

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **B**

STRUCTURAL AND COHESION POLICIES



Agriculture and Rural Development

Culture and Education

Fisheries

Regional Development

Transport and Tourism



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES

FISHERIES

THE IMPACT OF WTO AND OTHER TRADE NEGOTIATIONS ON FISHERIES

STUDY

This document was requested by the European Parliament's Committee on Fisheries.

AUTHORS

Öko-Institut: Miriam Dross, Hendrik Acker, Norma Schönherr;
Agricultural Economics Research Institute (LEI): Jos Smit, Rik Beukers.

RESPONSIBLE ADMINISTRATOR

Jesús Iborra Martín
Policy Department Structural and Cohesion Policies
European Parliament
B-1047 Brussels
E-mail: poldep-cohesion@europarl.europa.eu

LINGUISTIC VERSIONS

Original: EN
Translation: DE, ES, FR, IT.

ABOUT THE EDITOR

To contact the Policy Department or to subscribe to its monthly newsletter please write to:
poldep-cohesion@europarl.europa.eu

Manuscript completed in September 2009.
Brussels, © European Parliament, 2009.

This document is available on the Internet at:
<http://www.europarl.europa.eu/studies>

DISCLAIMER

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorized, provided the source is acknowledged and the publisher is given prior notice and sent a copy.



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES

FISHERIES

**THE IMPACT OF WTO AND OTHER TRADE
NEGOTIATIONS ON FISHERIES**

STUDY

Abstract:

The study compiles and analyses information on international as well as EU trade flows; it considers the tariffs applied in trade in fisheries with a particular focus on tariff protection maintained by the EU. Against this backdrop the current state of the ongoing multilateral and bilateral trade negotiations is described and analysed with regards to their possible impact on the EU fisheries and aquaculture sectors. Regarding negotiations within the WTO framework the focus is on NAMA and fisheries subsidies. The use of trade defence instruments by the EU is also put in the context of possible amendments to the ADA as well as WTO case law.

Contents

Acronyms	7
Executive summary	9
1 Introduction	15
2 World and EU trade in fisheries	17
2.1 Statistical Introduction	17
2.2 Global trade flows	18
2.3 EU trade flows	20
3 Tariff and non-tariff barriers on fisheries	23
3.1 Definitions and explanatory Introduction	23
3.2 Overview of barriers by the main trading nations/blocks	23
3.3 Tariff protection maintained by the EU	26
3.4 Other EU legislation with impact on trade flows in fisheries	32
4 Description of the WTO framework on fisheries	43
4.1 Negotiations on Non Agricultural Market Access (NAMA)	43
4.2 Negotiations relating to Trade and the Environment	49
4.3 Negotiations on fisheries subsidies	56
4.4 Other relevant WTO negotiations	64
4.5 WTO case law	66
5 Analysis of other relevant trade negotiations	71
5.1 EPA negotiations	71
5.2 Negotiations with the Mediterranean Area (EU-MED)	75
5.3 Negotiations with South and Central America	78
5.4 Negotiations with Asia	85
6 Trade defence instruments	91
6.1 Theory and legal framework	91
6.2 Past and present use of trade defence instruments	92
6.3 Possible evolution of trade defence instruments in the light of Doha	95
7 Conclusion	97
References	101
Annexes	107
Annex 1: Global and EU trade flows	107
Annex 2: Global and EU tariff barriers	113
Annex 3: The Swiss formula	117
Annex 4: Exemplary EPA fisheries chapters	119

Acronyms

ACP	Group of African, Caribbean and Pacific countries
ADA	Anti-Dumping Agreement
ADM	Anti-Dumping measures
ASCM	Agreement on Subsidies and Countervailing Measures
BOI	binding origin information
CCT	Common Customs Tariff
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CTE-SS	WTO Committee on Trade and Environment in Special (negotiating) Session
CTS-SS	WTO Committee on Trade in Services in Special Session
DSB	WTO Dispute Settlement Body
EBA	Everything but Arms – Initiative
EEZ	Exclusive Economic Area
EFF	European Fisheries Fund
EFTA	European Free Trade Association
EGS	Environmental Goods and Services
EPA	Economic Partnership Agreement
FAO	UN Food and Agriculture Organization
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GSP	Generalized System of Preferences
HACCP	Hazard Analysis Critical Control Point
IUU	Illegal, Unregulated and Unreported Fishing
LDC	Least Developed Countries
MEA	Multilateral Environmental Agreement
MFN	Most Favourite Nation
NAMA	Non-agricultural market access
NMFS	USA National Marine Fisheries Service
NTB	Non-tariff barriers

NAFTA	North American Free Trade Agreement
RFMO	Regional Fisheries Management Organizations
S&DT	Special and Differential Treatment
SPS	Sanitary and Phytosanitary Measures
STO	Specific Trade Obligations
SVE	Small and vulnerable economies
TBT	Technical Barriers to Trade
TED	Turtle excluder device
TNC	WTO Trade Negotiations Committee
TRQ	Tariff Rate Quota
UNCLOS	United Nations Convention on the Law of the Seas
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

Executive summary

Over the last decades the European fisheries sector has increasingly struggled with a number of structural issues. Efforts to decrease a significant overcapacity of the fleet since the 1980s have at best been partially successful. Modernisation of the remaining vessels requires important investments in order to improve product quality for an increasingly competitive world market, ensure compliance with ever stricter environmental and quota regulations, and maintain adequate safety and working conditions for the sector's workforce. Although the sector is comparatively well positioned to deal with these challenges, greater ability to compete in the future will hinge on the ability to adjust to resource and market constraints.

The objective of this study is to provide the Committee on Fisheries with a clear and detailed description of the potential impact of WTO and other trade negotiations and instruments on the EU fisheries and aquaculture sector. For this purpose, the study shall review and analyse international trade negotiations conducted by the EU that are relevant for the sector. The study analyses ongoing trade negotiations on fish and aquaculture products with regards to their impact on the EU fisheries and aquaculture sector. It provides an overview of the most important issues in fisheries trade, such as trade barriers, fisheries subsidies and environmental/socio-economic concerns. For this purpose relevant information on international trade flows; tariff and non-tariff trade barriers as well as the use of relevant trade defence instruments; and WTO, bilateral and regional trade negotiations are presented in the course of the document. The negotiations conducted in the international WTO framework, particularly the current Doha Round and negotiations on non-agricultural market access (NAMA) constitute a special focus of the study.

Levels of World and EU trade

The study reaffirms that fish and derived products are one of the most traded commodities in the world today. World trade value of imports amounted to 57 billion Euros in 2006. Thus, almost 40 percent of total world fisheries production enters international trade.

While Non-LDC developing countries supply 65 percent of world trade, the share of LDCs has remained stable at a very low level of 1 percent. The EU is an exception to that trend, with imports of (semi-)processed fish from LDCs having doubled since 2000. Trade flows between non-LDC developing countries and developed countries have increased by 25 percent since 2000. China is now the largest exporter of fish products and has emerged as a major player in fish processing.

The study underlines the significance of trade in fisheries for the EU-27 as the leading import market for fish products in the world, followed by the USA, Japan and China. The EU-27 share of world import amounts to 30 percent in value. Imports originate mainly from Norway, China, Iceland and the USA. Around 10 percent of EU-27 imports (1.7 billion Euros) are imported from ACP countries. Japan, Switzerland, Russia and, Norway are the main clients of fish products exported from the EU-27. Exports to Norway mostly consist of fishmeal for aquaculture.

Tariffs and NTBs

In general, traditional barriers to trade such as tariffs and quantitative restrictions have been reduced considerably under the GATT. On average, tariffs for fish have been reduced to 4.5 percent for developed and below 20 percent for developing countries. Among the major importing countries, the USA applies the lowest tariffs, while China and the EU impose

average tariffs close to 10 percent. These two regions also exhibit the highest occurrence of tariff peaks.

EU tariffs on processed products which compete with EU production are high, e.g. tariff peaks amount to 24 percent for processed tuna, 20 percent for shrimp, and 12 percent for canned sardines. Another important characteristic of the EU tariff structure is the wide variety of applied tariffs by country of origin, based on different preferential regimes applicable to different trading blocks. Only an estimated 5 percent of imports are charged the full MFN tariff rate. 45 percent of imports benefit from tariff free arrangements. Also, the EU has highly transparent structures as it applies tariffs as ad valorem duties. In return the tariff structure of emerging and developing markets may pose problems for EU exporters. Extremely high or no bound tariffs are applied by India and Brazil.

In light of the current tariff structure tariff reductions are expected to have only moderate economic impacts given the relatively low tariff levels at present. However tariff reductions could severely hit specific sectors inside and outside the EU, in cases where tariff peaks or tariff escalation still exist.

With the decline of traditional barriers to trade, the importance of non-tariff barriers (NTBs) has grown. The large developed importing economies, including the EU, have set up a web of stringent standards and regulations for public health or environmental reasons (e.g. protection of endangered species). For example the number of WTO SPS-notifications for fish products have doubled since 2000. The EU is generally perceived to be at the forefront of developing food safety standards and, consequently, wields substantial leverage on the development of the seafood export industries in developing countries. A practical problem to be addressed by the EU regards the uniform implementation of its standards, so as to prevent "port shopping", that is the selective landing of imports at European ports that are perceived as "less strict" with regard to the enforcement of food safety standards.

WTO framework on trade in fisheries

The international legal and policy frameworks governing trade in fish and fish products is largely shaped by the WTO. With China's entry in 2001, all major fishing nations are now WTO Members, except for Russia who is in the process of negotiating membership. In the current Doha Round of negotiations, fisheries are dealt with at five different levels: (1) Market access for non-agricultural products (NAMA); (2) the Agreement on Subsidies and Countervailing Measures (ASCM); (3) Trade and the environment, in particular as regards multilateral environmental agreements (MEAs); (4) the Anti Dumping Agreement (ADA); and (5) the General Agreement on Trade in Services (GATS). In addition, WTO case law has some influence on trade in fisheries.

NAMA

NAMA negotiations were launched with the goal "to reduce, or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries" (WTO 2008a).

According to the current NAMA modalities draft tariff reductions for fish and fishery products will be subject to the so-called "Swiss formula" with separate coefficients for developed and for developing Member States. It has been agreed that developing countries will be allowed to choose certain flexibilities. The current version of the draft modalities fixes a coefficient of eight for developed countries and 20, 22, and 25 respectively for developing countries. For the European Union, this would mean a maximum tariff of 8

percent, possibly resulting in an average tariff of below three percent and constraints on tariff peaks even for the most sensitive products.

The impact on the formerly relatively protected market for certain fishery products, particularly shrimp, tuna, and sardines, would be quite substantial. This fact initially triggered requests from within the sector for exemptions from the formula. However, this was perceived as too great a risk for the overall success of the NAMA negotiations, so that the stance of the EU has been to support the current proposal in return for the obligation on developing countries to work progressively towards binding their tariffs.

Some WTO members have engaged in sectoral negotiations aiming at achieving deeper tariff reductions in some non-agricultural sectors, among them fish and fishery products. Disagreement on the issue of sectoral negotiations is considered one of the reason for the failure of the Doha Round negotiations in July 2008. The rigorous position held by the USA, who demand that developing countries commit to sectoral negotiations in return for exemptions in the application of the Swiss formula, strongly contributed to the situation. The EU is an opponent of sectoral negotiations on fish and fishery products. Existing commitments to tariff cuts are considered far-reaching enough and further cuts are considered contrary to the interests of maintaining a competitive fisheries sector in the EU.

Fisheries Subsidies

Currently, there are no special WTO provisions relating to fisheries subsidies. These subsidies are disciplined only by the general subsidies rules found in the current WTO Agreement on Subsidies and Countervailing Measures (ASCM). The ASCM provides a framework for defining, reporting and disciplining subsidies that create trade distortions. At the WTO Ministerial Conference in Doha in 2001 agreement was reached to make fisheries subsidies part of the Doha Development negotiations. While in the first years the negotiation process was marked by substantial disagreement as to the scope and the strength of the mandate, the 2005 Hong Kong Ministerial renewed the mandate calling for an enforceable ban on harmful subsidies, clearly including environmental and development criteria. At the end of 2007, a draft text on fisheries subsidies was circulated taking the form of a new Annex to the ASCM. The list of subsidies proposed for prohibition was fairly broad. The proposal met strong objections - also from the EU. In December 2008 a new draft consolidated chair text was issued containing only a "roadmap for discussions" for fisheries subsidies. The chair advised to "take a step back and reflect on the fundamental issues raised by the mandate" once again (WTO 2008b).

However, some characteristics of a new emergent fisheries subsidies regime are already perceivable. Subsidies for fisheries management, research as well as monitoring, control and surveillance purposes are most likely to be exempted from disciplines. Also, LDCs will very likely not be affected too much from new disciplines. Disciplines on subsidies directly resulting in overcapacity are widely accepted, in principle. However, the question if subsidies for operating costs should be disciplined is highly controversial. Another issue that is as of yet unresolved relates to the question if exemptions from disciplines should be linked to fisheries management requirements.

The EU has shown a preference for restricting disciplines to subsidies contributing directly to enhancement of overcapacities over restrictions on contributions to operating costs and processing activities. In addition the EU has a special interest to exclude its money transfers in the context of fishing agreements opening third countries' fisheries to European fleets from the scope of the ASCM. If access fees were to be paid entirely by fishing fleets this would seriously impair the competitiveness of distant fleets in all likelihood.

Trade and Environment

Some Multilateral Environmental Agreements (MEAs) contain a number of trade or trade-related measures. As regards fisheries, trade-related measures in MEAs seek to promote fishery products complying with sustainable management and conservation objectives. An example is the use of trade measures in the fight against illegal, unregulated and unreported (IUU) fishing. In this context, trade-related measures may target certain national vessel registers ("flags of convenience") or certain catching methods (e.g. through eco-labelling schemes). Relevant MEAs include inter alia the International Convention for the Conservation of Atlantic Tunas (ICCAT), the UN Fish Stocks Agreement (UNFSA), or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). To ascertain the coherence between the WTO and MEA regimes, the EU has been a proponent of defining more specifically and generally clarifying the MEA-WTO relationship within the Doha negotiations. However, the mandate for these negotiations is rather limited: a negotiated amendment to the WTO rules or any other outcome altering the legal status quo are likely to be perceived as exceeding the Doha mandate. Thus, it is conceivable that negotiations will rather lead to the adoption of a brief statement endorsing existing elements of the WTO-MEA relationship, i.e. the conclusions reached by the Committee on Trade and Environment (CTE) for the purposes of the WTO's Singapore Ministerial Conference in 1996. This would presuppose, however, unanimous acceptance of the Singapore conclusions, which in itself is not likely to be reached.

Negotiations on reduction or elimination of tariffs and non-tariff barriers for environmental goods and services (EGS) are also taking place under the heading of "Trade and Environment". Generally speaking, this issue is of a limited interest for trade in fisheries at best. Goods and services concerned are either directly related to pollution control or natural resource management, relying to a great extent on capital-intensive technological solutions to environmental problems. The only fisheries related products suggested for inclusion in the list of EGS are fishing nets that incorporate turtle excluder devices. Discussions to include products derived from sustainable activities (e.g. fish caught through sustainable practices) are not taking place.

Anti-Dumping measures

Trade defence instruments have developed as a means of correcting trade distorting effects of uncompetitive or unfair practice in international trade. Economists criticise that these instruments usually delay the structural change needed for protected domestic industries to survive in the long term.

The EU has made use of trade defence instruments, mainly targeting imports of farmed salmon from Norway and Chile. Intermittent trade defence measures have been in place from 1993 until 2008. The most recent case has led to the adoption of a WTO panel report in January 2008. The panel found that the European Commission had made errors in conducting its investigations, in calculating the dumping margins, and in the assessment of the injury to the EU salmon industry. The measure was consequently repealed by the European Commission in summer 2008.

The Doha agenda also includes the mandate for negotiations on Anti-Dumping with the aim of clarifying and improving disciplines while taking into account the needs of developing and least-developed Member States. A quite ambitious chair's draft circulated in the end of 2007 proposed to include into negotiations measures concerning circumvention, zeroing practices and sunset reviews. The 2007 draft was replaced by a less ambitious document in the end of 2008. While elements to strengthen important procedural aspects such as the provision for more meaningful information disclosure during investigations have been retained, the most controversial ones have been proposed for re-negotiation. Important

elements of a revision of the ADA are still missing. However, the general assumption is that the amendment will nonetheless raise the bar on international trade regulation. The use of ADM will most likely be more difficult in the future.

GATS

The request-offer process remains the main method of GATS negotiations under the DDA. Any new commitments will most likely weigh most on developing countries. Impacts on the European fisheries sector will only be minor as Europe, along with other net-importers of fish products and related services already have largely liberalised markets and because they committed to higher requirements as regards the trade in services negotiations during the Uruguay Round.

However, one issue of concern to the EU is the chartering of vessels. Liberalisation in this respect might be conducive to re-flagging of fishing vessels, which would result in an increase of European vessels flying "convenience flags" and employing crew from low wage countries. As large-scale reflagging is not a frequent phenomenon up to date this concern is regarded as purely hypothetical at the moment.

WTO case law

The survey of fishery related WTO case law shows that use of the dispute settlement system is mostly related to the application of defence instruments, as well as alleged NTB. Cases involving the European Communities are the Chile-Swordfish case, (DS 193), Definitive Safeguard Measures on salmon (DS 326 and DS 328), Trade description of Sardines (DS 231) as well as Trade descriptions of Scallops (DS 7, DS 12, DS 14). While in many cases no formal decisions have been taken, the cases demonstrate that the WTO dispute settlement procedures have an important corrective role to play in the enforcement of WTO trade law in general. Usually, conflicts are resolved by mutual agreement among the parties concerned. However, if decisions are taken within the WTO dispute settlement system, i.e. if formal reports are adopted, their effect is not necessarily limited to specific cases. If and insofar as a stringent body of case law is established, it may contribute to setting overarching standards for national trade practices.

Bilateral and regional trade negotiations

Beyond its involvement in the development of the global trading system under the umbrella of the WTO, the EU engages in regional and bilateral trade negotiations. Currently, 121 countries are linked to the EU by regional trade agreements, many of them negotiated in the 1990s. Moreover, the EU maintains the most extensive network of preferential trade agreements of any WTO Member State. The EU concludes different kinds of bilateral trade agreements:

1. Economic Partnership Agreements in negotiation with ACP countries as a follow-up of the Cotonou Agreement,
2. Free Trade Agreements, notable examples include negotiations with EU-MED and Mercosur,

Bilateral and regional fisheries trade negotiations have had an increasingly important role to play in the EU's trade policy over the past years. With the backdrop of the stalled Doha Round negotiations, this trend is most likely to continue.

1 Introduction

Fish and derived products, including wild catch, aquaculture, and processed fish products, are one of the most traded commodities in the world today (ICTSD 2006). Almost 40 percent of total world fisheries production, from aquaculture and capture fisheries, enters international trade (CTA 2007). The international legal and policy frameworks governing how fish and derived products may be traded is largely shaped by agreements under the umbrella of the World Trade Organisation (WTO). The last 50 years have seen an unprecedented growth in global trade under the General Agreement on Tariffs and Trade (GATT) and, since its foundation in 1995, the WTO. Currently the WTO counts 152 Member States, accounting for more than 97 percent of world trade value. With China's entry in 2001, all major fishing nations are now WTO members, with the exception of Russia which is in the process of negotiating membership.

Although the fishing sector (hereafter: "the sector") in general contributes less than 1 percent to the gross national product of the EU Member States, fishing and aquaculture are important economic activities in the EU, particularly in marginal coastal areas where there are often few employment alternatives. Following China, the EU is the world's second largest fishing power producing a total of seven million tonnes of fish per year. Nevertheless, Europe is also one of the largest net importers of fish and derived products, making it an attractive market for exporting nations (European Commission 2006b).

Over the last decades the European fisheries sector has increasingly struggled with a number of structural issues. Efforts to decrease a significant overcapacity of the fleet have at best been partially successful. Modernisation of the remaining vessels requires important investments in order to improve product quality for an increasingly competitive world market, ensure compliance with ever stricter environmental and quota regulations, and maintain adequate safety and working conditions for the sector's workforce. Although the sector is comparatively well positioned to deal with these challenges, greater ability to compete in the future will hinge on the ability to adjust to resource and market constraints (European Commission 2008a).

Negotiations on tariffs and trade liberalisation in the framework of the WTO, particularly the Non-Agriculture Market Access (NAMA) negotiations and ongoing negotiations on the permissibility of fisheries subsidies will influence the future of the sector. During the "Uruguay Round" of trade negotiations (1986-1994), it was decided that the fisheries sector (including aquaculture) was to be excluded from the Agreement on Agriculture. As a result fisheries and fishery products are now treated as an industrial sector, and/or industrial products respectively in the current Doha Round of negotiations (since 2001). In addition to ongoing WTO negotiations, various regional and bilateral trade negotiations are also likely to influence the future of the sector in the EU.

The objective of this study is to provide the Committee on Fisheries with a clear and detailed description of the potential impact of WTO and other trade negotiations and instruments on the EU fisheries and aquaculture sector. For this purpose, the study shall review and analyse international trade negotiations conducted by the EU that are relevant for the sector. The study analyses ongoing trade negotiations on fish and aquaculture products with regards to their impact on the EU fisheries and aquaculture sector. It provides an overview of the most important issues in fisheries trade, such as trade barriers, fisheries subsidies and environmental/socio-economic concerns. For this purpose relevant information on international trade flows; tariff and non-tariff trade barriers as well as the use of relevant trade defence instruments; and WTO, bilateral and regional trade negotiations are presented in the course of the document. The negotiations conducted in

the international WTO framework, particularly the current Doha Round and negotiations on non-agricultural market access (NAMA) constitute a special focus of the study.

Other issues to be addressed include:

- fisheries subsidies;
- the concern about overexploitation of resources; and environmental concerns with regard to aquaculture;
- the change in quality control requirements in the main importing countries and their implication for suppliers;
- the concept of risk assessment and other safety measures as potential trade barriers;
- the concern of consumers about food safety; and labelling and traceability

The study draws on the opinions expressed by experts involved in or close to WTO negotiations. A series of semi-formal interviews were held between December 2008 and January 2009 with representatives of trade organisations from or exporting to the EU, environmental NGOs, International Organisations as well as European Commission Officials.

This study is set out in seven chapters including this introduction. Chapter 2 examines trade in fisheries on the global scale and on the EU level. Chapter 3 gives a general overview on tariff structures applicable to trade in fish and fisheries products, before describing the tariff framework maintained by the EU. The chapter concludes with a section on other EU legislation with a possible impact on trade in fish and fisheries products such as SPS requirements and labelling. Chapter 4 analyses the WTO framework with regard to trade in fish and fisheries products. Chapter 5 is devoted to other (regional and bilateral) trade negotiations involving the EU. The legal framework and use of trade defence instruments is subject of chapter 6. Chapter 7 presents a summary of the most important findings of this study.

2 World and EU trade in fisheries

The first part of the study will provide an overview over world and EU trade in fisheries. The focus will be on the main trading nations and blocks, in particular the top capture fisheries producers China, Peru, the United States, Indonesia, Japan, Chile, India, the Russian Federation, Thailand and Norway. The same will be done for aquaculture, i.e. the top aquaculture producers which are China, India, Japan, Philippines, Indonesia, Thailand, Korea, Bangladesh and Vietnam. Imports, exports and inward/outward processing operations will be detailed as well as the allocation of trade by species and by types of conditioning.

2.1 Statistical Introduction

The statistical introduction defines a number of important terms and gives a brief description of the methodology used in this chapter. In the following sections international trade in fish products will be analysed using the COMTRADE database kept by UNCTAD and COMEXT (Eurostat). The figures presented may underestimate world trade as country coverage is not complete. Also, reporting by compiling countries may not cover all trade flows.

International trade data are presented in a standardized format and were collected in accordance with the World Customs Organization's internationally agreed Harmonized System (HS) for defining product categories. Fish products are covered in the chapters 03, 1604 processed fish, 1605 processed shell fish, 230120 fish oil and 1504 fishmeal for feed. Statistics are available at HS-6 digits level (UNCTAD) and CN-8 digits level (COMEXT).

For the sake of greater clarity and readability the tables in the text present aggregated data in three product categories: unprocessed fish, processed fish, and fishmeal and fish oil.

- Unprocessed fish includes: live, fresh and frozen fish, crustaceans, and molluscs (HS 0301, 0302, 0303, 0306, 0307).
- Processed fish includes: dried, salted and smoked fish, processed fish and shellfish (HS 0305, 1604, 1605).
- Fishmeal and fish oil (1504, 230120) include fishmeal/oil for animal feed purposes like fish farming.

In a number of the tables in the following sections countries have been aggregated into three blocks in accordance with the WTO standard classification: developed countries, least developed countries (LDCs), and an intermediate category of non-LDC developing countries. The following guideline by the UN statistical division has been applied: *"There is no established convention for the designation of "developed" and "developing" countries or areas in the United Nations system. In common practice, Japan in Asia, Canada and the United States in North America, Australia and New Zealand in Oceania, and Europe are considered "developed" regions or areas. In international trade statistics, the Southern African Customs Union is also treated as a developed region and Israel as a developed country; countries emerging from the former Yugoslavia are treated as developing countries; and countries of eastern Europe and of the Commonwealth of Independent States (code 172) in Europe are not included under either developed or developing regions"* (UN, ref). The WTO list of LDCs has been used. In the following tables, a group of countries is indicated as "non-LDC developing countries". This group includes all countries which do appear neither on the above indicated list of developed countries nor on the WTO list of LDCs.

The tables in the following sections present imports and exports in terms of value rather than quantities. The reason for this is that values are essential in determining ad valorem tariffs (AVT). Moreover, the value of trade flows is for the current analysis a more relevant economic indicator than quantities. Only the trends (in the graphs) have been analysed in terms of quantity. This is done in order to avoid biases resulting from changing exchange rates between the Euro and other currencies, thereby allowing for the fact that product/species composition of trade flows might have changed over time. Trends of fish for food and fishmeal/oil are presented separately in order to avoid the overall view being dominated by the much larger flows of fishmeal.

Statistics on trade flows in fish and fisheries products rely on consistent registration of fish landings and inward processing activities. Fish catch, landed from foreign vessels in national ports or acquired by national vessels on the high seas from foreign vessels are to be included in import statistics (UN, 1998, §38). A vessel is considered foreign if it is operated by a non-resident enterprise. Fish caught by national vessels in foreign ports or transferred from national vessels on the high seas to foreign vessels are to be excluded from export statistics (UN, 1998, § 58).

Temporary admission (of goods) for inward processing means: “the customs procedures under which certain goods can be brought into a customs territory are conditionally relieved from payment of import duties and taxes; such goods must be intended for re-exportation within a specific period after having undergone manufacturing, processing” (Kyoto Convention, Annex E.6, pp. 6 - 8, and 21 and 22). The International Convention Relating to Economic Statistics adopted by the League of Nations in 1928 recommended the inclusion of such activity in the record of special trade statistics. When this recommendation is applied,...” goods that enter a country for or leave it after inward processing and goods that enter or leave an industrial free zone are also recorded and included in international merchandise trade statistics”. (UN, 1998, §65-68, Annex B).

Finally, a closer definition of EU external trade flows that are subject to analysis in this study is warranted. Exports to non-EU countries include: Goods, which leave the statistical territory of the Member State and are under the customs export procedure (final export, export following inward processing, etc.) or under the customs outward-processing procedure (usually goods destined to be processed or transformed for subsequent re-import). Imports from a non-EU country include: goods, which enter the statistical territory of the Member State from a non-EU country and are: (1) placed under the customs procedure for release into free circulation (goods that will be consumed in the importing Member State or dispatched to another Member State), either immediately or after a period in a customs warehouse, or (2) placed under the customs procedure for inward processing or processing under customs control (usually goods destined to be processed or transformed for subsequent re-export) either immediately or after a period in a customs warehouse (European Commission 2006b).

2.2 Global trade flows

The categories fish products (including fishmeal and fish oil for animal feed) are amongst the most widely traded natural resource-based goods (Mahfuz 2006). The following table presents a global view of world fish trade. More detailed tables have been moved to statistical appendix 1. The country groupings in the tables correspond to those used by the WTO. The trade positions of LDCs, non-LDC developing countries and developed countries have been highlighted. A number of tables present the trade flows of unprocessed and processed fish separately; this is done because of the issue of tariff escalation that will be discussed in detail at a later point.

Table 2.1 World trade of fish products including fishmeal and fish oil imports by developed countries, LDC countries and non-LDC developing countries (import value, billion Euros)

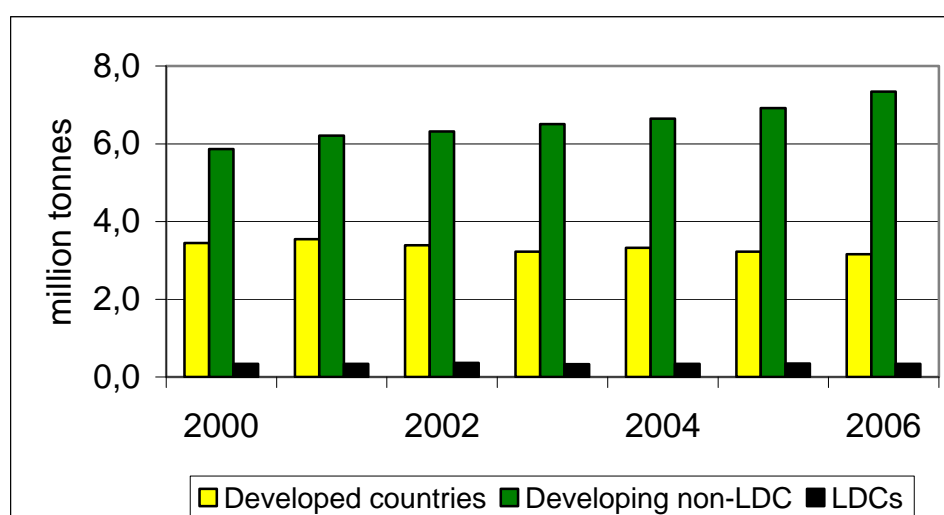
Countries of Destination	Countries of origin			
	Developed Countries	Developing countries non-LDC	LDCs	World
Developed countries	13,0	28,5	1,6	43,1
Developing-non-LDC	4,8	8,4	0,7	13,9
LDCs	0,0	0,0	0,0	0,1
World	17,8	37,0	2,3	57,0

Source: UNCTAD database

Reported world trade in fish products (including fishmeal and fish oil for animal feed purposes) was valued at 57 billion Euros in 2006. The table above shows that an important part of total imports by developed countries, constituting 76 percent of global import value, originates from non-LDC developing countries. Non-LDC developing countries supply 65 percent of world trade and are the main suppliers of developing and non-LDC developing countries. Perhaps surprisingly, LDCs contribute less than one percent to world trade in terms of value. Trade between LDCs is low; their main source of external supply comes from developed countries.

Import trends of developed countries are presented in the following graph. The graph below presents the imports (million tonnes) of (un)-processed fish for human consumption. The graph shows that imports from non-LDC developing countries increased by 25 percent since 2000. Imports from developed countries and LDCs were relatively stable.

Figure 2.1 Development of imports of fish for food by developed countries from other developed countries, non-LDC developing countries and from LDCs



In the developed world, unprocessed fish represents 44 percent of imports for food purposes (see table 1, Annex 1). Non-LDC developing countries clearly have an important role as suppliers of unprocessed materials. Raw materials represent 76 percent of their exports. Fishmeal and fish oil while important in terms of quantities traded have a low profile because the trade flows are presented in terms of value.

Tables 2 and 3 in Annex 1 show the nine major importers of fish products (including fishmeal and fish oil) by origin and by type of product. The EU-27, USA and Japan are by far the largest markets for foreign suppliers. Together these economies import 70 percent of the world's imports in terms of value, followed by China and the Republic of Korea. Seventy-five percent of USA and Japanese imports originate from non-LDC-developing countries and 57 percent of EU-27 imports. The EU-27 imports relatively more from LDCs (6 percent), than USA and Japan 2 percent. The share of processed fish represents 46 percent, 47 percent and 35 percent of the imports by the EU-27, USA and Japan. China imports mainly unprocessed fish for its processing industry (table 3, Annex 1). Tables 4 and 5 in Annex 1 present the major exporting blocks and countries for fish products. The data in the tables show the prominent position of China as the leading exporter of fish products. Its export value amounts to more than seven billion Euros or 14 percent of world exports. The EU-27 is one of the major exporters of fish (rank 7). The main fish exporting EU Member States are Denmark, Spain and The Netherlands. Table 5 of appendix 1 illustrates the prominent position of China as a leading exporter of processed products. The EU-27 is one of the major exporters of unprocessed fish (rank 5).

2.3 EU trade flows

The section highlights the involvement of the EU in world fish trade. The data presented in this section and in the tables listed in Annex 1 focus on trade flows relating to the multilateral and bilateral agreements and negotiations in which the EU is involved.

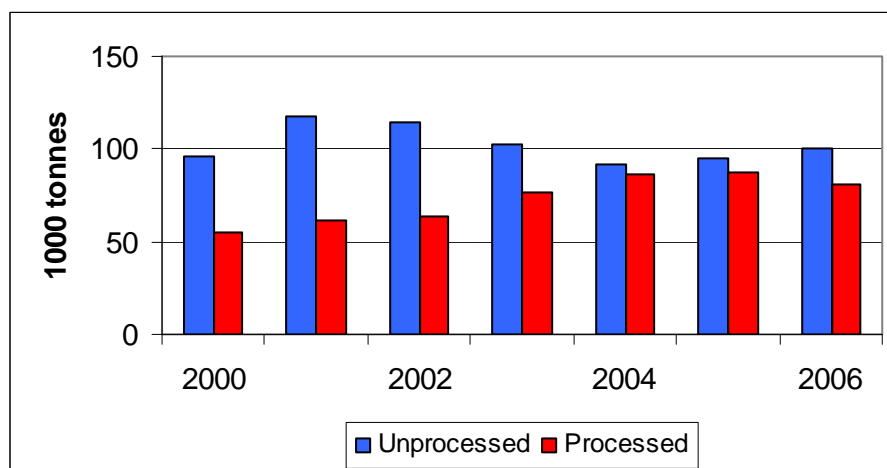
The bottom line of the table below indicates that the EU-27 import values of unprocessed and processed products are of the same order. The last column shows that some 60 percent of EU imports are from non-LDC developing countries. This percentage holds for both unprocessed fish and processed products. LDCs supply around 5 percent of total EU import value.

Table 2.2 EU-27 imports by product type and by origin (million Euros)

Origin	Product type		
	Unprocessed fish for food	Processed fish products	Total
Developed countries	2 796	2 434	5 230
Developing non-LDC	4 999	4 723	9 722
LDCs	543	309	852
World	8 338	7 466	15 804

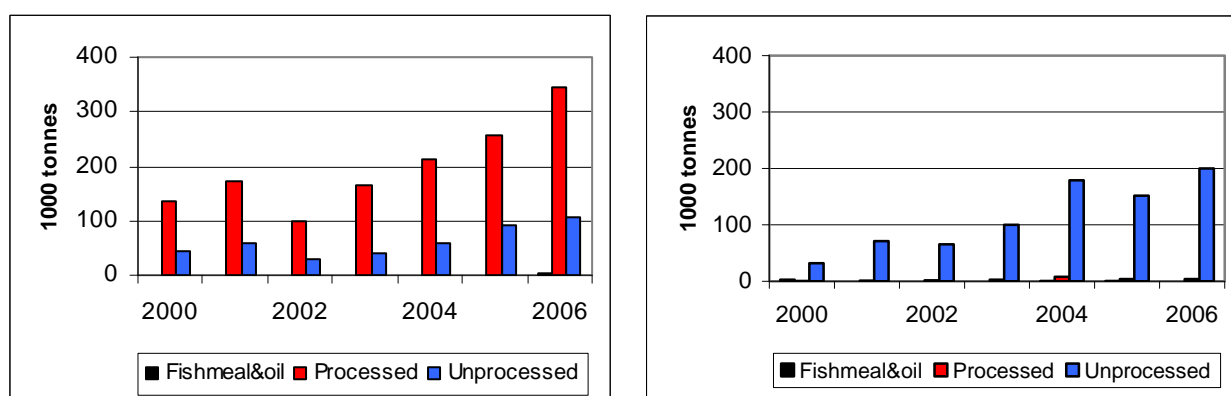
Source: Comext database, Eurostat

The trend in imports of fish for human consumption from LDCs is shown in the following graph. Imports of unprocessed fish have been stable since 2000 at around 100 thousand tonnes. Imports of processed products increased by 60 percent between 2000 and 2005.

Figure 2.2 Development of EU-27 imports of fish for food by developed from LDCs

Norway is the main supplier of the EU-27, while China is the second largest supplier before Iceland (see table 7, Annex 1). In addition, the import share from the USA is also significant. Although the EU-27 is a net-importer of fish and fish products, it exports products for which there is no market inside the EU, for example, small pelagic species. A large share (63 percent) of EU export value is related to unprocessed fish (see table 6, Annex 1). EU exports of fishmeal and fish oil are relatively small. Japan, Switzerland and Russia are the main clients of the EU-27 (see table 8, Annex 1). Russia is a large market for unprocessed fish. Norway imports large amounts of fish meal for aquaculture, while China imports unprocessed fish for processing. The USA imports both unprocessed fish and processed products from the EU.

The two graphs below highlight the fast growth of trade between China and the EU.

Figures 2.3a and 2.3b Development of EU trade with China

Imports

Exports

The graphs demonstrate the emergence of China as the world's leading fish processor. The panel on the left shows the increase of EU imports of processed products from China, which have increased by 130 percent since 2000. The second panel indicates that exports of unprocessed fish from the EU to China increased by a factor of six in the same period.

Tables 9 and 10 in Annex 1 present the trade flows between EU-27 and ACP countries. Comparison of these tables shows that the value of EU imports are 5,5 times larger than export value. The value of imports from the EU-27 to the ACP area is 1,7 billion Euros. The origins of the imports are mainly EPA West Africa, EPA East South Africa and EPA Southern Africa. The value of EU-27 exports to ACP amounts to 300 million Euros and concerns mostly unprocessed fish. The main importing ACP blocks are EPA West Africa and EPA East South Africa.

Tables 11 and 12 in Annex 1 present the mutual trade flows between EU-27 and seven Mediterranean (MED) countries. Figures at the bottom of the tables show that the value of EU imports from this area are nearly six times larger than the value of EU exports to these countries. MED countries supply 5 percent of EU-27 imports value. The EU imports mainly unprocessed fish from the MED area. Markets in MED countries take up around 0,3 percent of EU-27 export value. The EU exports both unprocessed and processed fish to the MED area.

We can conclude that the EU is a net importer of fish and only exports species for which there is no demand inside the EU. Sixty percent of EU-27 imports come from non-LDC developing countries. Norway, China and Iceland are the main external suppliers of fish to the EU. EU-exports are to Japan, Switzerland, Russia, Norway and China. Russia and China import mainly unprocessed fish products from the EU, while Norway imports mostly fishmeal. In regards to ACP blocks, the EU imports mainly from EPA West Africa, EPA East South Africa and EPA Southern Africa. The total amount of imports from ACP countries is 1.720 million Euros. MED countries export fish products with a value of 875 million Euros to the EU and import products with a value of 149 million Euros.

Key findings of Chapter 2

1. World trade value of imports amounted to 57 billion Euros in 2006. The categories fish products (incl. fishmeal and fish oil for animal feed) are amongst the most widely traded natural resource-based goods.
2. Non-LDC developing countries supply 65 percent of world trade. Crucial is the trade between non-LDC developing countries and developed countries. This trade flow increased 25 percent since 2000. China is now the largest exporter of fish products and has emerged as a mayor player in fish processing.
3. LDCs contribute less then one percent to world trade value. The imports by developed countries from LDCs remained stable since 2000.
4. The EU-27 (excluding intra EU trade) is the leading importer of fish products before the USA, Japan and China. The EU-27 share of world import value amounts to 30 percent.
5. Norway is the leading supplier to the EU-27, before China, Iceland and the USA. Japan, Switzerland, Russia and surprisingly, Norway are the main clients of fish products exported from the EU-27. Norway imports large amounts of fishmeal for aquaculture.
6. Around 60 percent of EU-27 imports are from non-LDC developing countries. LDCs supply 5 percent of EU imports. EU imports of (semi)processed fish from LDCs has doubled since 2000.
7. Around 10 percent of EU-27 imports (1,7 billion Euros) are from ACP countries. The main supplying ACP blocks are EPA W-Africa, EPA SE-Africa and EPA S-Africa. The value of EU-27 exports to the ACP area is 300 million Euros (11 percent of total EU export value).
8. The EU-27 imports value from MED countries is around 900 million Euros (5 percent of total EU imports value). The value of EU-27 exports to this area is 150 million Euros (6 percent of total EU export value).

3 Tariff and non-tariff barriers on fisheries

Chapter 3 gives a comprehensive overview of the tariff and non-tariff barriers to trade in fisheries and aquaculture products maintained by the main trading nations/blocks as identified in the previous chapter. An inventory of global tariff and non-tariff barriers has been drawn up on the basis of international datasets on trade barriers and by means of a thorough literature review on this issue. In a second step, the tariff protection maintained by the EU in relation to fisheries and aquaculture products - applied duties under the CET and current GATT commitments has been analysed on the basis of the EU customs database. EU applied duties under the CET and current GATT commitments have been compiled by main trading nations/blocks, type of conditioning or species. A glossary including the definitions of the main concepts employed in this chapter has been added in Annex 2.

3.1 Definitions and explanatory Introduction

Specifications of WTO tariff lines vary by country and economic block between HS-6 (the Harmonised System previously mentioned) and deeper tariff declarations up to the nine digit level. At nine digit level, there is not only variation across tariff lines, but also across trading partners within a single tariff line. These variations make detailed generalisations nearly impossible. Therefore, in order to avoid complications, product codes at the more generalized six digit level are used.

The analysis in this chapter focuses on most favoured nation (MFN) tariffs. In the case of the EU, the MFN applied tariffs are equal to the bound tariffs as they are negotiated in the WTO. These average applied MFN tariffs allow analysis of a single import tariff regime. This implies that differences in trade barriers by trade partner are ignored. In practice, many countries enjoy better rates than those offered by MFN tariffs because of preferential trade agreements. By working with MFN tariffs this study may overestimate both the benefits and costs of changes to tariffs since many countries already enjoy lower tariffs.

In this chapter, tariff peaks indicate tariff lines with MFN applied tariffs of over 15 percent. Tariff escalation is caused by combinations of low tariffs for unprocessed fish together with high tariffs for processed products for the same species. Tariff escalation is a means to protect internal processors and, as a consequence, they damage external processors. Concerns have been raised that tariff reductions will decrease the benefits of those countries currently enjoying preferential access to some markets; thereby reducing their advantage vis-à-vis other developing countries (tariff erosion).

3.2 Overview of barriers by the main trading nations/blocks

Traditional barriers to trade (tariffs and quantitative restrictions) have been reduced by negotiations under the GATT. Negotiations under the GATT succeeded in reducing average tariffs for fish by 25 percent. After the Uruguay Round, the average tariff on fish products was 4.5 percent for developed countries and below 20 percent for developing countries (Mahfuz 2006). FAO-Globefish (2000) found that such import duties continue to hinder processing and economic development of fishery industries in many developing countries. Countervailing duties and the proliferation of non-tariff barriers have similar effects as they often constitute demand-side constraints which limit market access.

Because the EU-27 has a large import surplus, the first concern of EU managers is a reduction of imports into the EU market. Nevertheless, certain EU producers would benefit

from global tariff reductions if it would mean better access to seafood markets in emerging economies and for specific products/species in developing countries.

3.2.1 Average MFN applied tariffs

The following table presents the tariff structures and occurrences of tariff peaks for the four major fish importing economies (EU, China, Japan, and USA). The tariffs of the four major importing blocks and countries have been analysed at the HS-6 level, the deepest level that can be compared internationally. For reasons of space, detailed results have not been presented. The same methodology has been applied for all of the economies. The table presents aggregated results at the level of three main product categories for unprocessed, processed fish and fishmeal/fish oil. The first two sections of the table below show for each of the categories the simple average of bound and MFN-applied tariffs. These numbers are presented for each of the world's major fish importing economies. The bottom lines of the table present the average MFN applied tariff weighted by the value of the imports.

Table 3.1 Average bound and MFN applied tariffs in major importing blocks

		China	Japan	USA	EU
<i>Bound tariffs</i>	Processed	10,8	4,0	0,4	10,4
	Fish oil & fish meal	11,1	8,0	2,7	14,7
	Unprocessed	10,1	2,4	0,4	3,4
<i>Average MFN tariffs</i>	Processed	10,9	4,5	0,4	11,4
	Fish oil & fish meal	11,0	9,3	2,4	14,2
	Unprocessed	10,5	1,8	0,4	3,1
<i>Weighted MFN tariffs</i>	Processed	9,0	3,7	0,5	9,4
	Fish oil & fish meal	9,0	6,7	2,5	9,8
	Unprocessed	3,7	0,0	0,2	1,4

Source: WTO

The USA apply the lowest tariffs, while China and the EU have average tariffs on unprocessed and processed fish products that are close to 10 percent. These results correspond to the findings of previous analyses (e.g. Roheim 2004). The value-weighted applied tariffs are somewhat lower than the simple average of applied tariffs. This indicates that products with a relatively high import value face lower tariffs than products with a relatively low import value. Bound and applied tariffs of other countries have been included in Annex 2. Tariffs applied by some of the emerging markets (Republic of Korea and India) are substantially higher than those of the developed economies. Extremely high tariff bounds are found in India and Brazil (see table 1, Annex 2).

Tables 2 and 3 in Annex 2 present the potential custom revenues on fish products for the major importers and the emerging economies assuming that MFN tariffs were fully applied for all imports. The import tax revenue gives an indication of the potential protection provided by the present MFN tariff structure in each of the markets. With MFN custom

revenues of about 2.7 billion euro, the EU has the highest potential value. Although China has higher tariffs than Japan, the potential custom revenues of Japan are almost twice as high as those of China because Japanese import value is much larger. The potential tax revenues of the emerging markets are small compared to the EU because the imports of all these markets are much smaller than the EU imports. Other studies indicate generally higher tariffs in developing countries and that tariff structures vary significantly between countries. This heterogeneous tariff structure poses a problem to the development of the South-South trade (Roheim 2004).

3.2.2 Tariff peaks and tariff escalation

Average applied tariffs are relatively low in the four major importing economies. However, due to tariff escalation and tariff peaks for certain fish products, import duties in developed country markets continue to present barriers to processing and economic development in specific fisheries industries of both developing countries and some developed nations.

Tariff escalation on certain products means that developing countries do not capture increased profits from processing. The tables above show that, in general, there is little variation between average applied tariffs for unprocessed and processed fish products (except in the case of Korea). Larger gaps may appear at deeper product levels. Improvements are occurring in this area and, as a result, significant quantities of whole frozen fish are being transported to developing countries for low-cost thawing, processing and packaging. Reducing tariff escalation will generate further opportunities for producing value-added fishery products and will provide a large potential for employment creation in developing countries.

Table 4 in Annex 2 shows the MFN tariff peaks (>15 percent tariffs) for the four major importing economies at HS-6 level. At the HS-6 level, no peak tariffs emerged for Japan and the USA. China has ten tariff peaks while the European Union has 29. The tariff structure of the EU has also been checked for tariff peaks at the deepest level (the eight digit Common Nomenclature (CN-8)). The CN-8 level provides a more detailed insight and shows a higher number of peak tariffs, 60 tariff peaks for unprocessed products and about 40 tariff peaks for processed products (for example, a 22 percent tariff is applied for *different* unprocessed tuna species (skipjack) and bonito). Tariff peaks for processed products appear in the categories prepared and preserved fish and shellfish. Table 5 at Annex 2 indicates an extremely large number of peak tariffs both for unprocessed and processed fish in the case of Korea and India.

Results above illustrate that major fish importing countries have followed different approaches in regards to setting tariffs for fish products imported from developing countries, the approaches range from preferential rates and duty-free access for some countries to the near-total removal of tariffs for certain types of products. Profiles of tariff structures also vary among the major importing economies in terms of the presence of tariff peaks and tariff escalation. Amongst the major world importers, the EU and China apply the highest duties and have the highest occurrence of tariff peaks. The USA and Japan have no tariff peaks. Nevertheless, the EU has highly transparent structures, as tariffs are applied as ad valorem duties.

3.2.3 Preferential Arrangements

Preferential arrangements for lower tariffs and duty free access exist between many developed and developing countries. These tariffs have often been negotiated under a variety of conventions and special cooperation agreements or have been granted under

autonomous arrangements such as generalised systems of preference (GSP). Preferential arrangements cover 80 percent of fish trade (Dey et al. 2002). The OECD estimates that weighted tariff averages for trade that are applied to seafood from developing countries (excluding LDCs) to the EU, Japan and the USA are 7,6 percent, 4 percent and 3,6 percent, respectively. The comparable rates for LDCs are 0 percent for the EU and the US and 3,6 percent for Japan (OECD 2003).

3.3 Tariff protection maintained by the EU

3.3.1 Overview of the Common customs tariff (CCT) and tariff exemptions or reductions applied to the imports into the EU

In previous paragraphs, the EU MFN tariff structure was presented and compared with other trading blocks. The EU MFN tariffs equal the Common Customs Tariff (CCT). The MFN/CCT tariff is not applied to all product lines and countries of origin because of the non-preferential and preferential tariff reductions in place. The EU has granted the following tariff exemptions and reductions in the form of autonomous and conventional arrangements.

1. Autonomous instruments:

- The General System of Preferences (GSP) and GSP+
- Everything But Arms initiative (EBA)
- Autonomous Tariff Suspensions (ATS)
- Autonomous Tariff Rate Quotas (TRQ)

2. Conventional instruments:

- Multilateral agreements (under WTO rules)
- Regional agreements
 - Economic Partnership Agreements (EPA)
 - MED
 - EFTA
- Bilateral agreements

The GSP is an autonomous trade arrangement through which the EU provides nonreciprocal preferential access to the EU market to developing countries and territories. The GSP+ provides additional benefits compared to the standard GSP and is offered to particularly vulnerable developing countries. Beneficiary countries include all developing countries which do not benefit from the more favourable EPA or EBA arrangements. South Africa generally exports under the Trade, Development and Cooperation Agreement (TDCA), however, its fish products are covered by the general GSP regime. The group of countries for which GSP is applied includes major suppliers of fish products to the EU like China, Argentina and Thailand. GSP is very relevant for the EU fish trade because it covers 45 percent of EU imports in terms of value.

LDCs, including the ACP-countries that did not sign a full or interim EPA, were granted duty-free access to the EU market in the Everything but Arms Initiative (EBA). EBA is incorporated into the GSP. Beneficiary countries comprise a group of 50 LDCs. They supply two percent of total EU imports.

Complete or partial autonomous tariff suspensions for EU fish imports are particularly relevant for the supply of raw materials products to be processed in the EU. For example, there is a complete suspension for frozen blocks of Alaska Pollack and prawns of the species *Pandalus borealis*. There are partial suspensions for fresh and frozen cod and blue grenadier. The value of products imported under autonomous tariff suspensions should not be lower than a reference price. Suspensions are also granted for a number of products having relatively low import values, e.g., sturgeon, lumpfish, red snapper, pacific salmon, and krill imported for processing. Tariff suspensions are applied equally across all countries and are therefore particularly relevant for imports from developed countries and from non-LDC developing countries that cannot benefit from more favourable EBA and EPA arrangements.

Autonomous TRQs are particularly important for the EU fish processing sector. Duty free access is granted for substantial amounts of fish for processing which includes cod (fillets) 110.000 tonnes, herring 30.000 tonnes, tuna 27.000 tonnes, hake 15.000 tonnes, shrimps/prawns 20.000 tonnes, squid/ 46.500 tonnes, surimi 55.000 tonnes, and smaller amounts for other species. These TRQs are non-preferential and therefore particularly relevant for imports from developed countries and non-LDC developing countries which cannot profit from more favourable EBA and EPA arrangements.

Also the TRQs resulting from WTO rules are mainly for the benefit of the EU processing industry. WTO TRQs are available, e.g., for herring (34.000 tonnes), cod (25.000 tonnes) and tuna (17.250 tonnes). These TRQs are non-preferential and therefore particularly relevant for imports from developed countries and non-LDC developing countries which cannot benefit from more favourable EBA and EPA arrangements.

Exporters from ACP countries were granted non-reciprocal, tariff-free access to the EU under successive Lomé Conventions and the Cotonou Agreement. The Cotonou agreement expired on January 1st, 2008. Whereas since the Lomé Convention I these agreements were primarily based on non-reciprocal trade preferences granted by the Community to ACP exports, the Community and the ACP countries have now agreed to conclude new WTO-compatible trading arrangements. Since 2001, the Community and ACP countries have been negotiating to conclude new WTO-compatible trading arrangements, progressively removing barriers to trade and enhancing cooperation in all areas related to trade. "Economic partnership agreements" should replace the non-reciprocal concessions. For fish products, access to the EU market will continue to be fully duty-free and quota-free provided that rules of origin and food-safety and environmental requirements are respected. As of January 1st, 2009, the Caribbean is the only region that completed the negotiations on a full EPA with the EU. Most African non-LDCs (18 countries, except Nigeria, Republic of the Congo, Gabon and South Africa) and two Pacific non-LDCs (Papua New Guinea and Fiji) have concluded interim agreements with the EC. Nigeria, Republic of the Congo and Gabon export to the EU under the (less favourable) GSP.

The relationship between the European Union and the neighbouring Mediterranean countries is governed by the Euro-Mediterranean partnership. These agreements also serve as a basis for the gradual liberalization of trade in the Mediterranean area. A key objective of this partnership is the establishment of a Euro-Mediterranean Free Trade Area by 2010. At present, fish imports originating from the MED countries are duty free. The European Union concluded bilateral Euro-Mediterranean Association Agreements with Algeria, Egypt, Jordan, Israel, Morocco and Tunisia. Morocco is a major supplier of fish to the EU.

Iceland and Norway are members of EFTA and the EEA. However, the EEA Agreement does not extend Community single market legislation to agriculture and fisheries products.

Arrangements relating to trade in fish are therefore specified in a separate Protocol 9 to the EEA (1993). This arrangement gives Iceland and Norway:

- preferential access to the EU market for certain products including cod, haddock, saithe and Greenland halibut – with the exception of frozen fillets.
- reduced duties (30 percent of MFN) for most other fish products but,
- no tariff concessions for certain products including herring, mackerel, shrimps and prawns.

The EU has granted tariff exemptions and reductions to a number of countries through bilateral agreements. Chile and Mexico were granted Duty free access for fish products.

In addition to the EEA agreement, both Norway and Iceland were granted additional preferences. More specifically, they were granted duty-free TRQs for pelagic fish and shrimp for further processing. The Faeroe Isles enjoy duty-free TRQs for all species of commercial interest.

In table 3.2 the applied preferential instruments and their key products/beneficial countries were summarized. The table shows the products and supplying countries that benefit most from each of the instruments. The combinations of products and countries/blocks illustrate that the EU policy is particularly to the advantage of EU processors, neighbouring suppliers (AER and MED) and suppliers in the developing world.

In the two bottom lines, the table gives an indication of the relevance of each of the preferential instruments. The second last line of the table presents the share of the EU import value affected by each of the preferential instruments. From import statistics and examination of the tariff regimes in force, it appears that around 45 percent of imports (in terms of value), have benefited from tariff-free arrangements (under autonomous TSs & TRQs 14 percent, WTO TRQs 2 percent, EBA 0 percent, EPA 11 percent, and around 18 percent under regional & bilateral arrangements. The regional & bilateral include free access for MED countries and Turkey and for many products originating from the other blocks. Around 50 percent (39 percent from developing countries, 11 percent from EFTA and Chile) benefited from non-zero tariff preferences, depending on the product line. The remaining 5 percent of the imports originating from developed countries (not in this table of preferential instruments) were charged the full MFN rate. A part of the imports from developed countries benefit from autonomous or conventional TRQs and TSs.

The values in the bottom line give an indication of the contribution of each instrument to the overall reduction of tariff protection resulting from all EU preferential arrangements together. The reduction of tariff protection, in terms of lower custom value, was estimated by multiplying the tariff cut (CCT minus preferential duty rate) by the corresponding import value. These calculations have been conducted for selected product lines which show the highest import value and which cover together over 70 percent of the total EU import value. It can be concluded that GSP, EPA and regional & bilateral agreements are the most significant preferential instruments. The high significance of these instruments relate to respectively a high market share (GSP and regional & bilateral agreements) and complete reduction of relatively high CCT tariff rates (EPA).

Table 3.2 Focus and relevance of preferential instruments applied by the EU

	Autonomous arrangements			Conventional agreements		
	ATRQs ATSS	GSP	EBA	WTO TRQs	EPA	Regional Bilateral
Access	Free	Reduced duty	Free	Free	Free	Free/ Reduced duty
Key products	Cod Herring Hake Tuna A. Pollack Shrimps	Shrimp Sepia Squid Freshwater fish		Cod Herring Tuna	Tuna Shrimp Hake Sepia	Cod Herring Hake
Major beneficial blocks & countries		DCs ² : China Argentina Thailand Ecuador India	50 LCDs	Norway Iceland DCs DdCs	LDCs ¹ DCs ¹	EFTA MED Chile Mexico
Percentage of EU import value		38				
Percentage of tax reduction	9	38	0	2	11	29
1) full or interim EPA. 2) remaining LDCs and DCs not included in EPA or EBA						

3.3.2 Evaluation of the actual levels of tariff protection currently applied by the EU

In this section the impact of the EU tariff policy on the tariffs effectively applied for specific products/categories and the related supplying countries/blocks is analysed. The effectively applied tariff is analysed using a methodology which incorporates the effects of MFN/CCT and all tariff rate quotas, suspensions, and preferential tariffs in place. The effectively applied duty has been estimated by computing the custom revenues and relating them to the corresponding import values. Customs revenues are estimated by multiplying the prevailing duty rate by the import value (taking account of the tariff rate quota). The CCT and preferential duty rates by product line and by partner country were derived from the TARIC (Integrated Customs Tariff of the European Communities) database run by the European Commission's Taxation and Customs Union Directorate-General. The custom values for each country/block of origin (and the corresponding tariffs) can now be aggregated to the average tariff applied for that product line or to the average of groups of products. These calculations have been repeated for selected product lines which show the highest import value. A number of assumptions were required in order to conduct the analysis. It was assumed that all tariff rate quotas have been fully used and that the corresponding share of the import value has been charged the lower tariff rate (in general 0) linked to the quota. Problems arise because of conflicting preferential regimes and available trade statistics. For instance, in many cases, tariff quotas apply for more than one tariff line. In addition, non-preferential tariff rate quotas are granted to all countries of origin. In all of these examples, each of the tariff rate quotas has been allocated to product lines and countries/blocks of origin on the basis of the corresponding import values.

The results of this analysis have been summarized in the table 3.3 here below. Values in the table present the (weighted) average of MFN bound tariffs, MFN applied tariffs, and the

effectively applied duties for unprocessed and processed products. In general, the EU MFN applied tariffs as specified by WTO are about equal to the bound tariffs. At the HS6-level, small differences emerge for only ten product lines out of 124. The differences seem to be mainly due to (as of yet) missing tariff bindings for recent extensions of the HS codes, e.g., for several tuna species, swordfish and tooth fish. However, the reported results show that the effectively applied duties are substantially lower. As a result of preferential tariff regimes, only about 25-30 percent of MFN tariffs have been effectively applied.

Table 3.3 Average bound, MFN applied and effectively applied tariffs

	Bound Tariffs	MFN Applied	Applied Duty	Percentage of MFN applied
Unprocessed fish	9,4	9,4	2,3	24
Processed products	9,8	9,8	2,9	30
Total average	9,6	9,6	2,6	27

Further details for specific fish products will be discussed based on the table 6 (Annex 2). Please note that the analysis is limited to those product lines showing the highest import values and the country groupings granted preferential terms of trade. Altogether, the product lines in the table cover over 70 percent of EU import value. The data presented in table 6 (Annex 2) indicates that MFN tariffs vary widely between product lines. In particular, tariff regimes differ between species which results in higher MFN rates for unprocessed fish landed by European fleets, e.g. fresh landed cod (12 percent), herring (15 percent), tuna (22 percent) and fresh cod fillets (18 percent). In addition, MFN tariffs of processed products which compete with EU production are high, e.g., tariff peaks for processed tuna are 24 percent, 20 percent for shrimp, and 12 percent for canned sardines. The relatively low MFN tariffs for all salmon products are notable (unprocessed 2 percent, canned 5,5 percent). The tariff structure of the EU was also analysed for tariff peaks at the CN-8 level, it shows 60 tariff peaks for unprocessed products and about 40 tariff peaks for processed products. However, the large number of peaks is a result of the large number of product lines. E.g., in the case of tuna, the same high tariff rate applies for many tuna species.

We conclude that EU tariff escalation for fish products is modest. Average MFN applied tariffs amount to 9.4 percent for unprocessed and 9.8 percent for processed fish. For a number of species information is available to compare products from different levels of processing. Examples in table 8 (Annex 2) illustrate that at the species level some cases of tariff escalation exist, e.g., for salmon (fresh salmon 2 percent, frozen fillets 8 percent), shrimps (unprocessed 8 percent, processed 20 percent). In other cases an adverse situation (those cases in which tariffs for processed products are lower than those for unprocessed products) exists, e.g., cod (fresh 12 percent, fresh fillets 18 percent, frozen cod 2 percent, frozen cod fillets 7,5 percent). It should be stressed that some product lines do not appear in this selection of relevant product lines as a result of existing tariff escalation, e.g., the MFN tariff for smoked salmon is 13 percent.

Results in table 8 also provide information on the wide variety of applied tariffs by country of origin, based on the different preferential tariff regimes applied to different trading blocks. Only imports arriving from developed countries except Scandinavian countries (under DdC in the table) are charged the full MFN tariff rate, though they can occasionally benefit from TRQs. The values in the table for all the other countries reflect the preferential treatment described in the previous section, e.g., duty free access for the Mediterranean

and EPA/EBA countries. Examples are tuna and shrimp, where LDCs are granted free access and non-LDC developing countries face high tariff rates.

3.3.3 Economic impact of current and possible further tariff exemptions or reductions

A key issue when analysing the economic impact of trade negotiations is the assessment of the effects of those negotiations on the competitiveness of domestic and foreign stakeholders. Using applied general equilibrium models would make it possible to assess the theoretical impact of trade policies on the competitiveness of EU and third country sectors¹. The main advantage of these models is their capability to quantify effects such as changes in EU and world market prices. Unfortunately, global trade models, e.g. those used by GTAP for agriculture products, only exist for aggregate level representations of sectors and do not provide much guidance for changes taking place at tariff line level. Therefore, analyses of the economic impacts in this study focus on average tariffs and the resulting value of custom revenues as indicators of the degree and volume of protection. These figures reflect the sum of gains and losses for domestic and foreign stakeholders related to the products in question.

Tariff reductions are not necessarily a priori benefits or disadvantages for EU stakeholders. In many sectors there are parties both in favour and opposed to tariff reductions. In the case of fisheries, it might be expected that domestic fishermen and fish farmers would advocate following a protective strategy in expectation of benefiting from import tariffs and the resulting higher prices in domestic markets. Following the same logic, a strategy in favour of tariff reductions would be in the interest of domestic processors of imported products as well as the foreign fishermen and processors supplying those products. Domestic consumers would also be expected to benefit from lower tariffs since this would imply lower domestic prices.

From the results of analysis presented in the previous sections it can be concluded that, in general, the degree of protection of the EU market for fish products is limited as result of moderate MFN tariffs and the large number of tariff concessions. Total actual custom revenues for fish for human consumption amount to approximately 670 million Euros. This protection of the EU market can be reasonably assumed to have resulted in some distortion of EU and world markets. The general economic impact of tariff reductions would be that some of the existing "distortions" in the world market caused by tariffs would be reduced.

From the perspective of the EU and external suppliers to the EU, tariff reductions can be expected to result in the following changes:

- Lower EU market prices for EU producers (fishermen and fish farmers).
- Lower purchase prices for EU importers of fish from developed or non-LDCs developing countries. This may have the effect of eroding preferential treatments for some LDCs.
- Lower prices for EU consumers for products originating from the EU and for comparable imports.
- Increasing world market prices, to the benefit of all foreign suppliers to the EU.
- Improved access to the EU of products from non-LDC developing countries and developed countries.

¹ Given certain strong assumptions and provided a number of conditions are met, the general equilibrium theory of economics gives an indication of the direction that trade flows and prices are expected to move in response to tariff reductions.

- The effect on producers in LDCs is ambiguous. Tariff reductions would not directly influence trade between these countries and the EU since this trade is already duty-free. However, two other effects may be expected. The LDCs could benefit from higher world prices. On the other hand, competition from other suppliers to the EU would increase. Boosting exports into the EU from non-LDC developing countries and developed countries (amounting to nearly 83 percent of EU imports) may pose problems to certain LDC producers (tariff erosion).

The general, economic impact is estimated to be moderate given the relatively low tariff level at present. However, tariff reductions could severely hit specific sectors inside and outside the EU, e.g., in cases where peak tariffs or tariff escalation still exist. The economic impact of non-tariff barriers is not fundamentally different from the results of tariffs. Non-tariff barriers directly (or indirectly) limit access to markets which will likely cause higher domestic prices and lower prices for foreign supply chains.

3.4 Other EU legislation with impact on trade flows in fisheries

For a long time national regulations have been considered a matter of “domestic sovereignty”. Nowadays they are at the centre of the international trade arena. This is due to (a) the decline of traditional trade barriers, (e.g. tariffs, quota and subsidies) and (b) the recognition of the impact that non-tariff barriers can have on trade (Henson et al. 2000, Maskus and Wilson 2000). Sanitary and Phytosanitary (SPS) standards of the EU are considered to be some of the most stringent in the World (Mbithi 2006). This section deals with non-tariff barriers (NTB) contained in EU legislation having an impact on trade flows in fisheries and aquaculture products. It focuses on measures falling within the remit of the WTO SPS and TBT agreements. The relevant measures and their potential impacts are discussed with a special focus on developing countries.

3.4.1 Sanitary and Phytosanitary Standards

Generally, Sanitary and Phytosanitary Measures (SPS) are a subset of regulations that specifically aim to protect human, plant and animal health. The protection of fish is included in this definition while the protection, for example of the environment per se and animal welfare are excluded (Iacovone 2003). More precisely the SPS agreement in its Annex A (Definitions No. 1) defines SPS as any measure applied to:

- a) protect animal or plant life from the introduction of pests, diseases or disease causing organisms
- b) protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food
- c) protect human health and life from plant or animal-carried diseases
- d) prevent or limit other damage caused by the entry, establishment or spread of pests.

They include “all relevant laws, decrees, regulations, requirements and procedures including, inter alia, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments [...]; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety”.

3.4.1.1 General Principles

Until January 2006, the relevant legislation regarding food safety and human health issues of fishery products has been Council Directive (EC) 91/493 on the conditions of placing fish and fishery products in the EU market. This Directive has been replaced by a complementary set of rules to harmonise EU food safety measures known as the "Hygiene Package". They are a suite of several Regulations including Regulation (EC) 852/2004 which lays down the general hygiene requirements for all food business operators and Regulation (EC) 853/2004 which provides additional specific requirements for food businesses dealing with foods of animal origin, including live bivalve molluscs and fishery products. Regulation (EC) 854/2004 establishes the official controls for foods of animal origin. From a fisheries perspective the new food hygiene legislation did not represent a fundamental policy shift compared with Directive (EC) 91/493, as it aimed to place other foodstuffs (such as meat, vegetables and fruits) under the same export conditions already in place for fish and fish products (Mbithi Mwikya 2006).

The General Food Law Regulation (EC) 178/2002 represents the overall framework to ensure a coherent approach in the development of food legislation. Most importantly, Article 11 of the General Food Law Regulation (EC) 178/2002 requires that all food and feed, including fish and fishery products, imported from third countries into the EU meet EU or equivalent standards in accordance with the principle of equivalence. Art. 11 reads: "Food and feed imported into the Community for placing on the market within the Community shall comply with the relevant requirements of food law or conditions recognised by the Community to be at least equivalent thereto or, where a specific agreement exists between the Community and the exporting country, with requirements contained therein."

In essence this provision results in an adjustment to EU standards and requirements by food business operators in third countries. Even where requirements are, strictly spoken, only binding on food and feed businesses located in the EU (including importers) those requirements will be passed on to businesses and primary producers in third countries as importers (who are legally responsible for marketing the food in the EU) will pass on these requirements to their suppliers. Specific requirements on third countries producers result from safety, traceability and prevention stipulations of the General Food Law Regulations.

Safety

Art. 14 of Regulation (EC) 178/2004 stipulates that food is not allowed to be placed on the market if it is unsafe. This is the case if it is either injurious to health, or unfit for human consumption. This general food safety requirement implies that although a product may comply with all specific requirements of food legislation, it is still not allowed on the market if a new hazard is found that not yet addressed by legislation. Furthermore, it demands that if food found to be unsafe is part of a batch, lot or consignment, it is presumed that all the food contained therein is considered to be unsafe, unless a detailed assessment proves that there is no evidence that the rest of the batch is unsafe.

Traceability

Art. 18 of Regulation (EC) 178/2004 requires food business operators to set up traceability systems. They are obliged to know and document from whom they have bought their food, respectively the ingredients, to know and document to whom they supply their products and to label their products so that they can establish traceability in case of a food safety problem. Similarly, where a food business operator finds out that a foodstuff presents a serious risk to health he shall immediately withdraw that foodstuff from the market.

Prevention

Art. 5 of Regulation (EC) 852/2004 requires food business operators to put in place implement and maintain a permanent procedure based on Hazard Analysis Critical Control Point (HACCP) principles. Such systems are seen as forming the basis for the identification and adequate control of food hazards in order to ensure a high level of consumer protection with regard to food safety.

3.4.1.2 Consumer health and Food safety standards

Food business operators making or handling products of animal origin must comply with the provisions of Regulation (EC) 853/2004 and where appropriate, certain specific rules concerning microbiological criteria for foodstuffs, temperature control and compliance with the cold chain, and sampling and analysis requirements. Foods of animal origin include live bi-valve molluscs and fishery products. Regulation (EC) 853/2004 (and its amendments) provides specific hygiene rules for food of animal origin. It contains fish-specific requirements, which cover the following²:

- Equipment and facilities on fishing vessels, factory vessels and freezer vessels: areas for receiving products taken onboard, work and storage areas, refrigeration and freezing installations, pumping of waste and disinfection.
- Hygiene onboard fishing vessels, factory vessels and freezer vessels: cleanliness, protection from any form of contamination, washing with water and cold treatment.
- Conditions of hygiene during and after the landing of fishery products: protection against any form of contamination, equipment used, auction and wholesale markets.
- Fresh and frozen products, mechanically separated fish flesh, endoparasites harmful to human health (visual examination), and cooked crustaceans and molluscs.
- Processed fishery products.
- Health standards applicable to fishery products: evaluation of the presence of substances and toxins harmful to human health.
- Wrapping, packaging, storage and transport of fishery products.

The provisions of Regulation (EC) 853/2004 apply to both unprocessed and processed products of animal origin.

Regarding microbiological criteria for foodstuffs, Regulation (EC) 2073/2005 includes limits for certain microorganisms, sets down limit values for food safety criteria and process hygiene criteria. The Regulation sets down the *E. coli* and *Salmonella* limits for placing live bivalve molluscs and live echinoderms, tunicates and gastropods on the market for human consumption. It also prescribes limit values for fishery products for the following:

- *Listeria monocytogenes* for Ready-to-eat food
- *Salmonella* for cooked crustaceans and molluscan shellfish
- Histamine for species associated with high amounts of histidine
- *E. coli* and Coagulase-positive staphylococci for shelled and shucked products of cooked crustaceans and molluscan shellfish (process criteria).

² Regulation (EC) 853/2004/EC Annex II "Requirements concerning several products of animal origin; Sections VII (Live bivalve Molluscs) and Section VIII (Fishery products)

Furthermore, the Regulation contains detailed controls encompassing sampling and analysis requirements.

Regulation (EC) 2074/2005 (Chapter II) contains rules for fishery products encompassing detection of parasites, maximum levels for total volatile nitrogen for certain species as a determinant of "fitness", analysis methods for marine biotoxins and labelling with cooking instructions for specified fish.

In addition to the general safety requirements, certain specific substances are forbidden in specified fish and fishery products:

- Directive (EC) 96/22 and its amendments prohibit the use of certain substances with hormonal and thyreostatic performance, including β -antagonists, in aquaculture products.
- Regulation (EC) 2377/90 and its amendments lay down maximum residue limits (MRLs) of veterinary medicinal products in foodstuffs of animal origin, including fish.

Impacts of EU import bans

In November 1997 Spain and Italy both banned fish imports from Kenya, claiming the presence of *Salmonellae*. Some EU Member States continued to import fish from Kenya under bilateral agreements. Kenya's fish exports to the EU declined by 34 percent and foreign exchange earnings from fish dropped 13 percent between 1996 and 1997. Following reports of a cholera outbreak in Kenya and neighbouring countries in January 1998, the EU again banned imports of chilled fish products from Lake Victoria, citing poor hygiene standards. This ban caused a 66 percent drop in the fish exports to the EU and a 32 percent drop in foreign exchange earnings from the previous year. A third ban in April 1999 followed a report that pesticides had been used in Lake Victoria to kill fish. This ban resulted in a further 68 percent decline in fish exports. (Source: IFPR 2003b).

3.4.1.3 Animal Health Rules

Council Directive (EC) 2002/99 of 12th December 2002 specifically addresses veterinary public health requirements. It regulates the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption. Aquaculture animals and controls of certain fish and bivalve diseases are covered by the legislation. The Directive obliges Member States to take all measures to ensure that products of animal origin intended for human consumption are introduced from third countries only if they comply with the requirements of the Directive (Art. 7). It makes imports subject to the production of a veterinary certificate meeting the requirements set out in Annex IV upon their entry into the Community. The veterinary certificate shall certify that the products satisfy all requirements laid down for such products under Community legislation with regard to animal health (Article 9). Commission Regulation (EC) 1664/2006 of 6 November 2006 amending Regulation (EC) 2074/2005 as regards implementing measures for certain products of animal origin intended for human consumption and repealing certain implementing measures contains the model health certificates for the import of fishery products and live bivalve molluscs to be used.

Council Regulation (EC) 1093/64 sets the terms under which fishing vessels of a third country may land directly and market their catches at Community ports.

3.4.2 The quality control system regarding imports

According to Council Directive (EC) 2006/88 of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animal imports of fishery products into the EU are subject to official certification. All fish and fishery products must thus come from a preparation, processing, packaging or storage facility („establishment“) which is approved by a competent body in the country concerned, which itself has been recognised by the European Commission. In order to export fish and fishery products to the EU the export country must provide guarantees that exports to the EU meet, or are at least equivalent to, the standards prescribed in the relevant EU legislation. The European Commission requests third countries intending to export fish and fishery products to the EU to provide all necessary information on the general organisation and management of sanitary control systems of the country.

This information relates to the following requirements to be fulfilled on a country level:

1. The animal health situation in non-EU countries must satisfy EU requirements for imports of the animals or products in question.
2. National authorities in non-EU countries must be able to provide rapid, regular information on the existence of certain infectious or contagious animal diseases on their territory.
3. Effective legislation on the use of substances (e.g. hormonal, thyreostatic, veterinary medicines), in particular concerning the prohibition or authorisation of substances, their distribution, release onto the market and their rules covering administration and inspection must be in place.
4. A programme has to be established to monitor the presence of certain substances (e.g. veterinary medicines) and the residues thereof in live animals and animal products.
5. The veterinary services must be capable of enforcing the necessary health controls.
6. To prevent and control certain infectious or contagious animal diseases effective measures must be available.

If these requirements are met, the country is “listed” as being eligible to export fishery and aquaculture products to the EU.

Once exports from a certain country have been allowed in general, national authorities in the country of origin must guarantee that the processing establishment where products intended for human consumption are produced satisfies EU requirements. A national authority in a third country can put forward a specific establishment for approval, if the national authority is confident that the EU requirements are met. In principle this means that establishments where animal and animal products are produced need to comply with the same requirements as establishments within the EU³. The European Commission undertakes checks to ensure that the Competent Authority undertakes this task in a satisfactory manner and to ensure requirements are complied with.

³ A list of establishments approved for import of fishery products into the EU is posted on the European Commission's website: https://sanco.ec.europa.eu/traces/output/listsPerActivity_en.htm#

Impacts of EU import bans

On July 30, 1997, the EU banned imports of shrimp from Bangladesh on the grounds that exports of this commodity did not meet the provisions of HACCP (Hazard Analysis Critical Control Point) regulations. The ban was imposed following EU inspection of Bangladesh's seafood processing plants. The visiting team also expressed its doubt with respect to the reliability and efficiency of the controlling function of the government inspections. The ban was estimated to cost the Bangladesh shrimp-processing sector nearly US\$15 million in lost revenues from August to December 1997. The impact on both the industry and the economy of Bangladesh was substantial. (Source: IFPRI 2003a)

3.4.2.1 Border Inspection

Regulation (EC) 854/2004 specifies rules for the organisation of official controls on products of animal origin intended for human consumption. It gives details of the controls to be carried out on live bivalve molluscs and fishery products.

According to Community legislation, each consignment of live animals and products of animal origin, including fish and fishery products, must be subject to official veterinary checks in the border inspection. The official controls include at least a systematic documentary check, identity check and, as appropriate, a physical check. In some cases the frequency of physical checks can be reduced and they depend on the risk profile of the product as well as on the results of previous checks. Procedurally, as regards the entry of products of animal origin, a pre-notification procedure to the Border Inspection Post (BIP) 24 hours before arrival of some consignments and the use of common veterinary entry documents (CVED) and the recently developed veterinary computer application (Trade Control and Expert System, TRACES) is required. Consignments which are found not to be in compliance with Community legislation must be either destroyed or, under certain conditions, re-dispatched within 60 days.

3.4.3 Technical Barriers to Trade

Non-tariff-barriers can also take the form of technical regulations, quality and composition standards, labelling, and source and origin information requirements (referred to as technical barriers to trade or TBT) (Mahfuz 2006). These measures are covered by the WTO TBT agreement, which refers to TBT as the definition of "product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method"⁴. For fisheries and aquaculture products the most significant TBT relate to production and processing methods (PPMs).

3.4.3.1 Rules of Origin

"Rules of origin" are the criteria used to define where a product was made. They are essential because a number of trade policies discriminate between exporting countries, e.g. quotas, preferential tariffs, anti-dumping actions, countervailing duties etc.. Rules of origin are also used to compile trade statistics, and for "made in ..." labels that are attached to products. As regards fishery products this origin is a complicated issue due to the differing jurisdictions over different maritime zones including the territorial sea, the Exclusive Economic Zone and the High Seas. The WTO Rules of Origin Agreement requires Members to ensure that their rules of origin are transparent; that they do not have restricting,

⁴ Annex I No. 1 of the WTO TBT agreement

distorting or disruptive effects on international trade; that they are administered in a consistent, uniform, impartial and reasonable manner; and that they are based on a positive standard. In addition the agreement contains a work program aiming at the harmonisation of rules of origin among all WTO members, except for some kinds of preferential trade. However, several deadlines to conclude the work programme (due to end in 1998) were missed. As regards fisheries, the question of how to attribute products of sea-fishing from the Exclusive Economic Zones of coastal states is subject to intense debate⁵. The question is whether such products are considered to be obtained in the state whose flag the fishing vessel is entitled to fly (such as advocated by the EU), or if they are considered to be obtained in the respective coastal state (such as proposed by e.g. Argentina, Australia, Brazil, Chile, Ecuador, India and the Philippines⁶).

The legal basis for non-preferential origin determination is found in Articles 22 to 26 of Council Regulation (EC) 2913/92 and Articles 35-65 of Commission Regulation (EC) 2454/93. According to Article 22 of Council Regulation (EC) 2913/92 "Articles 23 to 26 define the non-preferential origin of goods for the purposes of: (a) applying the Customs Tariff of the European Communities [...]; (b) applying measures other than tariff measures established by community provisions governing specific fields relating to trade in goods; (c) the preparation and issue of certificates of origin".

As to fishery products they will usually be regarded as originating in the country where the vessels are registered or recorded and which are flying the flag of that country. In case of further processing, under specific conditions, the product may be deemed to originate in the country where it underwent its last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture (Art. 24).

In order to provide traders with greater certainty as to the origin of their goods and to allow them to plan ahead on the basis of a legally binding decision, "binding origin information" (BOI) may also be obtained (since 1997) as a result of the Community's implementation of the WTO Agreement on Rules of Origin. They are usually valid for three years from the date of issue, but do not exempt from the requirement to provide proof of origin. They are binding upon the customs authorities in all Member States in respect of goods imported or exported after their issue, provided the goods and the circumstances determining the acquisition of origin are identical in every respect to what is described in the BOI⁷.

3.4.3.2 Labelling

Commission Regulation (EC)2065/2001 of 22 October 2001 details the application of Council Regulation (EC)104/2000 as regards informing consumers about fishery and aquaculture products.

The Regulation applies to all fishery and aquaculture products whether sold loose or packaged. But it applies to fish in certain forms only, e.g. fresh, chilled and frozen fish, fish fillets and other fish meat (including cut, flaked or minced), dried salted, smoked; Crustaceans and uncooked molluscs. The labelling information is not required for fish that

⁵ For a comprehensive summary of the debate of Rules of Origin regarding fishery products see: Serdy, A. (2007) INTERNATIONAL FISHERIES LAW ASPECTS OF THE RULES OF ORIGIN NEGOTIATIONS IN THE WORLD TRADE ORGANIZATION. Presentation at the 3rd Chatham House IUU Fishing Update and Stakeholder Consultation, 8-9 May 2007, retrieved from: http://www.illegal-fishing.info/uploads/Serdy_session8.doc on 13 January 2009

⁶ WTO document G/RO/W/95

⁷ The legal basis is contained in Council Regulation (EC) No. 2913/92 and Commission Regulation (EC) No. 2454/93.

has been further processed, preserved, treated or cooked. The information given must include a) the commercial designation of the fish species, b) the production method (caught, caught in freshwater, farmed), c) the catch area (according to FAO), and d) the scientific (Latin) name of the fish species (optional at retail sale to final consumer but must be included in traceability information at each stage of marketing).

There are specific requirements for live bivalve mollusc products: the label must specify the species of bivalve molluscs (common name and scientific name) and the date of packaging, comprising at least the day and month. The information concerning the date may be replaced by the phrase „these animals must be alive when sold“. The label, including the identification mark, must be waterproof. There is also a requirement for retailers not selling the live bivalve molluscs in individual consumer size packages, to keep the packaging label for at least 60 days after splitting up the contents. Strictly speaking, labelling requirements of this Regulation apply only to retail sales to the final consumer. However, all businesses must provide traceability information to facilitate accurate labelling by those who may be required to provide it further along the distribution chain.

3.4.4 Impacts of EU regulation

3.4.4.1 Impacts on countries exporting to the EU

In economic theory one perspective argues for a detrimental effect of high food safety standards on small scale fishery trade from the fishery sector (Henson et al. 2000). In general, investments, needed to meet food safety requirements, involve high fixed costs. These costs are proportionately higher for smaller firms than for larger ones. Consequently, smaller players risk being marginalized by rising standards. On the other hand, a different perspective is emphasizing the possibilities of compliance with SPS standards. It is argued that compliance with standards may promote modernization of the export supply chain, which in return may lower production costs and increase competitiveness. Exporters would get the possibility of re-positioning on current markets and could gain access to new markets. In addition, a number of positive spill-over effects may occur through compliance. Food borne illnesses as a major problem in many developing countries may lessen through upgrading the food processing industry and overall hygiene standards. Domestic food safety and animal and plant health may be improved. Moreover, waste reduction could be induced.

As the impact of standards depends on many factors (e.g. the conditions for different markets, products) impacts on a specific country will not go either in the one direction or the other, rather both developments will occur. However it is argued that in any event poorer countries are more likely to be negatively affected by standards; more advanced developing countries have better overall possibilities of complying with industrial countries' food safety demands. Consequently less developed countries run a higher risk of being further marginalized by standards (Frederiksson & Wendel 2005).

The EU is seen to be at the forefront in developing food safety standards and has a profound influence on the development of the seafood export industry in developing countries. Implications of the European health and hygiene requirements pose a major challenge to exporting industries. In particular the following requirements signify a substantial burden for third countries in order to be eligible to export fish (Mbithi 2006):

- Third countries are required to centralize competencies for enforcing hygiene and sanitary legislation, certification and inspection in *one* national competent authority.
- They have to put in place a high standard laboratory system and to make sure that quality tests are conducted in accredited laboratories.

- In order to comply with the EU standards national legislation on sanitary standards is frequently substituted by the EU standards.
- The need for food business operators involved in handling and processing of fish and fishery products to operate a quality assurance system during all stages of the production chain according to HACCP principles.

While it is widely accepted that these requirements are legitimate in the interest of consumer protection and a precondition for gaining access to the EU market, some aspects of the European legislation and/or its implementation are criticized.

Firstly, it is criticized that the use of the precautionary principle is arbitrary in many cases. Third countries allege that import restrictions on grounds of animal health problems in exporting countries are not always based on scientific evidence, or that measures are not corresponding to the supposed threat.

Secondly, the lack of established methodology for determining the principle of equivalence (especially as regards the application of HACCP principles) leads to developing countries finding it hard to establish the equivalence of their standards. They consider that the EU requires "sameness" as opposed to equivalence.

Finally, it is alleged that cross checks of results by referral laboratories upon entry to the EU are often denied. It is argued that in some instances laboratory analysis by inspection services in ports of entry have been proven wrong by referral EU laboratories. However, the possibility to have samples cross-checked has frequently been denied by inspection services and consignments were re-dispatched or destroyed (Mbithi 2006).

3.4.4.2 Impacts on the EU fisheries sector

Due to the substantial impact of the EU health and hygiene regime, allegations that the system serves protectionist purposes are widespread. In an ideal world one would seek to find a "bright line test" between protectionist and non-protectionist measures. However, in practice, most regulatory measures will have both kinds of effects and there will be a trade-off between removing obstacles to trade and legitimate regulatory sovereignty. From an economist point of view, conducting a cost-benefits-analysis would provide some guidance. While quantifying the trade costs of SPS measures is possible to some extent it seems to be harder to quantify the benefits to be set against trade costs. In any event, benefits and costs might eventually not be commensurable. That is why the SPS agreement insists on procedural requirements asking whether decision makers have gone through a procedure of genuine evaluation of the health and safety benefits of the measure. In a situation where it is not possible to estimate the costs and benefits of the outcome of the regulatory decision, regulators have to prove that they have undergone a process of genuine evaluation of the health and safety benefits instead. If this is the case, the measure has to be accepted even if the trade costs are very high (Iacovone 2003).

Moreover, from the EU perspective it should be noted that a presumably heterogeneous application of import controls by different Member States might also lead to some distortion effects. A widespread perception is that different Member States employ different procedures and/or test methods at their ports of entry. This discrepancy is supposed to have resulted in a phenomenon called "port shopping," whereby importers focus on ports of entry that have, or at least are perceived to have, less strict procedures (World Bank 2004).

Key Findings of Chapter 3

1. After conclusion of the Uruguay Round world wide barriers to trade of fish products (tariffs and quantitative restrictions) have been reduced to 4.5 percent for developed countries and below 20 percent for developing countries
2. The four major importing economies followed differential strategies for market access of fish products:
 - The EU applies relatively high tariffs (9.4 percent for unprocessed, 9.8 percent for processed fish) and a relatively large number of tariff peaks (e.g. for tuna and shellfish). The EU causes by far the largest economic impact on the world market due to its tariff structure and the size of EU imports.
 - The USA applies the lowest tariffs (0.5 percent for unprocessed, 2.5 percent for processed fish) and tariff peaks are absent. Tariff escalation is present (difference between processed and unprocessed fish).
 - Japan has also low tariffs 3.7 percent for unprocessed, 6.7 percent for processed fish) and has no tariff peaks. Tariff escalation is present (difference between processed and unprocessed fish).
 - China applies relatively high tariffs (9 percent for unprocessed and processed fish) and some tariff peaks exist.
3. The tariff structure of emerging and developing markets may pose problems for (potential) EU exporters. Amongst the four emerging markets that have been analysed (Rep. of Korea, India, Brazil and Thailand) the Rep. of Korea and India apply substantially higher tariffs than the developing economies. Extremely high or no bound tariffs are present in India and Brazil. Also the tariffs of developing countries are generally higher and vary significantly between countries. This heterogeneous tariff structure may also pose a problem to the development of the South-South trade.
4. Preferential agreements for lower tariffs and duty free access are widely spread and are estimated to cover 80 percent of fish trade. The OECD estimates that weighted tariff averages for trade that are applied to seafood from non-LDC developing countries to the EU, Japan and the USA are 7.6 percent, 4 percent and 3.6 percent, respectively. The comparable rates for LDCs are 0 percent for the EU and the USA and 3.6 percent for Japan.
5. The EU Common Customs Tariff (CCT, which equals the WTO MFN applied tariffs) is only partially applied. A patch work of arrangements gives preferential access for products of certain countries. The most relevant arrangements are GSP, EPA, EFTA, association arrangements (Euro-Mediterranean and others) and bilateral agreements.
6. It is estimated that around 45 percent of imports (in terms of value) benefit from tariff-free arrangements (autonomous and conventional arrangements, preferential arrangements for LDCs and associated countries) and 5 percent of the imports were charged the full MFN rate. The remaining 50 percent of the imports (from non-LDC developing countries and EFTA countries) benefited from diverse tariff preferences.
7. Reductions of general tariffs (in WTO) or further bilateral or multilateral trade agreements would in general result in moderate reductions of inside EU prices at all levels (EU producers, processors and consumers). However, tariff reductions could severely hit specific sectors when high tariff peaks or tariff escalation are present.

8. Since tariffs have been reduced, the importance of non-trade barriers has grown. The large importing economies have set stringent standards and regulations under the heading of Sanitary and Phytosanitary Measures (SPS), protection of endangered species, labelling of origin. The number of WTO SPS-notifications for fish products doubled since 2000.
9. The EU is seen to be at the forefront in developing food safety standards and has a profound influence on the development of the seafood export industry in developing countries. Implications of the European health and hygiene requirements pose a major challenge to export industries.
10. While the costs of NTB may be estimated it remains difficult to draw the line between defence of legitimate interests and protectionist measures, as it does not seem reasonable to value the benefits of such measures in terms of money.
11. A problem to be addressed by the EU regards the uniform implementation of EU standards involved with SPS measures ("port shopping").

4 Description of the WTO framework on fisheries

The last 50 years have seen an unprecedented growth in global trade under the GATT and later the WTO. Currently the WTO has 152 Members, accounting for more than 97 percent of world trade. With China's entry in 2001, all major fishing nations are now WTO Members, except Russia who is in the process of negotiating membership. During the "Uruguay Round" of trade negotiations, it was decided that the fisheries sector (including aquaculture) would be excluded from the Agreement on Agriculture. As a result fisheries and fishery products are now treated as an industrial sector, and /or industrial products in the current Doha Round of negotiations (Mahfuz 2006; CTA 2007).

The Doha Round, which was initially scheduled to end in 2005, has now entered the eighth year of negotiations. In the current Doha Round of Negotiations fisheries are dealt with at four different levels:

- Market access for non-agricultural products (reduction and elimination of tariffs and nontariff barriers, particularly on products of interest to developing countries) (NAMA);
- Agreement on subsidies and countervailing measures (ASCM);
- Trade and the environment, particularly as regards multilateral environmental agreements (MEAs);
- Dispute-settlement procedures.
- Lastly, under the General Agreement on Trade in Services (GATS) services incidental to fisheries may be liberalised.

Chapter four of the study will give a description of these ongoing WTO negotiations. Here, a detailed description and analysis of the offensive and defensive positions of the main players to the negotiations will be given. Finally, an estimate of the potential impacts of the measures in question (i.e. tariff reductions and prohibition of subsidies for the fisheries sector) on the economic and social development as well as on the environmental sustainability of the fisheries and aquaculture sectors in the EU and in its partner countries or country groupings will be presented.

4.1 Negotiations on Non Agricultural Market Access (NAMA)

This section addresses the negotiations on Non Agricultural Market Access (NAMA). The focus of this task is on the negotiations regarding the elimination or reduction of tariffs and non-tariff barriers to trade. At present, the NAMA negotiations have been slow and marked by conflict. Contentious issues include the setting of levels of tariff and non-tariff barriers; the prevention of tariff escalation; conservation and management measures for reducing trade impacts on resources; and Special and Differential Treatment (S&DT) as well as capacity building for developing countries (Mahfuz 2006).

Following the completion of the Uruguay Round of negotiations in 1994, average weighted import tariffs on fish products in developed countries have been significantly reduced. However, import duties continue to hinder the economic development of the fish processing sector in many developing countries. A number of submissions have been made in the NAMA negotiations, including proposals centred on a "Swiss" formula for tariff reductions (Mahfuz 2006). This proposal was adopted at the Hong Kong Ministerial meeting (WTO 2008a). Remaining difficulties in reaching a compromise between members include the issue of the different coefficients to be applied in the (Swiss) formula for developed and

developing countries (and between developing countries) for tariff reductions. Also, resolving the issue of reciprocity and preference erosion is highly complex (CTA 2007).

A revised paper including what could become the formula for cutting tariffs in a final deal was issued on 06 December 2008. It is the outcome of the latest discussions in the NAMA negotiations and will pave the way for a final agreement (WTO 2008a). Three issues of special concern to the EU will be elaborated on in the following sections, notably tariff cuts, preference erosion, and sectoral negotiations.

4.1.1 Mandates and objectives

The negotiations on Non-Agricultural Market Access (NAMA) were launched in January 2002 with the goal “to reduce, or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries” (WTO 2008a). However, many developing countries are weary of substantial tariff cuts, because they fear the intrusion of competitors into their main export markets and substantial erosion of the preferences they are privy to under GSP and other preferential trade arrangements. They also consider developed country demands on NAMA liberalisation as being disproportionate to what these countries are willing to give in the negotiations on agriculture. Therefore, special emphasis is placed on ensuring that needs and interests of developing and least-developed countries are taken account of and the recognition that these countries do not need to match or reciprocate in full tariff-reduction commitments by other participants (Mildner 2009).

Moreover, the bound tariff rate is significantly higher than the actually applied tariff rates in many countries, which leaves considerably leeway for ad-hoc tariff peaks. While average customs duties are now at their lowest levels after eight GATT Rounds, certain tariffs continue to restrict trade, especially on exports of developing countries — for instance “tariff peaks”, usually on “sensitive” products, amidst generally low tariff levels of an average of four percent in developed countries and nine percent in developing countries and LDCs (Mildner 2009). For industrialized countries, tariffs of 15 percent and above are generally recognized as tariff peaks.

Another issue is “tariff escalation”, in which higher import duties are applied on semi-processed products than on raw materials, and higher still on finished products. This practice protects domestic processing industries and discourages the development of processing activity in the countries where raw materials originate. This is especially relevant in the fish and fish products as well as aquaculture sectors where the majority of raw material is caught/reared in developing countries, but processed and sold in industrialised regions of the world, particularly Europe.

The mandate for moderating the negotiations addressing these issues resides with the Market Access Negotiating Group chaired by Ambassador Luzius Wasescha from Switzerland (WTO 2008a).

4.1.2 Main players and negotiation framework

The EU belongs to a block of large, industrialised net-importers of fish products, together with players such as Japan and the USA. Together with other developed countries, this group accounts for almost 80 percent of total imports. This is the principal reason why import tariffs in developed countries are so low and, albeit with a few exceptions such as for value-added products; do not represent any significant barrier to trade (see chapter 3). In fact, today’s most important barrier to increased exports, beyond the physical

availability of product, is the lack of ability to adhere to quality- and safety-related import requirements, rather than import tariffs (see Chapter 3) (FAO 2007), which has caused a rift to develop between net-exporters (mostly developing countries) and net-importers (mostly highly industrialised countries). In this context, a number of negotiation blocks have developed, namely the "Friends of Fish"⁸, the "NAMA-11"⁹, a broader group of developing countries called "G20+" (including important emerging economies such as China and Brazil), and a block of mostly Asian countries favouring the maintenance of comparably high tariffs for conservation reasons.

The most comprehensive and far-reaching proposal for market liberalisation has thus far been set forth by the USA, offering a complete abolishment of tariffs by 2015, with longer respites for developing countries and a limited number of exceptions. However, in light of stalled negotiations on agriculture, developing countries were not willing to accommodate the proposal (Mildner 2009). The NAMA-11 and the larger group of developing countries G20+ demand that development concerns be placed at the heart of the negotiations of the NAMA modalities and opt for "less than full reciprocity in reduction commitments" for developing countries. The rationale behind these demands is that developing countries as net-exporters of fish products would be more affected by tariff reductions, which sometimes are a significant part of state income. Other demands include a comparable level of ambition with agricultural market access; and appropriate flexibilities to manage adjustment costs and address development needs (NAMA-11 2006). Objections have also been voiced by a group of mainly industrialised Asian countries such as South Korea and Japan, which hold that "A zero-for-zero approach in the fishery sector should not be pursued since it would abolish all tariffs regardless of the level of fishery resources, the management status and the importance of fisheries and fishing communities in each country"¹⁰. They further caution that complete abolition of tariffs might also lead to added pressure on the resources through inducing catches beyond the renewable capacity of fish stocks, thereby impeding the sustainable exploitation of fishery resources.

4.1.3 Current state of negotiations

After numerous failed attempts to fix the modalities for tariff reductions the negotiating parties agreed at the Hong Kong Ministerial of 2005 to reduce tariffs according to the "Swiss Formula"¹¹. This method is in contrast to the approach previously agreed in the Uruguay round, which comprised an overall tariff reduction with flexibilities allowing members to cut some tariff lines to a larger extent and keep tariffs on sensitive goods high. It is not surprising, therefore, that the exact configuration of the modalities has thus far remained a matter for discussion.

The most recent modalities draft paper was issued in December 2008. Generally speaking, the December draft modalities text shows that considerable progress and convergence has been reached on a number of relevant issues. As regards fish and fish products, there was progress on determining tariff lines that are to be subject to an exemption to tariff

⁸ The "Friends of Fish" are a loosely defined group favouring a ban on fishing subsidies and the elimination of tariffs. It includes countries as diverse as Chile, Peru, New Zealand, the USA and Brazil. This is the most liberalisation-friendly group promoting equal market access for all. It is interesting to notice that the countries mentioned are some of the world's biggest net exporters of fish and aquaculture products (<http://ictsd.net/i/news/bridgesweekly/7505/>).

⁹ The NAMA-11 are a group of developing countries, who have been especially articulate about their position in the NAMA negotiations. Members of the informal negotiation block are Argentina, the Bolivarian Republic of Venezuela, Brazil, Egypt, India, Indonesia, Namibia, the Philippines, South Africa and Tunisia (See NAMA 11 Ministerial Communiqué (2006) at <http://www.tradeobservatory.org/library.cfm?refid=88375>).

¹⁰ *Market access for non-agricultural products, Communication from Japan*, TN/MA/W/15/Add, 16 January 2003

¹¹ The Swiss Formula was introduced in the Tokio Round of GATT negotiations (1973-1979), and provides for a mechanism to reduce high tariffs/tariff peaks more quickly than tariffs that are already very low.

elimination under the “disproportionately affected” provisions in paragraph 30. These lines are mostly fish and fish product lines, including trade-wise important species such as shrimp, yellow-fin tuna and processed fish-based foods, such as frozen fillets and loins¹².

The Swiss formula is intended to be used to reduce bound tariffs. In practice, many countries including the EU Member States already apply much lower tariffs than those they have bound in multilateral or bilateral agreements. Many developing countries, however, have bound only a relatively small portion of their tariffs and will most probably be exempted from reductions according to the formula, although they will be required to bind most or all of their non-agricultural tariff lines. Therefore, many African countries and all LDCs will in all likelihood be exempt from reducing their tariffs on fish and fish products.

4.1.3.1 Draft modalities

According to the current NAMA modalities draft, tariff reductions for fish and fishery products would be made using the above mentioned Swiss formula with separate coefficients for developed and for developing Member States. It has been agreed that developing countries would be allowed to choose certain flexibilities. The current version of the draft modalities fixes a coefficient of eight for developed countries and 20, 22, and 25 respectively for developing countries. The use of the different coefficients would depend on three new options:

- A member choosing to apply the lowest coefficient, 20, would be entitled to make smaller or no cuts in 14 percent of its most sensitive industrial tariff lines, provided that these tariff lines do not exceed 16 percent the total value of its NAMA imports. These tariffs would be subject to cuts equal to half of the agreed formula reduction. As an alternative, the member can keep 6,5 percent of its tariff lines unbound or exclude them from tariff cuts, provided they do not exceed 7,5 percent of the total value of its NAMA imports
- A member choosing to apply a coefficient of 22 would be entitled to make smaller or no cuts in a smaller number of products: up to 10 percent of its most sensitive industrial tariff lines from the full effect of the formula, provided that these tariff lines do not exceed 10 percent of the total value of its NAMA imports. These tariffs would be subject to cuts equal to half of the agreed formula reduction. As an alternative, the member can keep 5 percent of its tariff lines unbound or exclude them from tariff cuts, provided they do not exceed 5 percent of the total value of its NAMA imports.
- A member choosing to apply the highest coefficient, 25, would have to apply it to all its products without exceptions.

For the EU, this would mean a maximum bound tariff of eight percent, possibly resulting in an average applied tariff of below two percent and constraints on tariff peaks even for the most sensitive products¹³

4.1.3.2 Preference erosion

Provided that the current draft modalities were implemented, a total of 40 industrialised countries equalling 90 percent of the overall trade volume in fishery products would be obliged to apply the Swiss formula. The 32 poorest countries or LDCs would be exempt from tariff reductions. Other special provisions, preference regimes, and partial exemptions would apply to all other states. This is a concession to calls from developing countries who feared substantial erosions of the preferences accorded to them under the current WTO and

¹² For the comprehensive list of affected tariff lines, see JOB(08)/96

¹³ Below 8 percent as opposed to the currently valid average of 15 percent.

regional agreements. ACP countries and the NAMA-11 were particularly articulate about this point as most of them profit from preferential treatment under the Cotonou agreement. Therefore, a special provision according an additional five to six years extension has been proposed in order to enable developing countries to adjust to a liberalised market (CTA 2008).

This has been a contentious issue throughout the NAMA negotiations. Strong opposition came primarily from the USA who perceive the commitments made by industrialised and developing countries as disproportionate and demand concessions from the latter. The issue has been named as one of the reasons for the breakdown of the Doha negotiations in July 2008. The EU, having strong traditional economic ties with the fisheries sector in ACP countries, has signalled a willingness to support the plea of the developing nations (CTA 2008).

4.1.3.3 Sectoral negotiations

At the 2005 Hong Kong Ministerial Meeting the Member States agreed to follow a proposal by the USA and allow for sectoral negotiations in addition to the negotiations in the context of the "Single Undertaking". These sector negotiations may lead to additional tariff reductions, but only for those tariff lines where a critical mass of at least 90 percent of market players consent to be bound by a sector agreement.

Some WTO Members have suggested taking up sectoral negotiations for fish and fishery products. Through such agreements, tariffs might be reduced to zero in some developed countries, and in some cases with smaller reductions in participating developing countries as "special and differential treatment". These negotiations are voluntary, and would require a "critical mass" of countries joining the initiative for take off. However, the critical mass of market players can only be achieved if the emerging economies, most importantly China, agree to participate. These countries are strong opponents of sectoral negotiations though, which makes the occurrence of successful sectoral negotiations in the near future very unlikely.

Disagreements on the issue of sectoral negotiations are considered the second major reason for the failure of the Doha Round negotiations in July 2008. The rigorous position held by the USA demanding that developing countries commit to sectoral negotiations in return for accorded exemptions in the application of the Swiss formula strongly contributed to the situation. The EU is an opponent of sectoral negotiations on fish and fishery products. Existing commitments to tariff cuts are considered far-reaching enough and further cuts are considered contrary to the interests of keeping a competitive fisheries sector in the EU. Since the participation in sectoral negotiations is not mandatory the EU is not likely to be affected in the foreseeable future.

4.1.4 Potential impacts

When discussing potential impacts of a revised NAMA framework, it is interesting to take note of a recently published study on the economic gains to be achieved if an agreement was forged based on the February 2008 draft agreement¹⁴ (Francois et al. 2008). The study is not specific to fish products but tries to quantify the general economic impact of NAMA. According to the study, Francois et al. (2008) expect a reduction in the average tariff faced by Canada, the EU, Japan, and the United States of 26 to 28 percent.

¹⁴ Based on the NAMA modalities text issued by then-Chairman Don Stephenson on February 8, 2008, Dr. Francois' study analyzed the expected gains of cuts to current industrial tariffs by a coefficient of 8 percent or 9 percent for industrial countries, and of 19 percent to 23 percent for non-exempt developing countries.

Developing countries exporters would see cuts in the average tariffs ranging from 33 to 36 percent. These cuts in tariffs would in return lead to an increase in world exports by \$356 billion or 3.7 percent. However, net national welfare gains would at best be \$45 billion for the world as a whole, and generally well below one percent of each country's GDP. As one of the main reasons for these relatively minor economic gains expected especially for industrial countries, François et al. (2008) list the existing large differences between bound and actually applied tariffs, which would negate potential benefits of suggested new bound tariffs. Moreover, he stresses that flexibilities offered to developing countries, including exemptions to tariff cuts or options of keeping tariff lines unbound, would further decrease the potential economic benefits of greater NAMA liberalisation (François et al. 2008). Slight decreases in prices for fisheries product on the community market within the EU would be the consequence. This does not preclude, however, that the EU fisheries sector is prone to face substantial impacts (see case study example here below).

Case study: Impacts of trade liberalisation on the EU tuna industry

A study conducted by Organic Development, Poseidon Aquatic Resource Management Ltd, and MegaPesca Lda in 2005 estimated the economic impact of trade liberalisation on the EU tuna industry (FPA12/Tuna/05, commissioned by DG Fish) in general, without consideration for NAMA draft modalities. However, the results obtained may be considered indicative of real potential impacts if tariffs are to be considerably lowered. Both trade in farmed and wild-catch tuna as well as processed tuna products were considered in the analysis. Several scenarios were built – with the situation of the sector between 2000 and 2002 as a baseline – and their economic impacts estimated. The socio-economic impacts measured for each scenario relate to predicted losses in value of sales, in primary value added in the respective area and in employment, both directly following from changed terms of trade and indirectly from structural changes in the tuna industry. The study estimated that both the complete abolition of tariffs and a scenario involving the abolition of tariffs for tuna loins and a significant reduction of tariffs for canned products would have severe negative impacts on the EU tuna industry. The authors estimate a loss of added value of 20-25% percent, and losses in employment between 30-40 percent for both industry directly located in Europe and industry situated in ACP countries in the worst case scenario. The results vary strongly, however, between scenarios both as regards the scope and depth of impacts predicted.

For more detailed information and in order to access the full study, please turn to http://ec.europa.eu/fisheries/publications/studies/tuna_2005_en.pdf

We have applied the agreed coefficient of eight for developed countries to a number of key tariff lines (i.e. 1604, 1605, and 2301.20) in order to gauge potential impacts on the EU fisheries sector should the current draft modalities be agreed and implemented. The products covered by our trial are canned sardines, canned tuna, shrimps (processed), and fishmeal. Depending on the product, tariff cuts would range from 0 percent to 75 percent of currently applied MFN tariffs over a period of six years after implementation. This wide range is due to particular factors related to the sampled products, which are elaborated in the following:

For fishmeal, there are currently no tariffs applied. Fishmeal exports to the EU would thus not be affected. For canned tuna and processed shrimps, the economically most important fish products imported by EU Member States, current MFN tariffs are comparatively high – 24 and 20 percent respectively – and would thus be subject to substantial cuts in the wake of the implementation of the Swiss formula – 75 and 71.4 percent respectively. It should be noted, however, that the EU Member States obtain substantial amounts of these two goods from developing nations – 25 and 49 percent of total import volume respectively – that are

subject to the GSP and thus to tariffs below MFN levels. This fact would substantially mitigate the scale of tariff reductions. For canned sardines, the current bound MFN tariff of 12.5 percent would be brought down to 4.9 percent over six years. This represents a total cut of 61 percent. As only 11 percent of imports originate from GSP countries, the effect would be more pronounced for this product (see table 1, Annex 3).

From these figures it can be discerned that the impact on the formerly relatively protected market for certain fishery products, particularly shrimp, tuna, and sardines, would be quite substantial. This fact initially triggered requests from within the sector for exemptions from the formula. However, this was perceived as too great a risk for the overall success of the NAMA negotiations, so that the stance of the EU has been to support the current proposal in return for the binding obligation on developing countries to work progressively towards binding their tariffs.

Key findings of Section 4.1

1. Overall the NAMA negotiations have been slow and marked by conflict, with entrenched interest groups debating the three most contentious issues, i.e. setting coefficients for the Swiss formula, the continuation of sectoral negotiations, and preference erosion.
2. For the EU, the implementation of tariff reductions of the Swiss formula will have strong impacts on the fisheries sector, especially on the most commercially valuable products, such as shrimp and tuna, which currently are subject to the highest tariff rates.
3. While the EU has been lenient and willing to compromise on the Swiss formula and the issue of preference erosion, it rejects participation in sectoral negotiations on further tariff cuts.
4. The current NAMA draft might have severe impacts on the supply markets for fishery products to the EU, further promoting the penetration of Asian suppliers at the expense of ACP countries – a fact which is being criticised by European industry which has traditionally had strong commercial relations with ACP supplier countries.

4.2 Negotiations relating to Trade and the Environment

In this section two issues concerning the relationship of trade and environment and forming part of the Doha agenda will be dealt with. The possible impacts on trade in fisheries are discussed as regards the relationship between regimes of multilateral environmental agreements (MEAs) and the WTO regime (subsection 4.2.1). In addition, the elimination or reduction of tariffs and non-tariff barriers on environmental goods and services (EGS) is discussed in sub-section 4.2.2.

4.2.1 Trade related measures under MEAs

MEAs contain trade or trade-related measures that are currently debated in the context of the Doha Round. Such measures are used in MEAs for several reasons. Their purpose is to either directly restrict trade in polluting products or protected species, or to promote compliance with environmental provisions included in MEAs, to punish non-compliance (e.g. by imposing punitive trade sanctions), or to promote public awareness. The main categories of trade measures used in MEAs are (i) trade bans, (ii) trade sanctions, (iii)

licensing procedures and notification requirements, and (iv) packaging and labelling requirements (Roheim & Sutinen 2006). Concern about trade related measures are related to the question about whether they are compatible with WTO rules.

4.2.1.1 Mandate and Objectives

Trade-related measures under MEAs may potentially conflict with rules in the General Agreement on Tariffs and Trade (GATT). For example, Article XI GATT does not allow bans or quotas, Article III GATT prohibits discrimination between the same (or "like") products on the basis of country of origin. Trade-related measures may also contradict rules contained in the WTO Agreement on Technical Barriers to Trade (TBT), imposing conditions on the design and application of, for example, labelling. With respect to the relationship between trade law and environmental law Article XX GATT outlines the general exceptions to WTO rules, i.e. the conditions under which trade restrictions are exempt from legal challenge. Under this Article, WTO Members may adopt trade-restrictive measures for a variety of specified reasons (with adequate supporting evidence), including those that are a) necessary to protect human, animal or plant life or health (Article XX(b) GATT); or b) relating to the conservation of exhaustible natural resources (Article XX(g) GATT), if such measures are made in conjunction with restrictions on domestic production and consumption.

The relationship between WTO rules and MEAs depends to a great extent on how Article XX GATT is applied. The exemptions provided for by Article XX(b) GATT are rather limited. So far, dispute settlement panels have interpreted the term "necessary" to mean "least trade-restrictive". In addition, in order to prevent abuse of (trade-related) environmental regulations for protectionist purposes, case law has established that these measures must not be applied in a manner that constitutes "arbitrary or unjustifiable discrimination between countries where the same conditions apply" or "a disguised restriction on international trade" (ICTSD 2006a). The exemptions provided for under Article XX(g) GATT are somewhat broader. However, it may not be recurred to in the context of other WTO agreements such as the TBT agreement. In sum, it can be noted that, while there is legal scope to permit MEA based trade-related measures under the WTO agreements, there is great uncertainty as to its application in individual cases.

Although trade in fisheries is not the main focus of this issue – a positive relation with the international trade regime is especially seen as a principal factor for the climate change regime – trade in fisheries is certainly affected. As regards fisheries, trade-related measures in MEAs seek to promote fishery products complying with sustainable conservation and management objectives. An example is the use of trade measures in the fight against illegal, unregulated and unreported (IUU) fishing. In this context, trade-related measures may target certain national vessel registers ("flags of convenience") or fish products originating from states whose non-compliance can be credibly established (e.g. through eco-labelling schemes). Fish species subject to trade regulations for conservation purposes include sturgeon, several shark species, Patagonian toothfish, swordfish and some tuna species.

MEAs most relevant to fisheries are listed here below:

- The most important treaty in regard to the law of the sea is the **United Nations Convention on the Law of the Sea** (UNCLOS). While UNCLOS itself does not contain rules on trade and does not prescribe trade restricting measures, unilateral trade measures falling within the scope of UNCLOS may conflict with WTO rules. Typically, such measures would concern marine environmental protection and fisheries.

- Recommendations in the context of the **International Convention for the Conservation of Atlantic Tunas** prohibit imports of Atlantic Bluefin Tuna from several countries;
- The **UN Fish Stocks Agreement**, which enables port states to prohibit landings and shipments of fish caught in contradiction to agreed conservation and management measures on the high seas.
- The **Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**, which allows for trade bans on certain species listed in its Appendices.

With one exception¹⁵, trade measures taken by WTO members pursuant to MEAs or pursuant to recommendations by MEAs' institutional bodies have not been challenged at the WTO. Some WTO members do not see a major conflict of interest or legality between WTO law and trade-related provisions in MEAs. It is argued that conflicts arising between the provisions of a MEA and WTO rules could be settled through the WTO dispute settlement process. However, as in the Chile-Swordfish case, governments may also consider using dispute settlement procedures outside the WTO to address issues relevant to conservation of marine living resources and trade measures, possibly leading to conflicting decisions.

While WTO dispute settlement proceedings have already produced some guidance on how the WTO might act regarding a challenge to a MEA trade –related measure, there is no rule of precedent and, consequently, no certainty as to how future disputes may be decided.

In sum, political and legal certainty can only come from clear political and legal action. Therefore, among others, the EU has been strongly in favour of a general clarification of the MEA-WTO relationship within the Doha negotiations (Mahfuz 2006). Motivation of demandeurs for inclusion in the Doha agenda was clearly on the environmental side: *"The EU believes [...] that trade rules should not be used to trump internationally agreed environmental accords. The EU wants the international community to make sure both trade and environmental laws work together to support sustainable development"* (European Commission 2007).

Doha mandate

Paragraph 31 of the Doha Declaration states:

With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:

(i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question; (...)

Firstly, it has to be noted that the mandate instead of using the term "trade-related measure" refers to "specific trade obligations" (STO). Secondly, as paragraph 31 (i) stipulates that the "negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question" negotiations are not bound to provide a solution in cases where a WTO Member, which is not a party to a particular MEA, might be affected by a trade measure taken under the MEA. In addition, the Doha Declaration goes on to qualify

¹⁵ Please see description of "Chile Swordfish case" in section 4.5

the mandate under paragraphs 31 (i) and (ii) by stating that the negotiations "shall not add to or diminish the rights and obligations of Members under existing WTO agreements". It is argued that this strikes in favour of mere clarifications of existing rules instead of rule changes (ICTSD 2002). Thus, any negotiated amendment to the WTO rules or any other outcome altering the legal status quo would meet opposition based on the argument that it exceeds the Doha mandate (Palmer & Tarasofsky 2007).

4.2.1.2 Main players and negotiation framework

There are basically three different approaches regarding this matter. The first maintains that there are no inherent conflicts between MEAs and WTO rules and that, if there were any, they would have to be resolved in a mutually supportive way within existing rules and frameworks. Especially the USA and Australia argue for limiting the issue to improving the procedural coordination between the institutions concerned. This approach is described as reflecting those countries' "general scepticism of multilateral environmental policy and their desire to preserve their immunity as non-parties to some significant MEAs from multilateral "anti-competitive" environmental commitments." (Palmer & Tarasofsky 2007). Secondly, some developing-countries argue against any changes as they view trade-related measures as a door-opener to disguised protectionism in developed countries. Thirdly, WTO Members calling for greater clarity emphasize the potential conflict between WTO rules and MEAs at the expense of MEA objectives, as uncertainty might overly constrain the design of MEA trade measures. The latter group includes the EU, Switzerland, Norway and some other OECD members. It has been pointed out, that paradoxically this North-South divide persists despite the fact that in multilateral environmental negotiations it is often developing countries that support strong trade measures in MEAs (Palmer & Tarasofsky 2007).

The issue is addressed in the Committee on Trade and Environment in a Special (negotiating) Session (CTE-SS). Negotiations in the Dispute Settlement Body (Special Session) to clarify the Dispute Settlement Understanding could also have implications for the issue, in so far as it may result in instructions on how arbitrators of disputes should deal with the relationship between WTO rules and MEAs.

4.2.1.3 Current state of play of negotiations

It has been observed that since their beginning in 2002, negotiations of CTE (SS) have focused largely on the desirability, scope and process of the paragraph 31(i) negotiations, instead of dealing with substantive questions regarding possible outcomes to the negotiations (Palmer & Tarasofsky 2007).

Discussions still turn around the meaning of terms in the mandate such as MEA or STO. Discussions on which MEAs should be covered are still inconclusive. The USA, Canada, Australia and India would like to keep the coverage as restricted as possible. The criteria proposed would limit the number of MEAs covered to just six, with only CITES having a bearing on fisheries. Others favour the inclusion of all MEAs having been negotiated under the auspices of the UN. The EU would like to see a broader coverage that would include MEAs negotiated under the UN and other procedures open to all (including regional arrangements) with a minimum of three parties (ICTSD 2006a).

Also, the question of what constitutes an STO remains unsolved. The USA and Australia, in particular, are pressing for an explicit definition of STOs. Options range from limiting the scope to mandatory measures explicitly contained in the MEA, to including all measures necessary to achieve the MEA's object and purpose without being explicitly provided for or mandatory under the MEA. (So-called "non-specific measures" may e.g. occur when the MEA allows parties to take stricter measures to implement the MEA than specified in the

treaty (as in CITES)). Another open question is whether only the MEAs themselves should be covered or also the decisions and resolutions adopted under them.

As to proposals on the form and content of possible outcomes three different categories have been identified¹⁶. The first one argues in favour of leaving the issue to be settled by the dispute settlement mechanism on a case by case basis. The second category aims at amending Article XX GATT by introducing a reference to the environment. Finally, it is proposed to adopt an interpretative decision setting out the basis upon which specific trade obligations in MEAs would be considered consistent with WTO rules.

Though some WTO Member countries felt that a consensus on elements to be contained in a regulation of a relationship between MEAs and WTO rules seemed to be emerging (BMW 2008), text-based negotiations – originally supposed to start early 2008 – were not launched. Instead, it was suggested to draft a ministerial declaration summing up the state of play and mandating the continuation of negotiations¹⁷. Finally, in his report to the Trade Negotiations Committee of 18 July 2008 the Chairman of the CTE (SS) Ambassador Teehankee proposed that “text based negotiations should begin in September on the basis of Members' proposals. Further consultations will be held on specific elements covered in the proposals with a view to producing a draft text by end October”¹⁸.

4.2.1.4 Outlook

One possible outcome – provided that the legal status quo remains unchanged – might consist in a brief statement endorsing existing elements of the WTO-MEA relationship. Such a statement might draw on the conclusions reached by the Committee on Trade and Environment (CTE) for the purposes of the WTO's Singapore Ministerial Conference in 1996. Instead of formally codifying new rules it would contain generic statements about the WTO-MEA relationship. A proposal of the EU in 2006¹⁹ follows this idea, reaffirming several of the conclusions of the CTE's 1996 Singapore Report and asserting the principles of mutual supportiveness, no subordination, deference and transparency, as governing the WTO-MEA relationship. To make these principles operational the EU has proposed to grant observer status, upon request, to MEAs by relevant WTO bodies, and deference to the expertise of MEAs on relevant points by those bodies and by WTO panels and the Appellate Body examining issues that relate to a MEA²⁰. The endorsement of uncontroversial elements of the WTO-MEA relationship is regarded as a useful face-saving exercise for the proponents of WTO reform to better accommodate MEA trade measures by some. Others perceive it as having limited value and caution that such a step might add further confusion as to the MEA-WTO relationship. Moreover, at this point there is no agreement that the Singapore conclusions reflect the consensus in today's political context. Also, the EU proposal to consult experts from MEAs in the framework of WTO disputes remains controversial (BMW 2008).

Other scenarios aim at more ambitious outcomes. Prior to the Doha mandate a common suggestion had been made to grant some form of “immunity” for MEAS trade-related measures under Article XX GATT and equivalent provisions in other WTO agreements.

¹⁶ WTO Doc., Submission by Switzerland TN/TE/W/4.

¹⁷ <http://www.norway-geneva.org/wto/wtodoha/dohaenvir/CTE270208.htm>

¹⁸ WTO Doc. Report by the Chairman TN/TE/18 of 18 July 2008

¹⁹ Submission by the European Communities “Proposal for a Decision of the Ministerial Conference on Trade and Environment” Doc. TN/TE/W/68 of 30 June 2006.

²⁰ Regarding the observer status, the Doha agenda under paragraph 31 (ii) issues to negotiate “procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status”. Even on this issue no agreement has yet been reached; some members have argued that this issue may not be addressed until after broader issues associated with observer status in WTO bodies have been resolved (Palmer and Tarasofsky 2007).

Following the example of the NAFTA a “positive list” approach could be taken: the exemption could expressly either list relevant MEAs or even the specific trade obligations contained within them. Alternatively, in order to simplify accommodation of future STOs a set of criteria could be defined to identify the types of MEAs and STOs to be covered by the exemption. However, there is some concern that such amendments (either directly to Article XX GATT or by means of an interpretive decision) would alter the balance of rights and obligations of Members under existing WTO agreements, as required by the Doha mandate.

Another approach could consist in a reversal of the burden of proof. As for any exception to a rule the defendant of a measure under Article XX GATT has to prove that this measure qualifies for the exemption. An amendment to the rules of procedure could define that specific STOs are presumed to fall under the exemption until the contrary is proven. It is argued that such a change in the rules of procedure does not alter substantive rights and thus would be in line with the narrow mandate.

Other possible outcomes include the drawing up of a best practice guide, helping governments to negotiate and implement MEAs²¹, enhancement of training and capacity-building in the area of trade and environment to improve mutual understanding, or the requirement of sequencing of MEA and WTO disputes (exhausting of dispute settlement procedures under the MEA and finally requiring consultation of MEA authorities by WTO arbitrators (Palmer & Tarasofsky 2007)).

Table 6.2 Possible outcomes to improve WTO-MEA relationship

Function	Outcome
Information and Guidance	Developing “best practice” guide for design and implementation of MEA trade measures in a WTO consistent manner
	Endorsing existing elements of the WTO-MEA relationship
Communication and Training	Enhancing information exchange between MEA and WTO secretariats and bodies
	Training and strengthening capacity on the MEA-WTO relationship
	Granting MEAs observer status in WTO bodies
Law and Policy recommendations & Reform	Codifying legal principles on the MEA-WTO relationship
	Exempting MEA trade measures from WTO rules (list approach or reversal of burden of proof)
Conflict resolution	Requiring the sequencing of MEA and WTO disputes

Source: Palmer & Tarasofsky (2007)

²¹ It is argued that the WTO lacks the competence and expertise and such a guide should be at least developed by WTO and UNEP or MEA parties jointly.

Negotiations on the WTO-MEA relationship do not have a very high priority in the current round of negotiations. Moreover, since the Doha Round negotiations are conducted as a Single Undertaking in which “nothing is agreed before everything is agreed”, it is conceivable that the WTO-MEA negotiations are taken hostage by other issues. Commentators do not believe that the WTO-MEA relationship will be entirely clarified in the current negotiations. On the contrary, it is argued that meaningful progress can be made only outside the confines of the Doha negotiations (Palmer & Tarasofsky 2007). The Doha Round will at best set the basis to start a new more systematic phase of negotiations. Arguably any solution will have to include a strong political message backing a clear division of labour between the WTO and MEA regimes based on their respective core competencies.

4.2.2 Negotiations on environmental goods and services

Negotiations on the reduction or elimination of tariffs and non-tariff barriers on environmental goods and services (EGS) are also taking place in the context of the Special Sessions of the Committee on Trade and Environment.

The way negotiations are evolving suggests that the issue is most likely only of a limited interest to trade in fisheries. The debate is inconclusive regarding the approach to be taken in applying any preferences. The approaches suggested include a “list approach” and a “project approach”. The list approach attempts to establish list of goods, qualifying for liberalisation. This approach follows the logic of standard WTO market access type negotiations involving permanent MFN liberalisation of bound tariffs of the goods identified in the lists subject to negotiation. The project-approach - originally initiated by India - proposes to liberalize on a time-bound basis trade in environmental goods and services that are deemed important for specific projects to be agreed individually. This would limit liberalization of trade in EGS to those which are of interest to the parties concerned. However, after the May 2008 session, it remains unclear how to reconcile the two approaches.

Regarding the list approach, discussions have lately been dominated by a joint USA-EU proposal to limit the list originally presented by the “Friends of the environment” group (including the EU) to those goods and services directly related to mitigating climate change. It is proposed to first liberalize trade in some 43 products identified as being climate-friendly by a study of the World Bank. The list covers products ranging from solar collectors and system controllers, to wind-turbine parts and components, stoves, grates and cookers, and hydrogen fuel cells. The “climate change” focus of the proposal is criticized as not justified, considering that climate change does not form part of the WTO agenda. The proposal being based on a study of the World Bank it has been repeatedly criticized as “arbitrary”. Furthermore, Brazil is calling for the inclusion of biofuels into a possible “climate change list” (BMW 2008).

As far as the debate on the adoption of EGS definitions and classifications for trade purposes is concerned, the main focus is on goods and services, either for pollution control or for natural resource management, relying to a great extent on capital-intensive technological solutions to environmental problems (ICTSD 2007). If the scope of EGS was to be limited to equipment, technology or specific materials, or activities reducing the environmental impact of agriculture and fisheries activities and biotechnology applied to agriculture and fisheries activities, the impact on trade in fisheries would be of an indirect nature at most.

So far, only very few fisheries related products have been suggested for inclusion into the list of EGS. The USA have proposed to include “Made-up fishing nets, manmade textile

materials (specifically made up fishing nets that incorporate turtle excluder devices)” as well as “Fish netting and fishing nets of other than man-made textile that incorporate turtle excluder devices”. In addition they have suggested to include “Fishing rods, fish hooks, and other line fishing tackle, fish landing, etc.; parts and accessories thereof; (specifically circle hooks)” (WTO 2005). Trade in fisheries would also be directly affected, if products derived from sustainable activities would fall under the EGS definition. NGOs argue that such an approach would produce better effects by far in terms of the environmental protection. Such products might include, for example, sustainably caught fish. However, so far there is no such trend in the current negotiations.

Key findings of Section 4.2

1. Trade and Environment issues of some interest in the Doha Round include the relationship between trade-related measures under MEA and WTO law, as well as elimination of tariffs and NTBs on environmental goods and services. However, these issues will very likely only have a limited impact on European trade in fisheries
2. Uncertainties as to the compatibility of trade related measures under MEAs are not seen as a major threat or causing major disturbances in trade in fisheries. While a clarification of the relationship would especially be desirable from an environmental perspective a clear division of labour between the WTO and MEA regimes based on their respective core competencies will most likely not be attained within the Doha Round.
3. Products related to fisheries are not playing a major role within negotiations on EGS. Propositions for products to be included within an EGS scheme are so far limited to fishing gear incorporating turtle excluder devices, as well as circle hooks.

4.3 Negotiations on fisheries subsidies

4.3.1 Mandate and Objectives

Impacts of fisheries subsidies are twofold. As with any subsidies they have economic impacts in terms of distorting competition. By reducing the cost of fishing or enhancing its profitability by increasing revenue, subsidies may enable producers to sell at reduced prices, gain market share and also limit access to resources for others. However, it is rather the environmental impact that has made fisheries subsidies a prominent issue on the international agenda. According to the latest FAO report on the State of World Fisheries and Aquaculture about three quarters of the world’s fisheries are currently fished at or beyond their biological limit (FAO 2007)²². (Inappropriate) fisheries subsidies are commonly agreed to be one of the major causes of this situation (Sumalia et al. 2007, UNEP 2004). Subsidies may enable unprofitable fleets to stay in business resulting in overcapacity and leading to overexploitation of fish resources (Sumalia et al 2007).

However, not all subsidies automatically contribute to this effect. Fisheries subsidies are granted in many different forms for a great variety of purposes. They are not always directed at or having the effect of an expansion of fishing capacities or productive effort,

²² Although the percentage of stocks exploited at or beyond their maximum sustainable levels varies greatly by area the study concludes that “[o]verall, more than 75 percent of world fish stocks for which assessment information is available are reported as already fully exploited or overexploited (or depleted and recovering from depletion), reinforcing earlier observations that the maximum wild capture fisheries potential from the world’s oceans has probably been reached and calls for a more cautious and closely controlled development and management of world fisheries.”

but may also include support for early retirement or even reduction of fishing fleets. It also is therefore widely recognised that some subsidies are important for achieving environmental policy objectives (WTO 2006).

Sumalia & Pauly (2006) estimate that of the 30-34 billion US\$ of fisheries subsidies granted world wide annually, 20 – 26 billion US\$ may qualify as subsidies contributing to overfishing; 20 US\$ billion of which are clearly categorised as contributing to overfishing. Uncertainty regarding the rest results from ambiguous effects of subsidies depending on effective management and other contextual factors. The negative effects of subsidies may be prevented or reduced, when effective catch control or fisheries management are in place (OECD 2003). However, UNEP (2004) argues that it is only under the extremely rare ideal circumstances of an effective management regime that such subsidies could be benign.

Currently, there are no special WTO provisions relating to fisheries subsidies. These subsidies are disciplined only by the general subsidies rules found in the current WTO Agreement on Subsidies and Countervailing Measures (ASCM). The ASCM provides a framework for defining, reporting and disciplining subsidies that create trade distortions, defined mainly in terms of export distortions. The ASCM specifies that negative trade effects are to be assessed by examining indicators such as market share or prices in an export market. With respect to the fisheries sector this presents a severe limitation, as fisheries subsidies distort production more directly than they distort trade. It is thus difficult to demonstrate the adverse effects of fisheries subsidies on the basis of the criteria named in the ASCM (ICTSD 2006).

On the other hand, if no fisheries subsidies are explicitly listed in the “Green Box” of subsidies exempted from disciplines, subsidies with positive effects in terms of the environment or development could be subject to challenge on the grounds that they are trade distorting (Moltke 2007). In reaction to these deficiencies, as well as the negative impacts that fisheries subsidies can have on the environment, fisheries subsidies have been addressed in the WTO Committee on Trade and Environment (CTE) since 1997. At the WTO Seattle Ministerial Conference in 1999, the so-called “Friends of Fish” group (Argentina, Australia, Chile, Ecuador, Iceland, New Zealand, Norway, Peru, the Philippines and the United States), put forward proposals to discipline fisheries subsidies that distort trade, harm the environment and impede development. Finally, at the WTO Ministerial Conference in Doha in 2001 agreement was reached to make fisheries subsidies part of the Doha Development Negotiations.

Doha mandate

Paragraph 28 of the Doha Declaration after mandating negotiations aimed at clarifying and improving disciplines under the Agreement on Implementation of Article VI of the GATT 1994 and the ASCM states:

“In the context of these negotiations, participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries.”

In addition, paragraph 28 contains an explicit reference to Paragraph 31 of the Doha Declaration, which recalls the aim of “mutual supportiveness of trade and environment” and calls for further negotiations on trade and the environment. International support for this mandate was underscored at the 2002 World Summit on Sustainable Development in Johannesburg where governments called for the elimination of subsidies that contribute to

illegal, unreported and unregulated fishing (IUU) and to overcapacity (Article 30(f), Plan of Implementation).

4.3.2 Main players and negotiation framework

Negotiations on fisheries subsidies are taking place within the Negotiation Group on Rules which is under the authority of the WTO Trade Negotiations Committee (TNC).

WTO members arguing in favour of strong disciplines often depend heavily on the fisheries sector for food security or rely on the foreign revenue from fisheries export. On the other hand countries applying an extensive subsidy regime, as Japan and Korea, are naturally opposing such disciplines. At the outset of the negotiations these states claimed that the fisheries sector was not different from other sectors of the economy and, therefore, did not require the development of disciplines going beyond those that generally apply under the ASCM. Furthermore, the causal link between subsidies and overexploitation of fish resources has been called into question. These states also highlighted that the effects of subsidies on resources depend on the different resource status and fishery management regimes and could not be universally determined (Moltke 2007).

Top-Down or Bottom-Up?

The logic of negotiations mainly follows the “traffic lights” approach contained in the ASCM, which places subsidies in red, amber and green “boxes”. The “Red Box” contains subsidies which are prohibited per se; the “Amber box” contains so-called actionable subsidies which are subject to disciplines if specific adverse effects can be demonstrated; subsidies exempted from any disciplines on the basis of certain conditions are placed in the “green box”. However, within this approach two different ways of setting up the system are distinguished:

The “bottom-up” approach proposes to positively define subsidies to be prohibited. Following a “top down” approach all subsidies would generally be prohibited except for explicitly defined exceptions. When deciding in which box to put a specific subsidy this makes a difference especially as regards the burden of proof as to the harmfulness or non-harmfulness of subsidies.

The “top-down” approach is in principle supported by the “Friends of Fish” group including Chile, Colombia, Ecuador, Iceland New Zealand, Peru and the USA, as well as Pakistan and Brazil. However, as regards subsidies to be placed in the “Red Box” positions also differ widely within this group, with New Zealand proposing the most benign definition²³. The USA would like to restrict the definition to subsidies directly promoting overcapacity and overfishing. Regarding the “Green Box” the subsidies for the following purposes are proposed for exemption of disciplines: fisheries management frameworks, general infrastructure and access, specific social insurance programmes and effective decommissioning schemes.

The “bottom-up” approach is supported by Japan, Korea and Taiwan. ACP countries as well as small vulnerable coastal states also favour this approach. Subsidies proposed for placement in the “Red Box” are proposed include *inter alia* subsidies for vessel modification resulting in capacity enhancement, shipbuilding yards or transfers of vessels to non-contracting parties of Regional Fisheries’ Management Organizations (RFMOs), as well as those promoting IUU fishing. Subsidies proposed for the “Green Box” include early retirement or retraining schemes, structural adjustment and regional development

²³ According to the proposal a subsidy would include “any benefit conferred directly or indirectly on any natural or legal person engaged in harvesting, processing, transport, marketing or sale”

assistance not affecting natural resources or those promoting sustainable use of fisheries resources.

Overcapacity or Overfishing?

Proposals to limit fisheries subsidies are often described as focusing either on overcapacity or overfishing. Approaches limited to addressing overcapacity target subsidies directly enhancing fishing capacity, such as the construction or modification of fishing vessels. In contrast, disciplines on overfishing address subsidies for fishing activities i.e. contributions to operating costs such as for fuel, labour cost, and bait (ICTSD 2006).

In the current negotiations, there is an agreement that rules should in any event constrain overcapacity. However, if and how to deal with practices leading to overfishing remains an open question to date. Brazil and New Zealand would like to address subsidies aimed at both problems. A submission by the EU²⁴ and a joint proposal by Japan, Korea, and Taiwan²⁵ specifically target overcapacity by addressing subsidies for fishing vessel construction, modification, and overseas transfers. The rationale is that addressing overcapacity will inevitably curb problems with overfishing, because fewer boats will naturally translate into less fishing. NGOs argue that subsidies for operating costs clearly contribute to increased fishing pressure and thus to overfishing.

Transparency and Enforcement

Transparency is an essential element in making subsidy rules enforceable. WTO members are described as “famously reluctant” to publish information about their subsidies (Schorr 2008). Schorr estimates that the existing WTO notification requirements are disregarded in 90 percent of the cases. The need for strengthened notification procedures is therefore widely acknowledged. However, the design as well as the effects of such notification obligations are hotly debated. It has been proposed to link exemption of subsidies from disciplines to sustainability criteria i.e. the existence of sustainable fisheries management. This raises the question of the extent of information on fisheries management conditions required to permit an evaluation of whether sustainability criteria are met. Moreover, opinions are divided on the question about what the consequences of a failure to notify subsidies or subsidy schemes should be. More specifically, should failure to notify a subsidy be sanctioned and if so how? The EU is actively advocating more transparency and effective enforcement mechanisms.

Special and Differential Treatment (S&DT)

Developing countries wish to maintain a system of special and differential treatment (S&DT) allowing them to use a range of subsidies which cannot be used by developed countries. Exemptions from disciplines are especially claimed for artisanal fishing and small scale fisheries as these are considered as vital to maintaining food security, employment and foreign exchange earnings. On the other hand S&DT is controversial due to the fact that some developing countries are major fish harvesters, and extending S&DT to them could undermine the effectiveness of any new fisheries rules.

In order to cope with this problem different proposals have been made to limit possible negative effects. One idea consists in applying S&DT only to those developing countries that account for less than a minimum percentage of the world market share of fish or which have catches that fall below a certain weight threshold (Japan, Taiwan and Korea). Another suggestion is to ban subsidies for fisheries that are overexploited, depleted, or recovering

²⁴ See Doc. TN/RL/GEN/134

²⁵ See Doc. TN/RL/GEN/114/Rev.1

according to the UN Food and Agriculture Organisation (FAO) (Brazil). Other proposals emphasize that S&DT would have to be subject to certain conditions, such as compliance with notification and transparency provisions and the presence of a national fisheries management system. The EU has proposed to exempt developing countries from rules on subsidies providing they do not increase fishing capacity "to the extent that it is an impediment to the sustainable exploitation of fishery resources worldwide." However, some countries still maintain that that S&DT should be unconditional²⁶.

Access agreements²⁷

Another contentious issue relates to the conclusion of fisheries access agreements. Payments from one government to another may be considered under a subsidy regime. However, as they constitute an important source of government revenue for developing countries, fees from selling access rights will most likely be exempt from disciplines. More importantly, however, usually these agreements reduce the fees for fleets considerably. Access rights are transferred to fishing fleets free of charge instead of selling or auctioning them off. Up to two thirds of the notional fee is thus taken charge of by the government (Kleih et al. 2006). However, developing countries fear that access agreement may become unattractive overall if fleets would have to pay the access fees themselves (Campling et al. 2007).

This issue is of particular interest to the EU and its practice regarding the conclusion of fishing access agreements (EU Fisheries Partnership Agreements and/or the broader Economic Partnership Agreements). The EU concludes these agreements with third countries in order to open foreign fisheries to the EU fishing fleet. This practice might also be affected by new fisheries subsidy disciplines. Main beneficiaries of those agreements between the EU and ACP countries come from Spain, France and to a lesser extent Italy and Portugal (Kleih et al. 2006). Recently, private sector financial contributions to access fees paid under EU fisheries access agreements have slightly increased. If access fees would have to be paid for by the fisheries sector entirely as a result to new subsidy disciplines, fleet operation costs are bound to increase to a level that would probably effectively put parts of the European fleet out of business and thus reduce overall fishing effort. This would particularly affect the tuna sector and the whitefish sector as the EU fleet is heavily dependent on access to tropical tuna and whitefish resources (Kleih et al. 2006).

4.3.3 Current state of play of negotiations

The negotiations on fisheries subsidies were initially marked by substantial disagreement, as to the scope and the strength of the mandate (UNEP 2008). In particular, it was debated whether fisheries subsidies are responsible for overcapacity and over-fishing and on the degree of Special and Differential Treatment (S&DT) that should be accorded to developing countries (European Commission 2006). Considerable progress was made when the EU (ICTSD 2003) and Japan (ICTSD 2004) modified their positions and allowed negotiations to move from the question of whether new rules were needed at all to the nature and the extent of such rules (Moltke 2007). This development became manifest at the 2005 WTO Ministerial in Hong Kong where the negotiating mandate regarding fisheries subsidies was revised.

²⁶ Joint proposal of India, Indonesia and China (Doc. TN/C/W/51)

²⁷ For a comprehensive overview on WTO submissions regarding access agreements, see: Orellana, M. (2007), *EEZ Fisheries Access Arrangements and the WTO Subsidies Agreement: Legal Analysis and Options for Improved Disciplines*; UNEP, Geneva

Hong Kong Mandate

Paragraph 1.9 of Annex D states:

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

The renewed mandate calls for an enforceable ban on harmful subsidies, clearly including environmental and development criteria. Despite this strong commitment by governments, no substantial progress has been made since. The main questions in setting up and implementing a new approach for disciplines on subsidies going beyond the current agreement are still unresolved. These include the structure of disciplines, their application to specific subsidy types, and how to deal with S&DT for developing countries.

In the end of 2007, a draft text on fisheries subsidies was circulated among WTO Members. This draft text took the form of an Annex (Annex VIII), which would be inserted as an integral part into the ASCM. The scope of the list of subsidies proposed for prohibition in the document was fairly broad, covering subsidies to fishing capital and operating costs, price and income supports, and subsidies to IUU fishing. In addition, the draft proposed the prohibition of all subsidies that benefit fishing vessels or activities affecting fish stocks that are "in an unequivocally overfished condition" (Article I.2). Subsidies for port infrastructure would be prohibited if the facilities are used predominantly for activities related to marine wild capture fishing. The Chair's draft did not prohibit subsidies to marketing of fish products. As a "general discipline", the draft proposed that the use of a subsidy shall not result in "depletion of or harm to, or creation of overcapacity in respect of" (a) straddling or highly migratory fish stocks whose range extends into the national waters of another Member; or (b) stocks in which another Member has identifiable fishing interests. Generally, permitted subsidies would be subject to the condition that a fisheries management system "designed to prevent overfishing" was in place. Only subsidies to small-scale operations would be exempt from this requirement. Developing countries would be exempt from most disciplines, although subject to fisheries management and the "general discipline" applying to shared fish stocks. On access rights, the draft text provides for an exemption of fees paid from one government to another but treating the onward transfer of access rights as possible subsidies. Also, for these cases the draft provided for extensive exceptions: where the country granting the access is a developing country (as is usually the case), such subsidies would be allowed provided that the access agreement is made public and includes provisions to prevent overfishing (including requirements for regular stock assessments). The draft text foresaw to include a presumption of illegality of subsidies not notified to the WTO. It would be up to the subsidising member to establish that the subsidy is in line with international law. The same was proposed for access agreements the terms of which have not been made public. Moreover, the draft text proposed that fisheries subsidies notifications be required to include sufficient information for an assessment of fisheries management conditions to these subsidies. The management system would have to be peer-reviewed by the FAO.

However, several delegations—including the EU—have strongly rejected some of the proposals contained in the draft text, especially as regards the broad scope of the ban. The EU strongly criticised the draft as having put the negotiations in a bad position. They allege that the proposal satisfies supporters of a broad ban much more than the other camp.

In a working document of 28 May 2008 the Chair Valles Galmes summarized debate on his November draft in the Group as follows: *"In the area of fisheries subsidies, we are still wrestling with conceptual issues relating to the major building blocks of the disciplines and how they fit together"*. Until December 2008, there has been no progress in the debate. A new draft consolidated chair text of the Anti-Dumping and Subsidy and Countervailing Measures Agreements²⁸ tabled by Chair Valles Galmes contained only a "roadmap for discussions". In the document the chair advises to "take a step back and reflect on the fundamental issues raised by the mandate" once again. To focus the negotiations he first recalls the elements of the mandate (to **strengthen disciplines through prohibition of fisheries subsidies that contribute to over-fishing and overcapacity**, while establishing **appropriate and effective special and differential treatment** for developing and least-developed Members; emphasis added by the Chair) and secondly puts together an extensive list of questions to guide the future debate. The questions are designed to put the burden on those arguing against any elements contained in the first draft of November 2007. e.g. Members will have to argue why subsidies proposed for prohibition should not be prohibited, etc.

The idea is to first identify those subsidies that contribute to overcapacity or over-fishing, with a view to determining which of these should or should not be prohibited while considering how to effectively address the needs of developing Members. Moreover, the Chair has identified the following essential issues which need to be brought to greater convergence before a revised draft text can be produced: how the existence of overcapacity and over-fishing can be established as objectively and precisely as possible (i.e. the question if judgement should be left to the discretion of the Members or to whom it should be conferred) as well as the question if enhanced surveillance mechanisms are needed.

4.3.4 Outlook

Considering the overall state of the Doha Round negotiations and the current state of discussions on fisheries subsidies no definitive predictions on the eventual outcome can be made. However, it is rather unlikely that fisheries subsidies will be the deal breaker for the Doha Round. All elements for a negotiated compromise solution are on the table. However, the right balance between the positions of supporters for a broad ban on the one hand and states that would keep a wider margin for granting fisheries subsidies still needs to be found. Subsidies for fisheries management, research as well as monitoring, control and surveillance purposes will most likely be exempted from disciplines. Moreover, LDCs are very likely not affected too much by new disciplines, even if the exact scope of S&DT may not be predicted. Disciplines on subsidies directly resulting in overcapacity are also widely accepted. However, the effects of stricter rules on fisheries subsidies are unlikely to result in a reduction of overcapacity in the short term given the long lifetime of fishing vessels. As regards other subsidies (e.g. for operating costs, processing) these are subject to the overall negotiated compromise. It is currently impossible to estimate in how far subsidies will be conditioned by sustainable fisheries management as well as transparency and enforcement.

²⁸ See Document TN/RL/W/236 of 19 December 2008 at:
http://www.wto.org/english/tratop_e/rulesneg_e/rules_dec08_e.doc

4.3.5 *Impact on European practices*

The European Fisheries Fund (EFF) is the main financial instrument of structural policy in the fisheries sector in the EU. EFF's total budget is 4.305 billion Euros (in current prices) for the seven years of the programming period (2007-2013). In addition, EFF support is granted on the principle of co-financing, meaning that European aid is complementary to other public subsidies and/or co-financing by the beneficiary company, at a variable rate depending on the type of project. Funds from the EFF are allocated to projects under five priority axes including helping the fleet adapt fishing capacity and effort to available fish resources (axis 1) and support to the various industry branches (aquaculture, inland fishing, processing and marketing of fishery and aquaculture products) (axis 2). The most relevant axis as to its effects on overcapacity/overfishing is the first one. How the money is used varies between Member States. However, the largest producing Member States award between 20 and 40 percent of total grants under priority axis one. The European Commission points out that aid for active vessels is subject to very strict conditions ensuring that no increase of vessel's power and fishing capacity is taking place (European Commission 2008a).

The European fishery sector moreover benefits from additional rescue and restructuring aid. The most recent example is the emergency aid package for the fishing sector to tackle the fuel crisis. The European Commission has recently provided an extra 600 million Euros in response to rising fuel prices²⁹. The package institutes an ad hoc special, temporary regime derogating from provisions of the European Fisheries Fund regulation up to the end of 2010. The objective of the proposal is to reduce overcapacity while decreasing fuel costs. Concrete measures also include the partial allocation of vessel decommissioning aid to firms that replace larger old vessels with smaller more energy-efficient ones, temporary reductions in employees' contributions to social security payments, and emergency aid for the temporary stopping of fishing activities.

Under the provisions of the draft text of December 2007 most elements of this package would arguably fall within prohibited categories of subsidies, such as the general prohibition of any subsidies "the benefits of which are conferred on the acquisition, ... renewal, renovation, or modernization" and "subsidies the benefits of which are conferred on operating costs of fishing or service vessels" as well as "income support for natural or legal persons engaged in marine wild capture fishing". Kleih et al. (2006) state that the EU subsidy regime is having its biggest impact on processing (axis 2 of the EFF). They conclude that a possible loss of structural funding subject to the outcome of WTO negotiations is likely to impact most on the whitefish sector as cheap non-European white fish would probably replace EU landings and foreign low-cost processors would undercut EU processors.

²⁹ European Commission, press release of 17 June 2008 "EU package to tackle the fuel crisis in the fisheries sector" retrieved from http://ec.europa.eu/fisheries/press_corner/press_releases/2008/com08_48_en.htm

Key findings of Section 4.3.

1. The original Doha Mandate to clarify and improve the fisheries subsidies regime has been strengthened and revised by the Hong Kong Mandate of 2005, calling for an enforceable ban on harmful subsidies, clearly including environmental and development criteria.
2. However negotiations have not witnessed a break-through. A draft text presented by the Chairman of the Negotiation Group on Rules Ambassador Valles Galmes in November 2007, gained much criticism -also from the EU- for making supporters of a broad ban significantly happier than the other camp. Currently negotiations on fisheries subsidies are stalled and any progress is subject to a solution on modalities in NAMA negotiations. If the Doha Round is to continue it is very likely that an agreement on fisheries subsidies will also be reached. As illustrated by the roadmap presented by the Chair in December 2008, discussions have still not generated the necessary elements providing the basis for a revised draft text, all elements for a negotiated compromise solution are already on the table.
3. The issues of highest interest to the EU include the scope of subsidies to be covered by disciplines, with special interest in maintenance of money transfers in the context of fishing agreements opening third countries' fisheries to European fleets.
4. Main beneficiaries of those agreements between the EU and ACP countries come from Spain, France and to a lesser extent Italy and Portugal. If access fees would have to be paid entirely by fishing fleets this would make business most likely unprofitable. This would in particular affect the tuna sector and the whitefish sector as the EU fleet might lose access to tropical tuna and whitefish resources.
5. In addition the EU has shown interest in restricting disciplines to subsidies contributing directly to enhancement of overcapacities instead of contributions to operating costs and processing activities.
6. The exact scope of special and differential treatment for developing countries is also still under debate. Broad exemptions as proposed in the Chairman's draft text are criticized by NGOs for putting the effectiveness of the new regime as regards possible positive effects on stock recovery at peril. A linkage between the introduction of sustainable fisheries management systems and the exemption from subsidies could provide for a compromise solution.
7. Some improvements as regards transparency and enforcement of disciplines by means of strengthening of notification requirements seem likely.

4.4 Other relevant WTO negotiations

Other relevant WTO negotiations with an impact on the EU most importantly include the re-negotiation of the General Agreement on Trade in Services (GATS) (Gould 2004). As the main service trade agreement it covers all services needed in fisheries and aquaculture, such as commercial fishing and fish farming/hatching, fish processing, and all other service activities related to fisheries and fish farms/hatcheries (ActionAid 2006).

4.4.1 Services Council – GATS

The General Agreement on Trade in Services (GATS) was enacted in 1995. The Agreement commits Member States to progressively liberalise trade in services and to start a new round of negotiations no later than five years after its coming into force. Accordingly, negotiations started in 2000, but were not incorporated into the Doha agenda until two years later in the context of the “Single Undertaking”. The Agreement covers a wide range of services relevant to the fisheries sector, notably financial services, telecommunications, distribution, transport, commercial presence abroad and cross-border supply (WTO 2008b). The general aim of the negotiations is to facilitate market access and grant full national treatment of foreign affiliates of service providers. This means that national states will remain the main regulator of the terms of trade in fisheries related services in the near future. WTO requirements are expected to remain marginal, except for the potential strengthening of some rules on transparency (Kleih et al. 2006).

Up to date, the potential outcome of the Doha Round does not seem to lead to large-scale impacts on trade of fisheries related services, in general, and the European fisheries sector, in particular. This is due to the fact that Europe, along with other net-importers of fish products and related services already have largely liberalised markets and because they committed to higher requirements as regards the trade in services during the Uruguay Round of negotiations. Impacts are likely to be felt in developing countries mostly. However, there are two issues that have caused some concern in Europe: (1) the possibility of wider distribution of vessels flying “convenience flags” (Kleih et al. 2006), and (2) possible impacts on fish marketing and retailers (Arkell & Johnson 2005).

The chartering of vessels is among the services falling under GATS. This is a rather sensible issue, particularly in the EU, as charter vessels indirectly contribute to an expansion of the European fishing fleets and consequently aggravate the problem of capacity overload. Some voices suggest that liberalisation in trade of fisheries related services might be conducive to re-flagging of fishing vessels, which would result in an increase of European vessels flying “convenience flags” and employing crew from low wage countries (OECD 2003). This tendency is already observable in fishing activities conducted outside the EEZ of European countries, where national legislation does not apply. It has been suggested that RFMOs might have a big role to play in dealing with this problem in the future. Large-scale reflagging is not, however, a frequent phenomenon up to date. Although eventual tendencies in this direction should be carefully observed, this concern is purely hypothetical at the moment (Kleih et al. 2006; OECD 2003).

Retail and wholesale services are covered under the GATS “Distribution Sector” classification. These two sub-sectors are extensive in their coverage and include the wholesale or retail of a wide range of products. The retailing sector is the link between catchers and processors on the one side and customers on the other, and as such has significant influence on product pricing by charging mark-ups on fisheries products (Action Aid 2006). Poor performance of this sector can lead to misallocation of resources and consequently to a reduction of consumer welfare, i.e. overpricing. The rise of a limited number of global wholesalers and retailers controlling large shares of the market for fish products, and the subsequent establishment of foreign retailers in Europe have already had (limited) detrimental effects on small shops and businesses. Also, the rift between prices at the beginning of the supply chain and retail prices is likely to increase with global competition (Action Aid 2006). These issues are socially contentious as they directly affect consumer welfare. Therefore, it is not likely that full liberalisation of distribution will be achieved or even aspired (Arkell and Johnson 2005).

The request-offer process remains the main method of GATS negotiations under the DDA. WTO talks on the liberalisation of services in the Committee on Trade in Services Special Session (CTS-SS) had until the end of 2005 used a bilateral "request-offer" process, under which one country would request another to open up a particular service sector in a particular way. At the Hong Kong Ministerial Meeting in December 2005, WTO Members agreed that negotiations in services should be pursued on a multilateral basis (complementing the bilateral approach). Services relevant to fisheries are primarily covered under the "Business Services" negotiations under the heading of "services incidental to fishing". 33 WTO members have taken up commitments to liberalize such services, while a substantial number of countries (including the EU) have limited the commitment to consulting and advisory activities in relation to fishing³⁰. Five countries have made offers to liberalize aspects of their fishing services sector (also consultancy and advisory services), including Brazil and India. A collective request has been made by Argentina and Brazil to the EU, Australia, Canada, Iceland, Japan, New Zealand, Norway, and the USA to liberalize services incidental to fishing categorised under "Agriculture" (ActionAid 2007).

Key findings of Section 4.4

1. Overall, GATS negotiations will seek to grant full national treatment of foreign affiliates. In this area, governments may continue to impose regulation as they see fit. Consequently, national regulation will remain paramount, with WTO requirements expected to only marginally affect domestic decision making.
2. Large-scale impacts on the European fisheries sector are not to be expected from the GATS negotiations – if at all. However, a revision of the agreement could potentially impact on the retailing sector and vessel chartering services.
3. There have been concerns about possible effects of service trade liberalisation on the distribution of vessels flying "convenience flags" in European waters. A trend towards reflagging vessels is currently observed on the high seas where national rules do not apply. Whether trade liberalisation would really lead to large-scale reflagging is contentious in the literature.
4. Concerns have been voiced about the facilitation of the spread of multi-national wholesalers and retailers, putting local small-scale shops out of business, controlling prices and affecting consumer welfare, if trade in services is further liberalised.

4.5 WTO case law

This chapter is to give an overview of WTO case law most relevant for the European fisheries and aquaculture sectors. Cases involving the European Communities (EC) comprise the Swordfish case (DS 193), Definitive Safeguard Measures on salmon (DS 326 and DS 328), Trade description of Sardines (DS 231) as well as Scallops (DS 7, DS 12, and DS 14).

³⁰ Services incidental to fishing include the following: Fishing on a commercial basis in ocean, coastal or inland waters; Taking of marine or freshwater crustaceans and molluscs; Fish farming, breeding, rearing, cultivation of oysters for pearls or food; gathering of marine materials such as natural pearls, sponges, coral and algae; processing of fish, crustaceans and molluscs aboard the fishing boats; operation of fish hatcheries producing oyster spat, mussel and other molluscs seeds, lobsterlings, shrimp post-larvae and other crustaceans seeds and fish fry and fingerlings; growing of laver and other edible seaweeds; service activities related to marine and freshwater fisheries and to operators of fish hatcheries or fish farms; see: *United Nations Statistics Division, Classification Profile: ISIC Rev.3 (0500)*

4.5.1 Chile-Swordfish case

The involved parties in the Swordfish dispute (DS 193) were the EC and Chile. In April 2000 the EC requested consultations with Chile regarding the prohibition of landing swordfish in Chilean ports, which was established on basis of the Chilean Fishery Law. The EC asserted that its fishing vessels operating in the South East Pacific were not allowed under Chilean legislation to unload their swordfish in Chilean ports either to land them for warehousing or to tranship them onto other vessels. The EC claimed the Chilean prohibition to be inconsistent with GATT 1994 Articles V and XI.³¹

At the request of the EC a panel was established in December 2000. In March 2001 the EC and Chile came to a provisional arrangement based on a pilot phase where the parties undertook to resume bilateral cooperation. The suspension of the process for the constitution of the panel was confirmed in December 2007.³² The agreement consists in the re-establishment of a bilateral technical commission, port access for the fish caught under a new scientific fisheries program and the creation of a multilateral conservation forum for the Southeast Pacific.³³ The agreement reached by the parties is considered a first step in setting up the legal framework necessary to ensure the conservation of marine biodiversity in the South Pacific³⁴ and underscores the need for international cooperation for high seas fisheries conservation.³⁵

The case is of particular interest with regards to the relationship of WTO rules and trade-related measures taken under MEAs. While the EC initiated proceedings against Chile in the WTO, Chile went to the International Tribunal for the Law of the Sea (ITLOS) under the UN Convention on the Law of the Sea alleging breach of obligations to ensure conservation of swordfish. The two international tribunals might have reached conflicting results applying different rules to the same facts. However, as a political agreement was found both disputes have been suspended and no legal decisions have been taken.

4.5.2 Trade Description of Scallops

There are three cases relating to the Trade Description of Scallops (DS 7, DS 12 and DS 14). They are all related to the same item. In DS 7 the involved parties were Canada and the EC. In DS 12 Peru and the EC and DS 14 involved Chile and the EC.

The complainants concerned a French Governments' Order laying down the official name and trade description of scallops. The complainants claimed that the order reduced their competitiveness on the French market as their product was no longer allowed to be sold as "Coquille Saint-Jacques" although there was no perceivable difference between their scallops and French scallops i.e. in colour or appearance. They claimed that they were "like products". Violations of GATT Articles I and III and TBT Article 2 were alleged. A panel was established at the request of Canada in July 1995 and a joint panel was established in October 1995 at the request of Peru and Chile on the same subject. The two panels concluded their substantive work, but suspended the proceedings in May 1996 in view of the consultations held among the parties towards a mutually agreed solution. This agreement was reached in July 1996, allowing to market scallops in France as "Saint Jacques" followed by the scientific name of the species and clearly indicating the country of origin.

³¹ Orellana, The EU and Chile Suspend the Swordfish Case Proceedings ..., <http://www.asil.org/insigh60.cfm>

³² Orellana, The EU and Chile Suspend the Swordfish Case Proceedings ..., <http://www.asil.org/insigh60.cfm>

³³ Orellana, The EU and Chile Suspend the Swordfish Case Proceedings ..., <http://www.asil.org/insigh60.cfm>

³⁴ Orellana, The EU and Chile Suspend the Swordfish Case Proceedings ..., <http://www.asil.org/insigh60.cfm>

³⁵ Orellana, The EU and Chile Suspend the Swordfish Case Proceedings ..., <http://www.asil.org/insigh60.cfm>

4.5.3 Trade Description of Sardines

The dispute regarding the Trade Description of Sardines (DS 231) involved Peru and the EC.

In March 2001 Peru requested consultations with the EC concerning Regulation (EC) 2136/89, which was meant to prevent Peruvian exporters from continuing using the trade description "sardines" for their products. Peru held that, according to the relevant Codex Alimentarius standards (STAN 94-181 rev. 1995), the species "sardinops sagax sagax" are listed among those species which can be traded as "sardines". Therefore, they considered that the Regulation constituted an unjustifiable barrier to trade, and, hence, was in breach of Articles 2 and 12 of the TBT Agreement and Article XI:1 of GATT 1994. In addition, Peru argued that the Regulation was inconsistent with the principle of non-discrimination, and, hence, in breach of Articles I and III of GATT 1994. In May 2002 the DSB Panel, established in July 2001, concluded that the EC Regulation was inconsistent with Article 2.4 of the TBT Agreement, providing that

"[w]here technical regulations are required and relevant international standards exist [...], Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems."

The EC notified its decision to appeal to the Appellate Body certain issues of law covering the Panel report and certain legal interpretations developed by the Panel. In September 2002 the report of the Appellate Body upheld the Panel's finding, ruling that the EC Regulation was inconsistent with Article 2.4 of the TBT Agreement.

In July 2003, Peru and the EC informed the DSB that they had reached a mutually agreed solution to the dispute. According to the amended EC Regulation, Peruvian sardines can now be marketed on the EC market under a trade description consisting of the word "sardines" joined together with the scientific name of the species, i.e. "Sardines — Sardinops sagax".

4.5.4 Definitive Safeguard Measures on Salmon

The disputes over definitive safeguard measures (Salmon cases) involved Chile and the EC (DS 326) as well as Norway and the EC (DS 328).

In February 2005 Chile requested consultations with the EC regarding the safeguard measure against imports of farmed salmon imposed by Commission Regulation (EC) 206/2005 of 4 February 2005, as amended by Commission Regulation (EC) 580/2005. The EC had previously notified the WTO of its findings of "serious injury" and of its proposed safeguard measure against imports of farmed salmon of all origins. The measure consisted of a system of tariff quotas on the basis of the past imports of salmon into the communities. Imports of farmed salmon beyond the level of the quota were made subject to an additional duty. It also established a minimum price applicable to imports both within and beyond the tariff quota and required a security to be provided by importers as a guarantee of the payment of the actual import price.

Chile claimed that the definitive safeguard measure against imports of farmed salmon was inconsistent with the EC's obligations under the WTO agreements and seriously affected Chilean exports of salmon to the EC. Norway joined the consultations between Chile and

the EC shortly after³⁶. However, the EC revoked the measure by Commission Regulation (EC) 627/2005 finding that anti-dumping measures against imports of farmed salmon from Norway were sufficient to address the injury which the community industry was suffering. The safeguard measure was therefore repealed at the same time as the anti-dumping measures entered into force. Consequently, Chile formally withdrew its request for consultations and thereby put an end to the matter.

The following two cases did not involve the EC, but nonetheless are of particular interest.

4.5.5 Australia-Salmon case

DS 18 (Australia-Salmon) dealt with Australia's prohibition of salmon imports from Canada following an import risk assessment that identified up to 20 disease agents exotic to Australia that might be present in Pacific salmon products. Canada alleged that the prohibition was inconsistent with GATT Articles XI and XIII, and also inconsistent with the SPS Agreement.

The panel established in May 1997 found that Australia's measures were inconsistent with Articles 2.2, 2.3, 5.1, 5.5, and 5.6 of the SPS Agreement, and also nullified or impaired benefits accruing to Canada under the SPS Agreement. While reversing some of the Panel's reasoning the Appellate Body basically confirmed that Australia had acted inconsistently with obligations under the SPS Agreement basically arguing that "arbitrary or unjustifiable" levels of protection had been applied to several different yet comparable situations so as to result in "discrimination or a disguised restriction" on imports of salmon, compared to imports of other fish and fish products such as herring and finfish. The conclusion was that Australia was to bring in line its import measure with its SPS obligations. It was not an instruction to open the market to fresh chilled and frozen salmon (products), but to undertake an appropriate and non-discriminatory assessment of the risks such imports might pose.

4.5.6 Shrimp-Turtle case

In the case DS 58 "United States – Import Prohibition of Certain Shrimp and Shrimp Products" (or the Shrimp – Turtle case) several Asian countries (India, Malaysia, Pakistan and Thailand) complained that Section 609 of the USA Endangered Species Act constituted an impermissible restriction on trade under the GATT. Section 609 and its implementing regulations prohibited the importation of shrimp into the United States unless a country's shrimp program required shrimpers to use turtle excluder devices (TEDs) comparable to those used in the United States, as well as providing for credible enforcement. Imports to the USA were made subject to certification by U.S. officials that the importing nation had implemented a proper turtle conservation program. In its ruling the Appellate Body found that while the measure of the USA served an environmental objective that is legitimate under paragraph (g) of Article XX of the GATT 1994, this measure had been applied in a manner constituting arbitrary and unjustifiable discrimination between Members of the WTO. The USA provided countries in the western hemisphere — mainly in the Caribbean — technical and financial assistance and longer transition periods for their fishermen to start using TEDs and failed to give the same advantages to the four Asian countries that filed the complaint.

A lot of critics cite the Shrimp-Turtle case as proof that the WTO promotes trade liberalisation at the expense of environmental considerations. However, it has to be noted

³⁶ Regarding the dispute on the ADM adopted by the EC against imports of farmed salmon from Norway please refer to the chapter on Anti-dumping (chapter 6).

that the ruling has in principle acknowledged that measures to protect sea turtles are legitimate under GATT Article XX provided certain criteria (such as non-discrimination) are met. In return, it is argued however, that the Appellate Body imposed interpretative hurdles making it virtually impossible for any WTO Member to impose trade measures to protect the environment or natural resources (Wold and Fullilove 2000).

Key findings of Section 4.5

1. Fishery related WTO case law is mostly related to the application of defence instruments, as well as alleged NTB.
2. Cases involving the EC especially concerned prescriptions on the use of trade descriptions (Sardines, Coquille St. Jacques) which were considered to unfairly restrict trade. In both cases the EC (i.e. the Member State in question) changed its practice.
3. Although in many cases no formal decisions have been taken, the cases demonstrate that the WTO dispute settlement procedures may have an important corrective role against doubtful or protectionist trade practices and the enforcement of WTO trade law in general, as conflicting parties enter into negotiations to find a mutual agreed solution.
4. If decisions are taken within the WTO dispute settlement system, i.e. formal reports adopted, the effect is not limited to specific cases. Although the decisions are strictly speaking only binding on the parties concerned they contribute to setting standards for national trade practices.

5 Analysis of other relevant trade negotiations

Beyond its involvement in the development of the global trading system under the umbrella of the WTO, the EU engages in regional and bilateral trade negotiations. Currently, 121 countries are linked to the EU by regional trade agreements, many of them negotiated in the 1990s. Moreover, the EU maintains the most extensive network of preferential trade agreements of any WTO Member State (Panagariya 2002). The EU concludes different kinds of bilateral trade agreements, most importantly:

- Economic Partnership Agreements in negotiation with ACP countries as a follow-up of the Cotonou Agreement, and
- Free Trade Agreements, notable examples include negotiations with Euromed and Mercosur,

The issues to be considered in bilateral and regional trade negotiations on fish products are diverse and plentiful. Therefore, only one or two particularly important or contentious issues will be identified and discussed for each region treated in this chapter. Where appropriate, cross-references to other ongoing negotiations will be made. This being said, bilateral and regional fisheries trade negotiations have had an increasingly important role to play in the EU's trade policy over the past years. With the backdrop of the stalled Doha Round negotiations, this trend is most likely to continue (Mildner 2009; Panagariya 2002).

5.1 EPA negotiations

The ongoing EPA negotiations with ACP countries stand out by far in this context for two reasons. First, EU Member States have close historical ties to ACP countries, which, after decolonization, have transformed into close trade partnerships. Although ACP states only account for a minor portion of overall trade volume in fisheries products in the EU, an elaborate system of trade preferences has long become an important pillar of EU development aid and is often an important source of income for the highly specialized and volatile economies of the ACP countries.

5.1.1 Main players and negotiation framework

Fish exports to the EU from ACP countries benefit from special, non-reciprocal, tariff-free arrangements under the Cotonou agreement and other preferential trade arrangements (for a description of the various preferential arrangements for developing countries, please turn to Chapter 3.2.3). The EU-ACP Cotonou Partnership Agreement was signed in 2000 for a period of 20 years. Cotonou includes provisions that allow for a revision of the agreement every five years. Such a regular update is needed to keep it relevant in a rapidly changing international and ACP-EU context. This is what happened for the first time in 2005. Cotonou is now coming close to its second revision which is due to take place in 2010. Both the ACP and the EU started preparations in the first half of 2008. The European Commission established an inter-service Task Force whilst discussions with the EU Member States on the European draft negotiating mandate will take place in the last quarter of 2008. The ACP have also started their own internal reflections on the revision and asked a group of Ambassadors to lead this process with the ACP Secretariat.

The formal ACP-EU negotiations on the revision are taking place between March 2009 and the beginning of 2010. These negotiations include, most prominently, the set up of several Economic Partnership Agreements (EPAs), that are to replace the current scheme in order to make it compatible with WTO rules as it currently does not satisfy the conditions of GATT Article XXIV regarding the creation of a customs union or a free trade area.

The negotiations take place on several levels. Firstly, the EU is in negotiation with newly built regional blocs of countries, namely the Caribbean Community (CARICOM)³⁷, the Southern African Development Community (SADC)³⁸, the Economic Community of West African States (ECOWAS)³⁹, Pacific Islands Forum (P-ACP)⁴⁰, the group of Eastern and Southern African countries (ESA)⁴¹ and the East African Community (EAC)⁴². The continuation of uninterrupted market access for fish and fisheries products was a major motivation for non-LDC developing countries to enter into (interim) EPAs, particularly for small and coastal economies, e.g. Papua New Guinea and Fiji, from the P-ACP group, and some EAC as well as ESA countries (Campling 2008).

5.1.2 State of play of the negotiations

The EU has either initialled or already signed interim or full EPAs with 36 countries of the 77 in the ACP. The other 31 are Least Developed Countries (LDCs) and therefore receive full access to the EU market without any need for reciprocal opening under the EU's "Everything but Arms" provisions. The EU is negotiating with ACP countries in six different regional groupings, as decided by the ACP countries. In some cases interim EPAs have been agreed with individual countries to secure their market access. Three interim EPAs (with Ivory Coast, Cameroon and SADC) and a comprehensive, long-lasting regional EPA (with the Caribbean region) have been signed to date. Progress has also been recently made in negotiations with the West African region. The European Commission regularly publishes policy briefs regarding the state of play of EPA negotiations; the latest edition was issued in June 2009 and is quoted in the box here below.

³⁷ The group counts 15 full members, namely Antigua & Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts & Nevis, St. Vincent & the Grenadines, Suriname, as well as Trinidad & Tobago. In addition, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, and the Turks & Caicos Islands have associate membership status (see CARICOM 2009).

³⁸ The Southern African Development Community (SADC) comprises the following Member States: Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Martinique, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe (SADC 2009).

³⁹ The Economic Community of West African States (ECOWAS) comprises a total of 15 members, namely the Republic of Benin, Burkina Faso, Cabo Verde, Côte D'Ivoire, Gambia, Ghana, Guinée, Guinée Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo (ECOWAS 2009).

⁴⁰ The group of Pacific ACP countries (PACP) includes the following Member States: Cook Islands, Timor Leste, Fiji, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu (European Commission 2009).

⁴¹ The Eastern and Southern Africa (ESA) group comprises the following countries: Comoros, Seychelles, Madagascar, Mauritius, Djibuti, Eritrea, Ethiopia, Sudan, Malawi, Zambia, and Zimbabwe (European Commission 2009).

⁴² The Eastern African Community (EAC) came into life in 2006 when members of other regional blocks, notably SADC, decided to form a new negotiation group in order to increase their political leverage. Member States include Kenya, Uganda, Tanzania, Burundi, and Rwanda (EAC 2009).

State of play of EPA negotiations June 2009 (European Commission 2009b)

- *Caribbean (CARIFORUM)*: The EU and Caribbean countries in the CARIFORUM grouping have signed a full-fledged EPA. The Agreement covers all rules necessary for a free trade agreement, and also services, fisheries, environmental and social aspects. Haiti has initialled the agreement but not yet signed.
- *Central Africa (CA)*: A goods-only interim EPA was signed on the 15th January 2009 with Cameroon, the only Central African (CA) country which decided to negotiate an interim agreement. The Commission is currently negotiating a full regional EPA with Central Africa. Eight Central African countries are involved in negotiations. Five of them are Least Developed Countries (LDCs) (Chad, Central African Republic, Democratic Republic of Congo, Sao Tome e Principe and Equatorial Guinea) and three are non LDCs (Cameroon, Congo and Gabon). Equatorial Guinea recently indicated it did not want to continue to negotiate and preferred an observer status.
- *Eastern Africa (EAC)*: An interim Framework Economic Partnership Agreement has been initialled with the Eastern African Community (EAC). The only non-LDC in the region is Kenya.
- *Eastern and Southern Africa (ESA)*: At the end of 2007, the Commission initialled an interim EPA with six ESA member states: Comoros, Madagascar, Mauritius, Seychelles (CMMS), Zambia and Zimbabwe. Negotiations continue on services, investment, agriculture, rules of origin, sanitary and phytosanitary provisions and technical barriers to trade, customs, trade facilitation and trade-related rules, with a view to signing a full-fledged EPA in 2009. ESA countries that did not initial the interim EPA (Djibouti, Ethiopia, Eritrea, Malawi and Sudan – all LDCs), are now negotiating a full EPA.
- *Pacific (P-ACP)*: The Commission is currently negotiating with 14 Pacific ACP countries. Additionally, Timor Leste has observer status in EPA negotiations. At the end of 2007, the Commission initialled an interim EPA with Papua New Guinea and Fiji. Both countries presented an independent Market Access offer. All 14 PACP countries are negotiating the full EPA as a region.
- *Southern Africa (SADC)*: An interim EPA was initialled with Botswana, Lesotho, Swaziland, Mozambique and Namibia at the end of 2007. Angola can join the agreement, but as a LDC in the meantime maintains full market access. The EU and South Africa have a separate trade deal, the Trade, Development and Co-operation Agreement (TDCA) from 1999. Both sides continue negotiations for a full EPA while preparing for signature and WTO notification of the interim EPA. On 4 June 2009, Botswana, Lesotho and Swaziland signed the EU – SADC interim EPA. Mozambique signed on 15 June 2009. Namibia is still considering whether to sign. Angola and South Africa will not sign the interim EPA at this stage, but are participating in comprehensive EPA negotiations.
- *West Africa (ECOWAS)*: All of Western African states except Mauritania are members of the Economic Community Of West African States (ECOWAS), a customs union since 2006 (full completion foreseen for 2009). Most French-speaking countries are also members of the West Africa Economic Monetary Union (UEMOA), with a full customs union and a single currency. Only two West African countries, Côte d'Ivoire and Ghana, initialled bilateral "stepping stone (or "interim") EPAs" with the EU at the end of 2007. The interim EPA with Côte d'Ivoire was signed on 26 November 2008. Progress towards concluding a comprehensive regional EPA with West Africa was made at talks in Cotonou (Bénin) and in Brussels, including a Ministerial meeting, in June 2009. The region includes 13 LDCs that benefit from the "Everything but Arms" trade arrangements.

As every country grouping negotiates a separate EPA with the EU, it is not possible to give a general description of the fisheries provisions contained in such an agreement. However, it is feasible to look at the fisheries chapters of existing EPAs, most notably those already concluded by EAC, ESA, and CARICOM, and draw some general conclusions as to what

implications similar agreements might have⁴³. The fisheries chapters included in the EAC and ESA agreements are identical, whereas the CARICOM-EPA contains a joint chapter on agriculture and fisheries (Campling 2008).

An issue that has been contentious in the negotiations for literally all ACP country groupings are provisions relating to Rules of Origin (for a detailed account of tensions among countries over RoO, which are quite comparable to those present in the current EPA negotiations, please turn to Chapter 3.4.3.1). While the EU has made prove of a willingness to relax some of its strict requirements, as demonstrated in the EAC/ESA fisheries chapters, it is not clear whether this has had any practical relevance to exporting countries. However, in the case of negotiations with P-ACP countries the EU has allowed for one important change that was demanded by the Pacific group as an essential prerequisite for concluding an agreement (Cartwright 2003). The EU now allows global sourcing RoOs for these countries. That is to say that regardless of where the fish was caught or the status of the catching vessel's flag, registration or ownership, the fish is deemed originating from P-ACP as long as it is being processed into a pre-cooked, canned or packaged product there. This provision is of great importance particularly to the Pacific tuna processing sector. However, there is no evidence as of yet whether local processors are able to reap the benefits of this provision in practice since their exports are still subject to the strict SPS requirements of the EU⁴⁴ (Campling 2008, for a detailed account of the issues surrounding SPS measures, please turn to Chapter 3.4.1).

In the case of the ESA/EAC agreements the EU has also relaxed previous trade restrictions on canned tuna and tuna loins. Under the Cotonou Agreement the automatic derogation annual quota for canned tuna was fixed at 8,000mt and 2,000mt respectively, and distributed among all 77 ACP countries. The ESA grouping now receives the same volume quotas but with allowance for distribution among ESA countries only. The same provision holds for EAC in the case of tuna loins (Campling 2008).

Another issue of great importance to ACP countries and the EU alike is preference erosion. However, the EU has so far made very limited commitments as regards preference erosion in the case of fish and fish products; since it holds true that the issue is subject to agreements reached on trade liberalisation in the context of the current Doha Round negotiations (Campling 2008, also see Chapter 4.1).

5.1.3 Potential impacts

The Cotonou Agreement, existing fisheries access agreements with ACP countries and long-established trade relationships tie the EU fisheries sector to ACP countries⁴⁵. While the main impacts of EPAs would be on the ACP countries, industry within Europe are concerned that preference erosion due to a discontinuation of the current preference scheme might lead to changes in the current trade structure that might be detrimental to the EU fisheries sector. Concerns have been voiced that if current tariff preferences be eroded or changed, ACP imports might be replaced by influxes from the (cheaper) Asian production of fish and fisheries products. Therefore, industry considers it vital that EPAs include safeguard clauses

⁴³ Campling (2008) provides a detailed comparative account of the fisheries chapters of existing EPAs, on which this section is largely based, see Annex 4 for a representation and discussion of selected elements of the fisheries chapters of the EAC/ESA partnership agreements, which would go beyond the scope of this study.

⁴⁴ EU-SPS regulation requires freezer and factory vessels to be registered and approved by the local competent authority in each country, which is in turn under the oversight of DG SANCO. This poses a severe practical constraint on the extension of input for local processors as the supply of SPS-compliant fish is limited to the capacity of the total number of vessels registered and approved by DS SANCO (Regulation (EC) No. 853/2004).

⁴⁵ Potential impacts of the negotiation process on the European fisheries sector have not been assessed as of yet. For a general appreciation and simulation of the economic effects and WTO compatibility of EPAs, please turn to European Parliament (2006).

to prevent preference erosion. However, this issue is mainly located in the NAMA negotiations at the WTO, where EU industry has successfully lobbied for such a provision to be included in the NAMA draft texts (see Chapter 4.1).

The moderate relaxation of RoO clauses in existing EPAs as compared to the Cotonou Agreement are not likely to have significant effects on the European tuna processing industry as the imports of raw fish from ACP countries to the EU constitute only a small share of overall trade flows (see Chapter 2.3).

Key findings of Section 5.1

1. As every country grouping negotiates a separate EPA with the EU, it is not possible to give a general description of the fisheries provisions contained in such an agreement. However, an account of selected elements of existing EPA fisheries chapters is presented in Annex 4.
2. The main issues dominating the negotiations are Rules of Origin, trade restrictions on sensitive products – i.e. canned tuna and tuna loins – as well as preference erosion. The topic of preference erosion has been referred to the NAMA negotiations by the EU though, so that outcomes from EPA negotiations as regards this issue are dependent on the results reached in the context of WTO negotiations.
3. Impacts on the European fisheries sector will in all likelihood be limited. However, there are concerns that preference erosion might lead to a loss of market share by ACP countries in favour of cheap imports from Asia.

5.2 Negotiations with the Mediterranean Area (EU-MED)

The EU maintains special economic relations with a number of developing neighbour states in the Mediterranean, namely Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Mauritania, Syria, Tunisia, Turkey, and the Palestinian Authority (Panagariya 2002). The EU is currently negotiating a Mediterranean Free Trade Area (EU-MED) that also covers fisheries products. Another issue of high concern to the EU is fisheries resource management in the Mediterranean, which is fished by both European fisheries nations, such as France and Spain, and neighbouring non-EU countries, such as Morocco and Tunisia (European Commission 2008d). At present, fish imports originating from the MED countries are duty free. The European Union concluded bilateral Euro-Mediterranean Association Agreements with Algeria, Egypt, Jordan, Israel, Morocco and Tunisia. Among the MED countries, Morocco is the main supplier of fish to the EU market and accounts for 26% of all fish imports into the EU from Africa.

5.2.1 Main players and negotiation framework

The objective of a fully fledged EU-MED regional Free Trade Area to the horizon of 2010 remains the key component of the EU trade relations with the Mediterranean. Important issues in these negotiations include tariff dismantling, market access, trade facilitation and regulatory policies between the EU and its partners and between Mediterranean abutting countries (European Commission 2008d).

The current negotiation process between the EU and its Mediterranean partners is rooted in the Barcelona Declaration of 1995. The declaration spells out the Mediterranean Basin Initiative that seeks to strengthen political ties and gradually create a Europe-Mediterranean free economic area. The envisaged EU-MED free-trade area implies

reciprocal free trade in manufactured goods; preferential and reciprocal access for agricultural goods of interest to both partners; and free trade among the Mediterranean partners themselves, with "Mediterranean Partners" considered to be all Mediterranean countries not belonging to the EU (Malvarosa 2002).

The process envisaged free-trade agreements between the EU as a whole and each of the Mediterranean partners individually, along with similar free-trade agreements among the Mediterranean partners themselves. The process should culminate with an overall agreement between the EU and these countries as a region by 2010 (Malvarosa 2002).

The main objectives of the negotiations as stated the Barcelona Declaration were:

- the establishment of a common Euro-Mediterranean area of peace and stability based on respect for human rights and democracy;
- the progressive establishment of a free-trade area between the EU and its Partners, and among the Mediterranean Partners themselves, accompanied by EU financial support for economic transition in the Partners; and
- the development of human resources, promotion of cultural integration and rapprochement of the peoples in the Euro-Mediterranean area.

Algeria, Egypt, the Libyan Arab Jamahiriya, Morocco and Tunisia belong to the list of "developing countries," and therefore profit from the Global System of Trade Preferences (GSTP) (Malvarosa 2002)⁴⁶. The GSP arrangements have been almost completely replaced for Morocco and Tunisia, who are the main Mediterranean suppliers of fish to the EU, under EU Agreements with the two countries. The respective protocols to these agreements grant an access free of custom duties to almost all fishery products originating in Morocco and Tunisia, with some exceptions for prepared and preserved sardines (Malvarosa 2002).

5.2.2 State of play of the negotiations

The main policy goals of the EU with regard to EU-MED are concerned with regional integration and the extension of the EU internal market to Mediterranean partner countries. Major breakthroughs have already been achieved in the manufactured and industrial goods sector. As regards fisheries trade the way forward to deepen trade liberalisation is still to be negotiated with many Mediterranean countries, among them Egypt and Israel. Trade negotiations on agricultural and fisheries products have been concluded with Jordan, Tunisia and Morocco (European Commission 2008d). These existing agreements and their respective fisheries chapters offer a perspective as to what is to be expected upon completion of the EU-MED.

Association Agreement with Morocco

The Association Agreement with Morocco was concluded in 1996. Fisheries provisions are contained in Chapter II of the Agreement as well as in protocols 1 and 2. The Agreement affirms the commitment of the EU and Morocco to "gradually implement greater liberalisation of their reciprocal trade in agricultural and fishery products". (Art.6 EU-MED Morocco 2000). De facto this means that substantially all fish products may enter the EU market free of duty, with some exceptions for preserved or prepared sardines.

⁴⁶ This tariff scheme is fully applied to imports of fish products from the Libyan Arab Jamahiriya and Egypt. For Algeria, the scheme is fully applied to fishery products originating in Algeria and entering the EU area, with the exception set by §18 of the EU agreement with this country for products falling within subheadings 16 04 of the Common Custom Tariff (prepared and preserved sardines).

Furthermore, Article 54 of the Agreement stipulates that "The aim of cooperation shall be to:

(a) modernise and restructure agriculture and fisheries through methods including the modernisation of infrastructure and equipment, the development of packaging and storage techniques and the improvement of private distribution and marketing chains" (EU-MED Morocco 2000). This is particularly important for Morocco as the main exporter of fish products to the EU market since it implies an improvement in its capacity to comply with EU SPS requirements.

Other Association Agreements

The Association Agreement with Tunisia was signed in 1995 and entered into force in 1998. The fisheries provisions included in Chapter 2 as well as its related protocols are identical with those found in the Euro-Mediterranean Agreement with Morocco (EU-MED Tunisia 1998).

The Association Agreement with Jordan entered into force in 2002 (EU-MED Jordan 2002). Since Jordan has no substantial fisheries industry the Agreement does not contain detailed provisions concerning trade in fish and fisheries products. However, Annex V of the Agreement includes the reservation that "Access to and use of the biological resources and fishing grounds situated in the maritime waters coming under the sovereignty or within the jurisdiction of Member States of the Community is restricted to fishing vessels flying the flag of a Community territory unless otherwise provided for." (EU-MED Jordan 2002).

The will to bring the remaining negotiations to a close before the deadline in 2010 was reaffirmed by the partner countries at the Paris Summit 'Barcelona Process: Union for the Mediterranean' on 13 July 2008. It was reported that „important progress was achieved in the first half of 2008 in the negotiations on further liberalisation of agricultural, processed agricultural and fisheries products, in accordance with the Barcelona Declaration and the Rabat Euro-Mediterranean Road Map for Agriculture. Negotiations were recently concluded with Egypt and Israel, progress was made with Morocco and negotiations were launched with Tunisia." (p.13). Since these countries already benefit from free of duty imports for substantially all fish products and since most Southern Mediterranean countries besides Morocco do not have an industrial fishing sector supplying to the EU, the ongoing trade negotiations in the context of EU-MED will likely not impact on the EU fisheries sector and are, therefore, not considered further in this study.

5.2.3 Potential impacts

Euro-Mediterranean trade relations have been the focus of major economic analysis throughout the last few decades. Especially since the launch of the Barcelona Process in 1995, scholars have developed theoretical models to quantify the impact of the free trade agreements (FTAs) established between the EU and the Mediterranean countries. Whereas most of these studies conclude that trade liberalization will increase welfare in both regions, others assess the importance of broadening these FTAs, coupled with further liberalization within the WTO framework. These studies have been reviewed in detail in the context of the FP6 research project GoEuroMed (2006). However, we are not aware at this point of any analyses performed with regard to the fisheries sector in either region.

In line with the results of GoEuroMed (2006) it is reasonable to assume that an all encompassing agreement with Euromed countries will enhance EU market access and facilitate trade in fish and fisheries products from Mediterranean countries into the EU. Moreover, a closer partnership can be expected to be favourable for the continuous improvement of hygiene standards and technical requirements, thus increasing consumer

safety and further facilitating trade relationships. In the same vein, the EU aims for tighter competition rules and enhanced cooperation on TBT and SPS measures in fisheries. The new free trade area is expected to attract European and foreign investment and lead to an economic diversification within the Mediterranean partner countries. This might also benefit the EU fisheries sector, which has long-standing trade relationships with the EU-MED countries (European Commission 2007).

However, an empirical research base and more research specifically on the impacts of the liberalisation of trade in fish and fisheries products on the partner regions are necessary to provide any information on impacts beyond speculation.

Key findings of Section 5.2

1. Among the EU-MED partner countries, Morocco is the main supplier of fish and fish products to the EU market. An Association Agreement has been in place since 2000, permitting free of duty imports for virtually all fish products originating from Morocco except processed sardines. The same conditions apply to Tunisia which concluded an Association Agreement with the EU in 1998.
2. The empirical base for estimating impacts of these agreements or further negotiations in the context of EU-MED is very limited. The results of existing macro-economic analyses are ambiguous.
3. Nevertheless, it is to be expected that the existing preferential arrangements will enable EU-MED partner countries to better comply with EU SPS requirements.

5.3 Negotiations with South and Central America

5.3.1 Main players and negotiation framework

The EU pursues a multitude of trade negotiations with various countries and country blocs in Latin America. The most important achievements to date have been the successful conclusion of Association Agreements with Mexico (2000) and Chile (2005) – of which the latter is highly relevant for trade in fish and fish products, given Chile's high levels of exports of fish to the EU (also see Tables 4 & 5 in Annex 1).

Latin America as a whole is the second most important provider of fish imports into the EU. Historically, Europe's trade relations with Latin America have been based on bilateral and regional trade agreements. The EU is currently involved in bilateral and regional trade negotiations and/or agreements with the following countries and country groupings in Latin America⁴⁷.

- Chile
- Mexico
- MERCOSUR⁴⁸
- Central America⁴⁹
- The Andean Community⁵⁰

⁴⁷ Caribbean Countries enjoy a special status, being part of the ACP countries, which have benefitted from preferential trade deals in the past, and are thus not covered in this section (European Commission 2006a).

⁴⁸ MERCOSUR comprises as full members: Argentina, Brazil, Paraguay, Uruguay, and Venezuela; as associate members: Bolivia, Chile, Colombia, Ecuador, and Peru; and Mexico, which holds an observer status (see <http://www.mercosur.int/>).

⁴⁹ The Central American Common Market (CACM) consists of five member states, notably Guatemala, Honduras, El Salvador, Nicaragua, and Costa Rica (see <http://www.sieca.org.gt/site/>).

The focus of current negotiations is on fisheries subsidies and the reduction of tariff and non-tariff barriers to trade (Mandelson 2008).

The European Union initiated negotiations for a FTA with MERCOSUR as early as 1995 in reaction to the USA's efforts to establish a Free Trade Area of the Americas (FTAA). Negotiations have been cumbersome and marked by conflict (Bilaterals 2005). In addition, the EU is in bilateral negotiations with other Latin American trade blocks, notably the Andean Community and Central America, as well as Mexico – with which it has had an association and free trade agreement since 2000 (DPA 2008). As concerns trade in fish and fisheries products the most important partner country having a Free Trade Agreement with the EU is Chile. This might give a perspective as to possible impacts of further trade agreements with other countries and regions in Latin America.

5.3.2 State of play of the negotiations

Mexico and Chile are the only Latin American countries to have concluded Association Agreements with the EU to date. As such these agreements have a symbolic character in the context of the EU-Latin American trade relationship. They are the first comprehensive – political, economic, and cooperation – agreements with countries in the region and they set a precedent for future agreements with other countries or group of countries in the region (Domínguez 2006).

An important point to consider is that the free trade agreements with the EU complement a broad network of free trade agreements that Latin American countries and country groupings have signed with Canada, Mexico, South Korea, most major South American countries, and the United States. Mexico and Chile, for example, have a similar number of free trade agreements with various trading partners, including United States and Canada, Israel and Central America (Domínguez 2006). In the same vein, the EU is simultaneously negotiating agreements with other Latin American countries and country groupings, e.g. Central America and the Andean Community.

Association Agreement with Chile

The Association Agreement with Chile is arguably the most advanced FTA the EU has concluded in Latin America with regard to trade liberalisation in the fisheries sector. The cooperation between the EC and Chile has been guided by several bilateral agreements. The Community Cooperation Framework Agreement signed in 1990 was the main instrument permitting the initiation of government level contacts after the re-establishment of democracy in Chile in 1990. This agreement was replaced by a second Cooperation Framework Agreement signed in 1996, which included in its provisions the objective of the creation of a political and economic association between Chile and the European Community and its member states (SICE 2007a). The EU and Chile began negotiations in April 2000 and the Association Agreement was signed on 18 November 2002. The Association Agreement has been in force since 1 March 2005 and covers the main aspects of EU-Chile relations, namely, political and trade relations and cooperation (Domínguez 2006).

⁵⁰ The original Andean Pact was founded in 1969 by Bolivia, Chile, Colombia, Ecuador and Peru. In 1973, the pact gained its sixth member, Venezuela. In 1976, however, its membership was again reduced to five when Chile withdrew. Venezuela announced its withdrawal in 2006, reducing the Andean Community to four Member States. With the cooperation agreement with Mercosur, the Andean Community gained four new associate members: Argentina, Brazil, Paraguay and Uruguay. These four Mercosur members were granted associate membership by the Andean Council of Foreign Ministers meeting in an enlarged session with the Commission (of the Andean Community) on July 7, 2005 (see <http://www.comunidadandina.org/endex.htm>).

The Association Agreement between the EU and Chile is unique in the context of trade negotiations between the EU and Latin America as it provides for substantial tariff cuts as regards on fisheries products (see box below).

Most relevant fisheries provisions of the EU-Chile Association Agreement (SICE 2007a)

- ***Article 25(1) (Fisheries)***

In view of the importance of fisheries policy in the relations between them, the Parties undertake to develop closer economic and technical collaboration, possibly leading to bilateral and/or multilateral agreements covering fisheries on the high seas.

- ***Article 68 (Customs Duties on fish and fisheries imports originating in Chile)***

1. Customs duties on imports into the Community of fish and fisheries products originating in Chile listed in Annex I under category "Year 0", "Year 4", "Year 7" and "Year 10" shall be eliminated in accordance with the following timetable, so that these customs duties are completely eliminated by the entry into force of this Agreement, 1 January 2007, 1 January 2010 and 1 January 2013, respectively:

Percentages of annual tariff reduction

Cate-gory	Entry i. force	1.1. 04	1.1. 05	1.1. 06	1.1. 07	1.1. 08	1.1. 09	1.1. 10	1.1. 11	1.1. 12	1.1. 13
Year 0	100%										
Year 4	20%	40%	60%	80%	100%						
Year 7	12,5%	25%	37,5%	50%	62,5%	75%	87,5%	100%			
Year 10	9%	18%	27%	36%	45%	54%	63%	72%	81%	90%	100%

2. Tariff quotas on imports into the Community of certain fish and fisheries products originating in Chile listed in Annex I under category "TQ" shall be applied as from

entry into force of this Agreement, in accordance with the conditions mentioned in that Annex. These quotas shall be managed on a first-come first-served basis.

- ***Article 69 (Customs Duties on fish and fisheries imports originating in the Community)***

1. Customs Duties on imports into Chile of fish and fisheries products originating in the Community listed in Annex II under category "Year 0" shall be eliminated at the entry into force of this Agreement.

2. Tariff quotas on imports into Chile of certain fish and fisheries products originating in the Community listed in Annex II under category "TQ" shall be applied as from entry into force of this Agreement, in accordance with the conditions mentioned in that Annex. These quotas shall be managed on a first-come first-served basis.

Association Agreement with Mexico

Negotiations on an Association Agreement between the EU and Mexico began in October 1996. On 8 December 1997 the European Union and Mexico signed an agreement made up of three pillars:

- an Economic Partnership, Political Cooperation and Cooperation Agreement (known as the "Global Agreement") which laid the basis for the negotiation of a free trade agreement between Mexico and the European Union;
- an interim agreement on trade and trade-related matters (known as the "interim agreement"), which provided the framework and mechanisms for trade liberalization and
- the Final Act.

The Interim Agreement on trade and trade-related matters entered into force on 01 July 1998. In the same year a Joint Committee of the Interim Agreement was created and negotiations towards a free trade agreement were initiated. From November 1998 to November 1999 nine rounds of negotiation were held successfully (SICE 2007b).

The Association Agreement entered into force in 2000 as the first agreement of its kind between the EU and a Latin American country. The FTA covers a broad spectrum of economic aspects. It included: a full liberalization of industrial products by 2003 for the EC, and by 2007 – with a maximum 5 percent tariff applied by 2003 – for Mexico; substantial liberalization for agricultural and fisheries products; and, as regards rules of origin, a satisfactory balance between the EU's policy of harmonization and market access considerations (Domínguez 2006). The conclusion of a sectoral fisheries agreement was foreseen in the Global Act, which, however, does not seem to have materialised to date.

Most relevant fisheries provision(s) of the EU-Mexico Association Agreement (Global Agreement, SICE 2007b)

- Article 35 (Cooperation on fisheries)

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 sectoral fisheries agreement, in accordance with their respective legislation, if deemed appropriate.

FTA negotiations with MERCOSUR

MERCOSUR and the European Union have been in negotiations towards a bi-regional free trade area since April 2000. Since 1995, MERCOSUR-EU relations have been guided by the EU-MERCOSUR Framework Cooperation Agreement, signed on 15 December 1995. The agreement currently under negotiation consists of three parts:

- the political dialogue;
- trade and economic issues and
- cooperation.

The scope and objectives of the agreement were agreed upon at the first negotiating round in April 2000 then at the Madrid Summit of May 2002. As of October 2006, sixteen negotiating rounds have been conducted. Since May 2004 negotiations have been carried out through informal technical meetings only (SICE 2007c).

At a Ministerial meeting in Lisbon in October 2004, MERCOSUR and EU negotiators reiterated the priority of the negotiation of the Association Agreement. FTA negotiations with MERCOSUR were rested in 2005 over disagreements on liberalisation of trade in agricultural products and Foreign Direct Investment (Domínguez 2006), particularly over import quotas of meat from Brazil. While agricultural negotiations were predominant trade

in fisheries does not seem to have posed major obstacles in the negotiations. In light of the stalled Doha negotiations at the WTO (see Chapter 4) Brazil has signalled a willingness to reinforce the Mercosur – EU negotiation process again (Leo 2009).

Association Agreement negotiations with Central America

Building on the EU-Central America Political Dialogue and Co-operation Agreement of 2003 negotiations on an Association Agreement were launched in 2007. Since then seven full rounds of negotiations have taken place. The negotiations tabled to conclude in 2009, were suspended in July 2009 due to the recent developments in Honduras. It is envisaged to resume negotiations as soon as possible.

On the substance, in general the negotiations have been moving quite swiftly. Not surprisingly the most controversial issues are in the trade chapter. According to the European Commission key challenges include the region-to-region dimension of the agreement, Central America's attitude towards Services and Investment, Public Procurement, as well as openings on sensitive products. However, chances for a conclusion of the trade pillar of the negotiations are seen as "possible in the short term" (European Commission 2009c). In relation to fisheries an issue still under debate is again the exact definition of rules of origin meant to assure that the raw material used for processed fish products also originates from the countries which are parties to the agreement. Products of particular concern are tuna and aquaculture products (COMEX 2009).

Association Agreement negotiations with ANDEAN Community

Negotiations between the EU and the Andean Community for an Association Agreement were also launched in 2007. The goal was to conclude a comprehensive region-to-region agreement comprising the three dimensions of 'Political Dialogue', 'Cooperation' and 'Trade'. However talks collapsed because of the lack of agreement on the objectives and scope of the 'Trade' part in June 2008. In particular Bolivia was critical of the EU's perceived requests regarding the privatisation of natural resources and basic services. A new negotiating format has been put in place splitting between negotiations on political dialogue and cooperation with the Andean Community as a whole and 'multi-party' trade negotiations with as many Andean Community countries as possible. The latter negotiations were started with Peru, Colombia and Ecuador.

Six rounds of trade negotiations have taken place between January and September 2009. Negotiations are expected to conclude rapidly with Colombia and Peru, while they have provisionally been suspended by Ecuador in July 2009.

The European Commission sees "good progress on the text of all chapters and improved offers on market access for goods and services", a "complete agreement with Colombia and Peru on chapters on TBT and government procurement". Main challenges are said to persist "on sensitive agricultural products, some IPR provisions, as well as on "the chapter on trade and sustainable development" (European Commission 2009c). The EU's banana tariffs remain a particularly delicate subject, with Colombia searching for an agreement with better terms than those set out in a preliminary agreement at WTO level on this issue put forward in 2008 (ICTSD 2009). On fisheries EU access to the EEZ's also seems to be a delicate issue (Andina 2009).

5.3.3 Potential impacts

Association Agreement with Chile

With regard to the trade area, it is still too early to assess the economic effects of the Agreement on the Chilean economy. It is expected, nonetheless, that the specific areas covered by the trade chapter of the agreement will contribute to the diversification of the Chilean economy (Domínguez 2006).

Lessons learned from the Free Trade Agreement with Chile as regards fisheries show progress on issues like SPS, services, investments, and competition. Europe has maintained its status as a main trading partner for Chile due to the Free Trade Agreement in the face of NAFTA (Robinson & Iacovone 2004). This appraisal is consistent with Nowak-Lehmann et al. (2005) who caution, however, that while impact of the FTA on relative prices will improve Chile's competitive position not only with respect to the EU countries but also with respect to third countries that do not have an FTA with the EU, in the medium to long run the effect of the FTA will be eroded if the EU also decides to conclude FTAs with other countries competing in fisheries trade. Potential candidates are countries such as Peru and some Asian countries, such as Thailand and Indonesia. Moreover, Chile faces stiff competition from European countries in the fisheries and agricultural export sectors. Main competitors include UK, Ireland and Norway (Nowak-Lehmann et al. 2005).

Association Agreement with Mexico

In the 5 years following the entry into force of the FTA, bilateral trade between the EU and Mexico grew by nearly 40 percent (Domínguez 2006). Specific impact assessments with regard to trade in fish and fisheries products are not publicly available at this point. This might be due to the fact that fish and fish products do only play a minor role in overall EU-Mexico trade flows both in terms of quantity and in terms of value.

FTA negotiations with MERCOSUR

There are conflicting positions within the EU as concerns a Free Trade Agreement with Mercosur. While the main industrial associations are in support of such an agreement so as to maintain their export market shares within the Mercosur area in the face of an FTAA⁵¹, the agricultural and, to a lesser extent, the fisheries sectors are concerned about increasing competition from Latin American imports (Klom 2003, Working group on European Union-Mercosur negotiations 2000).

It should be noted that fish and fisheries products are mostly subject to preferences under GSP, despite of important tariff peaks. Tariff reductions in this sector are subject to WTO negotiations (see Chapter 4) and are rather at the sidelines of current Mercosur-EU negotiations which are focused on resolving the above mentioned conflict.

Association Agreement negotiations with Central America

In general the EU is seen to benefit from an Association Agreement. Central America's import tariffs would be lowered and as a consequence imports are expected to rise more than exports. As Central American products through the GSP+ already benefit from preferential access to the EU market it is not expected that an agreement would provide

⁵¹ Following NAFTA, EU's share on Mexican trade fell significantly and concerns were raised that the same might occur if an FTAA agreement was reached before the EU-Mercosur FTA (ibid.).

any major changes for those countries. A Trade Sustainability Impact Assessment (TSIA) conducted for the European Commission expects the overall economic effects of the agreement to be beneficial in the long term, with positive effects in the areas of national income, poverty reduction and employment and wages in both the EU and Central America. It highlights hardships in the adjustment process. Due to their relatively small size, structural changes would first and foremost affect the Central American economies rather than the EU countries (ECORYS 2009)⁵². As to the exploitation of its natural resources the study predicts that fish production will decline especially in Costa Rica (-0.5 percent) and Panama (-0.7 percent). Concerning trade flows in processed fish products the study expects a decline of the sector in Panama and Costa Rica and foresees growth in Nicaragua, Guatemala, El Salvador and Honduras, mainly due to internal specialisation within the Central American region. No changes in these respects are expected for the EU.

Other issues having an impact on EU fisheries concern the EU's interest in securing access to the territorial waters for European fishing vessels as well as provisions on IUU and unsustainable fishing practices in general.

Association Agreement negotiations with ANDEAN Community

The EU had commissioned a Trade Sustainability Impact Assessment (TSIA) for an Association Agreement with the Andean Community. The TSIA conducted in 2008/2009 has found no significant economic impacts for the EU from the proposed agreement. The impact on EU trade flows is described as negligible and there will be no change in EU's GDP. As to economic impacts for the Andean countries the study predicts assuming a 97 % liberalization an increase in production and exports of fisheries in Bolivia and Peru and a decline for Ecuador and Colombia. As for environmental impacts the authors see change in production as an effect of liberalizing trade as producing very small, albeit negative effects on fisheries (Development Solutions 2009).

Ecuador and Colombia are important exporters of canned tuna. In fact in 2008 Ecuador was the largest exporter in canned tuna to the EU with an estimated market share of 23 percent, while Colombia's exports of canned tuna to the EU represented a 4 percent market share in 2008 (Campling and Havice 2009). But both countries already export duty-free under the EU's GSP+ regime.

⁵² The study is available at: <http://tsia.ecorys.com/ca/>

Key findings of Section 5.3

1. The EU is currently involved in a number of negotiation processes with different Latin American countries and country groupings. Association Agreements have been concluded with Mexico and Chile, while negotiations with MERCOSUR have stalled since 2005.
2. The most far-reaching Association Agreement as regards trade in fish and fish products has been concluded with Chile. The fisheries chapter aims at achieving the abolition of tariffs on fish products by 2013. However, the scope and depth of the impact of the agreement will depend among others, on the speed at which FTAs will be concluded with other large fish exporting countries, notably in Asia. The agreement has already lead to increased competition with the EU sector, notably in the UK and Ireland. This is one of the reasons why the EU sector is sceptical of the conclusion of an FTA with MERCOSUR as it fears the consequences of an influx of greater quantities of Latin American imports into the EU market.
3. However, it should be noted that fish and fisheries products are mostly subject to preferences under GSP, despite of important tariff peaks. Tariff reductions in this sector are subject to WTO negotiations and are rather at the sidelines of current Mercosur-EU negotiations.
4. Negotiations for an Association Agreement with Central America are currently suspended because of the situation in Honduras. Although the European Commission sees the conclusion of the trade pillar of the negotiations as "possible in the short term" on fisheries the definition of Rules of Origin is still controversial.
5. As to negotiations with the Andean region countries, trade negotiations are limited to Colombia and Peru. However, on the delicate product canned tuna all Andean countries already benefit from exporting duty-free under the GSP+ regime. Important issues for negotiations regard access to fishing grounds and sustainable fishing practices.

5.4 Negotiations with Asia

Under this heading trade negotiations with Asia will be covered, namely the Association of South-East Asian Nations (ASEAN) and the Republic of Korea. ASEAN Member States are Brunei, Darussalam, Indonesia, Cambodia, Myanmar, Philippines, Thailand, and Vietnam. The latter two are of particular importance in EU-Asia fish trade. Asian fish exports to the EU have been growing substantially over the last decade. The ongoing trade negotiations will also be structured along fault lines within Asia as important fish producing and trading countries have taken very different positions on the contentious issues in the Doha Round (see section 4) (ICTSD 2006; Dey et al. 2002).

Bilateral fisheries agreements with the EU play an important role in this regard. Asia has been undergoing a process of rapid economic integration during the last decade. Next to ASEAN, other multi- and bilateral intra-Asian Free Trade Agreements, such as the Asian Free Trade Area (AFTA), and the South Asian Free Trade Agreement (SAFTA), are strengthening its international leverage in trade negotiations. In this context, the EU is trying to speed up negotiations for a Free Trade Agreement (Josupeit 2005; Escabillo 2009).

5.4.1 Main players and negotiation framework

EU policy towards Southeast Asia is largely premised on strengthening its economic presence and securing market access and investment opportunities for its corporations in an expanding Asian market. Consequently there is a strong emphasis particularly on trade in services and Foreign Direct Investment perceivable in the FTA negotiations with ASEAN (Cuyven 2007). Trade in fish and fisheries products is important with regard to a number of countries that have recently emerged as large-scale exporters of both raw and processed fish (particularly from aquaculture) to the EU market, notably China, Vietnam and Thailand (Botezatu 2007, also cp. Chapter 3). As the EU had ongoing negotiations for “Partnership and Co-operation” with Thailand, Singapore, Indonesia, Malaysia, the Philippines and Brunei, and started negotiations with Vietnam, prior to commencing FTA negotiations with ASEAN the original strategy of the European Commission foresaw FTA negotiations with only seven of the ten ASEAN members, excluding Myanmar, Laos and Cambodia (Cuyven 2007).

The EU started negotiating a FTA with ASEAN in May 2007, also covering fish and fisheries products. Moreover, it has initialled the Trans-regional EU-ASEAN Trade Initiative (TREATI) as a forum for dialogue and regulatory cooperation (European Commission 2008). The initiative was officially launched as a key component of the European Commission’s Communication on “A New Partnership with South East Asia” in July 2003. The priority areas for co-operation under TREATI are closely linked to ASEAN’s own drive for economic integration and comprise sanitary and phytosanitary standards in agro-food and fisheries products, industrial product standards and technical barriers to trade (Cuyven 2007).

Similar to the EPA and Mercosur negotiations, contentious issues are related to provisions on Rules of Origin, SPS measures, and preference erosion for developing countries. A 2006 report by the so-called ASEAN-EU Vision Group, therefore, suggests four priority areas for negotiations, notably

- Cooperation on SPS and TBT in the agricultural and fisheries sectors under the TREATI initiative
- Trade facilitation measures under the TREATI initiative
- Cooperation on intellectual property rights
- Cooperation on competition policy

The report further suggests that the goal of negotiations should include the full elimination of tariffs for 90% of trade and tariff lines within a period of seven years after the entry into force of a FTA. The report reaffirms that importance of S&DT for less developed countries and suggests completing negotiations as a single undertaking, which precludes sectoral negotiations on agriculture and fisheries. However, fisheries are cited as a regional priority sector for cooperation aiming at capacity building for fishery resource management, technology transfer, and improved exchange of information (ASEAN-EU Vision Group 2006).

5.4.2 State of play of the negotiations

Negotiations with ASEAN

Progress on the EU-ASEAN FTA has not been made as quickly as the EU might have hoped at the launch of the negotiations. In fact, talks have moved slowly and the EU has gradually distanced itself from its former stance of negotiating a regional agreement with ASEAN as a whole. This is mainly due to human rights issues in some ASEAN countries, notably Myanmar. Therefore, the EU has required individual ASEAN countries to sign a Partnership

Cooperation Agreement, containing a commitment to human rights, as a prerequisite to an FTA. As of October 2008, Indonesia had already concluded its PCA with the EU, Singapore and Thailand were in advanced stages of negotiations, and Vietnam, Malaysia and Brunei were about to begin. The Philippine government stated early on that it expects problems in negotiating a PCA, as the agreement requires that the signatory state join the International Criminal Court – a commitment that not all ASEAN countries are willing to make (Bilaterals 2009).

Consequently, negotiations have come to a standstill in 2009. Efforts of the EU to move forward with negotiations with individual countries, among them Thailand, Vietnam, Singapore and Brunei, have been met with some criticism (see e.g. Bangkok Post 2009).

In the light of difficult negotiations, the EU has recently signalled openness to negotiating tariffs on canned tuna exports from the Philippines and other ASEAN states, which are currently subject to MFN tariffs as opposed to tuna imports from ACP countries (Estabillo 2009). The concerns raised by the European tuna sector with regard to the liberalisation of tariffs on fish imports from Asia and the possibility of preference erosion has already been discussed in Chapter 5.1.

FTA with South Korea

South Korea had been designated a priority FTA partner in the Global Europe trade policy strategy of 2006. Negotiations were launched in May 2007. After eight rounds of negotiations, an agreement has been initialled on 15 October 2009. After approval by the European Parliament entry into force of the agreement is expected in the second half of 2010. Key elements of the agreement include the abolition of “virtually all tariffs”, rules on non-tariff-barriers, the opening of many services sectors, the installation of an efficient dispute settlement system, a general safeguard clause allowing re-establishment of MFN-duties in case of sudden surge in imports.

On tariffs, the agreement foresees the gradual reduction of current customs duties on fish and fish products essentially over the next years, starting after entry into force of the agreement. For each Party and product category a specific duration has been fixed. The duties will be removed in equal annual stages. In general transition periods for removal of Korean customs duties are longer (up to 10 years) than those for the EU (maximum of 5 years)⁵³. As to Rules of Origin the EU standard rules of origin will be maintained. They are contained in the “Protocol concerning the definition of ‘originating products’ and methods of administrative co-operation”. Regarding fish most importantly, classification as “wholly obtained” is still dependent upon 50% ownership by nationals or companies of the Parties to the agreement, with companies in addition needing to have their head office and main place of business in the EU or Korea.

5.4.3 Potential impacts

Negotiations with ASEAN

ASEAN countries, such as Vietnam and Thailand are rapidly gaining market shares on the EU market for fish and fisheries products. In this context it is vital for the EU to ensure that food safety standards as well as its own economic interests in the region are met. A FTA with ASEAN and/or separate member countries is expected to deepen the dialogue started under the auspices of TREATI and open up new investment opportunities for European companies (ASEAN-EU Vision Group 2006).

⁵³ See Annex 2-A “Elimination of customs duties” in combination with the Tariff schedules of each Party, accessible at: http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145143.pdf

Direct impacts on the EU fisheries sector cannot be gauged at this stage. However, various studies find that the EU position in the negotiations with ASEAN is clearly a defensive one. For example, Botezatu (2007) finds that "The recent interest shown by the European Union towards the countries in South-East Asia, as well as the initiatives for setting up free trade areas in the region, come to confirm the uneasiness that portrays the situation at home, as well as the efforts that it set out to make in order to maintain its competitiveness on a global scale. Particularly, the attention that the EU has given to bi-regional cooperation, initiating talks for a free trade area with ASEAN, rather than with its member countries, strengthens the belief that the EU is currently seeking to consolidate its position in Southeast Asia and to counter the increasing influence of China and Japan. (Josupeit 2005, Cuyvers 2007).

In the EU fisheries sector the above-mentioned "uneasiness" is caused by fears that cheap imports of unprocessed fish will disrupt long-standing trade relationships with ACP countries, while influxes of processed products might harm the European processing industry⁵⁴ (cp. Chapter 5.1). Cuyven (2007) cautions, however, that little empirical research is available on potential welfare effects of an FTA between the EU and ASEAN, much less with a particular focus on the fisheries sector. Again, existing information on potential impacts of such an FTA are exploratory at best.

FTA with South Korea

Liberalising trade in fisheries with Korea will have positive effects on the European food sector. It has been demonstrated in previous sections that Korea applies substantially higher tariffs than the developing economies and that the overall tariff structure of Korea poses problems for (potential) EU exporters. As fisheries represents one of the most highly protected food sectors in Korea and as fisheries based products are Korea's leading import of food products (IBM 2008), the removal of customs duties creates market opportunity for the European food manufacturers. The Korean Maritime Institute has estimated that after elimination of all tariffs on fish and fish products, fisheries imports from the EU can increase by approximately 9 to 15 percent. Major imports will be frozen seafood, other than live and fresh fish. On the other hand it considered it unlikely that Korea will enjoy major benefits from tariff reductions, not only due to already lower EU fisheries tariffs but also due to the gradual decrease of marine resources. Chances for increasing exports are seen for fish surimi products, crabs, and oysters, already major Korean export products to the EU, and canned tuna (KMI 2007). The Rules of Origin definition allows fish caught by EU fleets and processed in Korea to benefit from lower tariffs, thus theoretically opening a "captive market" for EU vessels. With view to Korea's own large domestic and distant-water fishing fleet, the size of this market is likely to be of minor importance. However, the definition successfully avoids other fishing fleets to benefit from the agreement.

⁵⁴ See, e.g. the ASEAN-EU Vision Group (2006) report, which states that „ASEAN and the EU will have to act promptly. If the new partnership is delayed or postponed to a distant future, it may be overshadowed by other regional and bilateral initiatives.“ and „Given the proliferation of free trade agreements involving ASEAN and the EU separately, the risk is that both regions may unintentionally penalise each other by trading on the basis of MFN only in the near future.“ (p.4)

Key findings of Section 5.4

1. EU policy towards Southeast Asia is largely premised on strengthening its economic presence and securing market access and investment opportunities for its corporations in an expanding Asian market providing a strong incentive to strive for further trade liberalisation. At the same time, exports from the fast-growing fisheries sectors of ASEAN countries penetrate the EU market already at the current (rather high) tariff levels, eroding market share of traditional ACP suppliers and cutting into the market share of EU tuna processors.
2. While the original goal of the EU was an inter-regional FTA with ASEAN as a bloc, the current approach consists in setting up negotiation processes with individual ASEAN member states due to human rights issues in some ASEAN countries, most notably Myanmar.
3. While there are fears that cheap imports of unprocessed fish will disrupt long-standing trade relationships with ACP countries, while influxes of processed products might harm the European processing industry in Europe, there is little empirical evidence to support them.
4. The recently signed FTA with Korea foresees a gradual removal of Korean customs duties for European imports of fish and fish products over the next three to five years. With Korea having one of the most protective tariff structures regarding fisheries so far, the Agreement provides substantial market opportunities for the EU food sector.

6 Trade defence instruments

6.1 Theory and legal framework

There are three kinds of trade defence instruments: anti-dumping measures (ADM), anti-subsidy measures and safeguard measures. All these instruments involve the *temporary* introduction of restrictions on imports in specific circumstances:

- anti-dumping measures are applied when a country “dumps” products on export markets at cheaper prices than the “normal price” charged on the home market;
- anti-subsidy measures are applied when a product is sold on export markets below a normal market price due to subsidies received by the producer in his home country;
- Safeguard measures are emergency measures aimed to prevent “serious injury” to domestic industry caused by rapid increases in imports.

The need for these kinds of defence instruments is usually described as coming from the differences existing in national competition laws and in the regulatory standards between states (Dordi 2006). In addition, the international economy has no mechanism for correcting anti-competitive practices similar to the competition authorities that operate in almost all national economies (European Commission 2006). Therefore, trade defence instruments have developed in international law as a means of correcting the trade distorting effects of uncompetitive practices at the international level. Safeguard measures are an exception to that rule as they restrict imports that are not inherently “unfair”. Rather, they are meant to protect a given domestic industry from imports that increase in such quantities and are made under such conditions as to cause or threaten to cause serious injury to that industry. While in the case of anti-dumping and anti-subsidy measures the exporter is expected to reform, in the case of safeguard measures the domestic industry is given more time to adapt. Anti-Dumping measures are the EU’s most used form of trade defence instrument (European Commission 2006). The use of safeguard measures is relatively rare and – with respect to the fishery sector- seems to have been applied as provisional measure accompanying anti-dumping investigations only. This section, therefore, focuses on the use of ADMs.

Typically ADMs take the form of charging extra import duty on one particular product from one particular exporting country in order to bring its price closer to the “normal price” and thus to eliminate the harm being caused by the dumping to the domestic industry of the importing country. ADM may also take the form of a fixed minimum import price (MIP). Technically MIPs take the form of an undertaking, in which exporters in question agree to a minimum price to be charged. This is preferable for the exporter as he benefits from the increased price, rather than the importing country enjoying higher revenues. However, economists claim that ADMs have repeatedly failed to achieve their desired effects, as they are ill-suited to bring about sustained structural change in favour of the protected domestic industries (Bostock et al. 2004).

WTO legal framework on ADM

Trade defence measures represent the exception to the rule. As they are contradicting WTO trade liberalisation commitments they are highly regulated by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 usually referred to as the Anti-Dumping Agreement (ADA). The GATT itself in its Article VI only *condemns* dumping that causes injury, but it does not prohibit it.

Article VI GATT

The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry.

This approach follows logically from the definition of dumping as price discrimination practised by private companies. As the GATT addresses governmental behaviour it cannot prohibit dumping by private enterprises. Moreover, importing countries may not find it in their interest to act against dumping, for example because their user industries benefit from the low prices (UNCTAD 2003). The ADA sets out the conditions under which WTO Members may apply ADM as a remedy against injurious dumping in their markets. It provides detailed rules on the concepts of dumping and material injury and contains many procedural provisions; e.g. detailed procedures are set out on how anti-dumping cases are to be initiated, how the investigations are to be conducted, and the conditions for ensuring that all interested parties are given an opportunity to present evidence. Broadly speaking, a government has to be able to show that dumping is taking place in order to legitimately instigate ADMs, calculate the extent of dumping (how much lower the export price is compared to the exporter's home market price), and show that the dumping is causing injury or threatening to do so. The ADA narrows down the range of possible options of calculating whether a particular product is being dumped. It provides three methods to calculate a product's "normal value". Generally, the calculation of a "normal" price is based on the price the exporter will charge in his domestic market. If this is not possible the government may recur to the price charged by the exporter in another country, or a calculation based on the combination of the exporter's production costs, other expenses and normal profit margins. The agreement also specifies how a fair comparison can be made between the export price and what would be a "normal price". In addition, it has to be established if the dumping is hurting the industry in the importing country. To this end a detailed investigation evaluating all relevant economic factors that have a bearing on the state of the industry in question has to be conducted. If the investigation shows that dumping is taking place and that the relevant industry sector in the importing country is being hurt, the exporting company can undertake to raise its price to an agreed level in order to avoid the implementation of an anti-dumping import duty. Anti-dumping measures must expire five years after the date of imposition unless an investigation shows that a removal of the duty will cause injury.

6.2 Past and present use of trade defence instruments

The implementation of antidumping or "safeguard" campaigns is a regular occurrence in seafood trade whenever a domestic industry is threatened (Kleih et al. 2006). Most notably, rapid developments that have lead to significant cost reductions in exporting countries (e.g. the large-scale production of farmed shrimp or salmon) were at the origin of the use of trade defence instruments in the fishery sector.

Farmed salmon imports to the EU have been a disputed issue for a number of years. Intermittent trade defence measures have been in place since 1993 especially targeting imports from Norway but also from Chile (NHO 2006). Norway is the world's biggest producer of farmed salmon. EU countries import about one billion Euros worth of salmon per annum from Norway⁵⁵. Norwegian salmon accounts for about 60 percent of the EU's

⁵⁵ http://trade.ec.europa.eu/doclib/docs/2006/may/tradoc_120351.pdf

salmon imports⁵⁶. The European Economic Area agreement concluded in 1994 excluded the agriculture and fishing sector⁵⁷.

Overview of defence instruments applied by the EU to imports from Norway

1989: Subsidy and dumping complaint against Norwegian salmon
 1993: EU introduces minimum price on Norwegian salmon
 1995: EU introduces new minimum price on Norwegian salmon
 1996: New subsidy and dumping complaint against Norwegian salmon
 1997-2003: Five years salmon agreement with fixed minimum price
 2002: Dumping complaint against Norwegian trout
 2004: Antidumping duty of 19.9 percent on Norwegian trout
 2004: EU starts safeguard investigations measures against farmed salmon from third countries, including Norway
 2004: New dumping complaint against Norwegian salmon
 2005: Adoption of definitive safeguard measures; revocation and introduction of temporary provisional anti-dumping duties; change of the form of the ADM to minimum price for Norwegian salmon
 2006: EU introduces permanent minimum prices for Norwegian salmon as definitive anti-dumping measure.
 2008: Minimum prices are repealed, subject to monitoring of the market until 2011.

Source: NHO

The most recent case has led to the adoption of a WTO panel report in January 2008. Early in 2005 the EU had first put in place safeguard measures allowing only 10 percent of imports to enter the trading block at unrestricted prices and imposing a minimum price on all other salmon imports from Chile, Norway and the Faroe Islands. Chile and Norway both launched WTO challenges to the measures. In retaliation to the measure Norway also notified the WTO that pursuant to Article 8.2 of the Agreement on Safeguards — which allows for the suspension of concessions in reaction to safeguard measures — it was increasing tariffs to as much as 100 percent on a number of fish and food products imported from the EU into Norway (ICTSD 2005). The EU revoked the safeguard measures but introduced a provisional minimum import price in June 2005 accusing the country of dumping its product on the EU market. Early in 2006 the European Commission adopted a minimum price level for farmed salmon originating in Norway⁵⁸. In March 2006, Norway requested WTO consultations challenging these antidumping measures. Norway claimed that the antidumping measures were inconsistent with the EU's obligations under the Antidumping Agreement and the GATT and challenged the EU's "identification of the product under consideration, the definition of the domestic industry, the calculation of the margin of dumping, the findings of injury and causation, the remedies imposed on dumped imports, and certain procedural aspects of the investigation" (ICTSD 2008).

⁵⁶ <http://www.foodproductiondaily.com/Supply-Chain/Norway-takes-salmon-dispute-to-the-WTO>

⁵⁷ In a separate Protocol to the EEA agreement Norway obtained better market access for some fish products; Protocol 9 to the EEA Agreement gives Norway (a) preferential access to the EU market for certain products (including cod, haddock, saithe and Greenland halibut – with the exception of frozen fillets), (b) reduced duty (30 percent MFN) for most other fish products, but (c) no tariff concessions for a limited number of products (including salmon, herring, mackerel, shrimps and prawns, Norway lobster), for the full text of the Protocol see: <http://www.efta.int/content/legal-texts/eea-enlargement/additional2004/AdditoinalProtocolFishNorwayEUmaintextEN.pdf>

⁵⁸ Six different minimum prices depending on the type of salmon, from 2,80 € (whole salmon) up to 7,73 € (for salmon filets).

After unsuccessful attempts to resolve the issue, a panel was created in August 2006. Finally on 15 January 2008 WTO Members adopted a dispute panel report against the practices of the EU. The panel found that the minimum import prices imposed by the EU on the Norwegian fish were “inconsistent with WTO rules on 22 separate grounds,” concluding that the EU made errors in conducting its investigations, calculating the dumping margins, and in the assessment of injury to the EU salmon industry. However, the panel stopped short of explicitly invalidating the anti-dumping measures, or requiring the EU to repeal them. In reaction to the panel report the EU pledged to proceed to implement the relevant technical parts of the panel report, while announcing that pending the implementation process, the current Minimum Import Price would remain in place. However, in July 2008 the Council of the EU adopted a regulation repealing the anti-dumping measures on imports of farmed salmon originating in Norway with effect from 20 July 2008⁵⁹. On a request for a partial interim review lodged by Italy, Lithuania, Poland, Portugal and Spain in 2007 the Commission had found that the basis on which the measures were established had changed and that these changes were most likely of a lasting nature. However, given a certain unpredictability of market conditions mainly due to the nature of the product (perishable goods), the EU decided to monitor the market closely and to review the situation should there be sufficient prima facie evidence that market conditions had changed significantly. In such case, consideration would be given to the initiation of an investigation on an ex officio basis, should it be deemed necessary. The monitoring is limited until 21 January 2011.

In essence the measure has raised prices for EU processors and consumers (Denmark, France) but benefited the salmon farmers of Scotland and Ireland (Kleih et al. 2006).

In March 2004 the Community had also imposed definitive anti-dumping duties on imports of large rainbow trout from Norway (and the Faeroe Islands) by Council Regulation (EC) 437/2004. The regulation was also repealed in 2008 on the basis of a partial interim review⁶⁰. Exports to the EU had doubled in 2007 despite the antidumping duty of nearly 20 percent⁶¹. Apparently EU producers were unable to meet consumer demand. However, the value of trout imports from Norway into the EU is rather small compared to salmon imports. In 2003 Norway supplied about seven million kilos of rainbow trout to the EU. The other controversial dispute on anti-dumping measures regards frozen shrimp. With effect from February 2005, the USA had imposed anti-dumping duties on certain shrimp and prawn exports from Brazil, China, Ecuador, India, Thailand and Vietnam. Different shrimp producers within the same country were made subject to different ad valorem tariff rates. Essentially the most common tariff rates applied were 3.58 percent (Ecuador); 5.95 percent (Thailand); 7.05 percent (Brazil); 10.17 percent (India); 25.76 percent (Vietnam); and 112.81 percent (China) (Dunaeva & Mathews 2007). On 17 November 2005, Ecuador initiated WTO dispute proceedings against USA anti-dumping duties on its shrimp exports. On 8 June 2006, Ecuador requested the establishment of a panel, basically alleging that the method known as “zeroing” used by the USA Department of Commerce to calculate the duties contravened WTO rules. According to this method, instances where USA sales prices are higher than the home market level are simply not taken into account, or “zeroed” out of the assessment. Ecuador argued that this process lead to artificial and inflated anti-dumping margins. In a series of decisions against the USA, the WTO’s Appellate Body and several WTO panels had consistently ruled that the zeroing approach was in violation of the ADA, which requires the “fair comparison” of export prices and home market prices in

⁵⁹ Council Regulation (EC) 685/2008 repealing the anti-dumping duties imposed by Council Regulation (EC) No. 85/2006 on imports of farmed salmon originating in Norway.

⁶⁰ Council Regulation (EC) No. 805/2008 of 7 August 2008 repealing the anti-dumping duties imposed by Regulation (EC) No. 437/2004 on imports of large rainbow trout originating in Norway; OJ L-217/1 of 13. August 2008.

⁶¹ Trout Market Report - August 2007 from <http://www.thefishsite.com/articles/320/trout-market-report-august-2007>.

dumping calculations. Consequently, in its report of January 2007, the Panel found that the United States acted inconsistently with the first sentence of ADA Art. 2.4.2 by using “zeroing” in calculating margins of dumping. Consequently, as regards Ecuador, the anti-dumping duties were abandoned in July 2007. However, with a view to the other countries concerned the duties remained effective.

The measures lead to severe trade distortions. Already in 2004, due to the investigations of the USA administration preparing the fixation of the measures, imports from the six target exporting countries fell by 13 percent, reducing their market share in the USA from previously 74 percent of total imports to 62 percent. At the same time shrimp imports from several non-targeted countries increased dramatically: imports from Malaysia increased by 880 percent, from Indonesia by 116 percent, and from Bangladesh by 113 percent. According to data published by the National Marine Fisheries Service (NMFS), total shrimp imports to the United States have increased by 14 percent since the tariff was imposed, as USA shrimp buyers switched to new suppliers of frozen shrimp in countries not-targeted by the ADM. Also, USA shrimp imports from the six countries targeted by the tariff have increased by almost 20 percent since the tariff was imposed as foreign producers subject to the tariff altered their production to shrimp products exempt from the tariff (Dunaeva & Mathews 2007). In essence, not even the domestic industry was protected as domestic shrimp prices have decreased by 9 percent since the duties were imposed.

Other ADM imposed by the USA concern frozen fish fillets from Vietnam (effective since August 2003) and fresh and chilled Atlantic salmon originating from Norway (effective since April 1991)⁶².

6.3 Possible evolution of trade defence instruments in the light of Doha

The Doha Mandate included an agreement to negotiations on Anti-Dumping (GATT Article 6). The aim is to clarify and improve disciplines while preserving its basic concepts and principles, and to take into account the needs of developing and least-developed participants. Negotiations on anti-dumping measures are taking place within the Negotiating Group on Rules chaired by Ambassador Guillermo Valles Galmes of Uruguay and are coupled with negotiations on subsidies (see chapter 4.3).

The draft text of the Chair of the Negotiating Group on Rules of November 2007²⁰⁰⁷ proposed revisions to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. As the draft contained some ambitious elements it was subject to controversial debates. The Chairman therefore concluded in July 2008 that “few if any delegations believe that my first Chair’s texts struck a proper balance” and “little if any progress has been made since” and “it seems [...] that Members at this stage would prefer [...] a bottom-up approach and that I adequately reflect the actual negotiations among Members”. He, therefore, envisaged providing draft legal language in those areas where consensus could be reached. The intention was to release draft texts as soon as possible after modalities had been achieved. A new draft text was issued in December 2008. Some elements of the first draft have been retained. These concern, for example, important procedural aspects. For instance, the proposed revisions provide for more and more meaningful information disclosure during investigations. The proposed text defines the range of information that public notices will be required when

⁶² Semi-Annual Report under Article 16.4 of the Agreement on the United States of America, WTO document G/ADP/N/173/USA of 9 September 2008 at:

http://docsonline.wto.org/GEN_viewerwindow.asp?http://docsonline.wto.org:80/DDFDocuments/t/G/ADP/N173USA.doc

announcing initiation of an antidumping investigation. Additionally, public notices issued after the imposition of provisional measures would be required to explain the analysis underlying the preliminary determinations on dumping and injury, including the manner in which the margins of dumping have been established. These changes, if adopted, would improve interested parties' understanding of the investigation, the case they have to meet, and the nature of the determinations made. Further, the proposed revisions would make it mandatory for investigating authorities to inform exporting firms of the authority's intention to conduct an on-the-spot investigation, and to provide sufficient notice of the visit. At present, such notice is not mandatory. On the other hand, the proposed revisions would significantly enhance the WTO's oversight over compliance by its members under the ADA. The proposed rules provide for "periodic reviews" of members' antidumping policies and practices. Other revisions contained in the draft text of 2007 are not retained in the December 2008 draft text; these concern amendments regarding how to deal with circumvention⁶³, zeroing practices⁶⁴ and sunset reviews.

The ongoing debate demonstrates that divergence of opinion on many elements the ADA is still too wide for achieving consensus among WTO members. However, the following trend has been consistently observable throughout the negotiations:

- More pressure on investigating authorities to be more transparent e.g. through providing more information, analysis and timelines
- Involvement of more parties to the process
- Enhancement of peer pressure to conform with the requirements of the Agreements through periodic reviews by the WTO compliance with the Agreements.

It is thus reasonable to assume that the revision of the ADA will most likely raise the bar on international trade regulation. With the experience of the 2008 WTO panel report on the EU's anti-dumping measures against Norwegian Salmon in mind it is fair to expect that in the future the EU will be encouraged to make use of Anti-dumping measures in a more prudent manner.

Key findings of Chapter 6

1. The use of trade defence instruments in the fishery sector is mainly an issue for the USA and the European Union. As to the EU this issue is most important as regards salmon (Ireland and Scotland).
2. Standards on the level of proof required are already regulated to some extent by the ASCM, but the methods applied remain complicated and leave enough room for contestable decisions.
3. Therefore observers highlight the role of affected industries in starting anti-dumping investigations and stress that adoption of ADM also seems to be a question of the significance of the affected industry.
4. Current WTO negotiations aim for raising the standards to be applied in investigating and deciding on dumping measures.
5. Economists stress that the goals envisaged with use of ADM are most often not reached: prevention of price decreases and/or a long-term stabilisation of domestic industry frequently fail.

⁶³ The draft had proposed to enable members to take new steps against the circumvention of antidumping duties, i.e. allowing an investigative authority to apply an existing antidumping duty to another product if the importation of the product takes place in circumstances that constitute circumvention of the duty. If circumvention is found to exist, the new rules also would permit the duty to be applied retroactively to the date the circumvention review was initiated.

⁶⁴ The draft text of 2007 had foreseen to make in most circumstances allowance of the use of "zeroing" methodology to determine the margin of dumping. If adopted, these provisions would essentially reverse the WTO Appellate Body and subsequent Panel ruling that declared the use of zeroing itself a violation of the Anti-Dumping Agreement.

7 Conclusion

The EU's fisheries market is generally characterized by a supply deficit. Exports are limited to species/products for which there is no demand inside the EU. Sixty percent of EU-27 imports come from non-LDC developing countries. While LDCs supply only 5 percent of EU imports it is interesting to note that EU imports of (semi)processed fish from LDCs have doubled between 2000 and 2005. China has developed into the world's leading fish processor. While EU exports of unprocessed fish to China have increased by a factor 6 since 2000, imports of processed products from China have increased by 130 percent. Nonetheless, Norway remains the main exporter to the EU by far. Regarding the special relationship with ACP countries it has to be noted that even under preferential conditions imports from these countries amount only to about ten percent in terms of value. Norway, China and Iceland are the main providers of EU fish imports. Over 60 percent of EU exports consist of unprocessed fish. Norway imports large amounts of fish meal for aquaculture.

Following the Uruguay Round world wide barriers to trade of fish products (tariffs and quantitative restrictions) were substantially reduced to an average 4.5 percent for developed countries and below 20 percent for developing countries. However, because of the large import surplus, the first concern of EU managers is a reduction of imports into the EU market. To some extent the existing tariff structure reflects this tendency. Compared to other major fish importing economies (like the USA, Japan and China) the EU applies relatively high tariffs (9.4 percent for unprocessed, 9.8 percent for processed fish) and a relatively large number of tariff peaks have been observed (e.g. for tuna and shellfish). For some products tariff escalation is quite important, e.g. for salmon (2 percent for fresh salmon, 8 percent for frozen fillets) and shrimp (8 percent for unprocessed shrimp, 20 percent for processed shrimp). Preferential treatment also has considerable effects. The most relevant arrangements are tariff rate quota for basic materials for the EU processing sector, GSP, EPA/EBA, EFTA and several other regional arrangements (e.g. Euromed). The preferential treatment of LDCs and non-LDC developing countries differs widely for some species. Noteworthy examples are tuna and shrimp, where LDCs are granted free access and non-LDC developing countries face high tariffs. In sum, the EU causes by far the largest economic impact on the world fish market due to its tariff structure and the size of EU imports. In return the tariff structure of emerging and developing markets may pose problems for (potential) EU exporters. Brazil, India and Korea apply high tariffs and/or have no bound tariffs.

In conclusion, reductions of general tariffs (in a WTO context) or further bilateral/multilateral trade agreements would in general result only in moderate reductions of internal EU prices at all levels (EU producers, processors and consumers). However, tariff reductions could severely damage specific sectors when high tariff peaks or tariff escalation are present. This especially concerns trade in tuna, shellfish, salmon and shrimp. In such cases also LDC producers currently benefiting from preferential access could be damaged by tariff erosion.

The EU's tariff structure makes NAMA negotiations a crucial issue for parts of the EU's fishery sector. Overall the NAMA negotiations have been slow and marked by conflict, with entrenched interest groups debating the three most contentious issues, setting the coefficients for the Swiss formula, the continuation of sectoral negotiations, and preference erosion. For the EU, the implementation of tariff reductions related to the Swiss formula will have strong impacts on the fisheries sector, especially on the most commercially valuable products, such as shrimp and tuna, which currently are subject to the highest tariff rates. Arguably, as a consequence of the general trend of tariff reduction, the importance of non-trade barriers is growing. Sanitary and phytosanitary measures play a major role in this

respect. The number of SPS notifications to the WTO for fish products have doubled since 2000. The EU is a frontrunner where the development of food safety standards is concerned and has a profound influence on the development of the seafood export industry in developing countries. European health and hygiene requirements pose a major challenge to export industries. A problem to be addressed by the EU regards the uniform implementation of EU standards leading to a phenomenon called "port shopping".

The environmental agenda of the Doha mandate includes negotiations on the relationship between trade measures under MEAs and the WTO regime, as well as the elimination or reduction of tariffs and Non-tariff barriers on environmental goods and services. These issues will very likely only have a limited impact on EU trade in fisheries. Uncertainties as to the use of trade related measures under MEAs and their compatibility with WTO rules have been an issue in a limited number of cases in the past. However, these have not caused major disturbances in trade in fisheries. While a clarification of the relationship would be desirable a clear division of labour between the WTO and MEA regimes based on their respective core competencies will most likely not be attained within the Doha Round. Products related to fisheries are not playing a major role in the negotiations on EGS. Propositions for products to be included within an EGS scheme are so far limited to fishing devices, including turtle excluder devices as well as circle hooks.

Negotiations on fisheries subsidies are a major issue for the EU. Disciplines for fisheries subsidies are very sensible as strengthened disciplines could have a great impact on current EU practices, i.e. the legality of rescue and restructuring aid such as the recent emergency aid package for the fishing sector to tackle the fuel crisis, as well as spending within the EFF framework. The EFF is having its biggest impact on the processing industry. Subject to the outcome of WTO negotiations cheaper white fish would probably replace EU landings and lower cost processors undercut EU processors. Another crucial issue for the EU is the payment of access fees in the context of trade agreements providing for EU access to foreign fisheries. While the outcome regarding the submission of subsidies to the processing industries remains an open question, currently changes in respect to access agreements seem rather unlikely.

GATS negotiations are not expected to result in large-scale impacts on the European fisheries sector. If at all, a revision of the agreement could potentially impact on vessel chartering services and reflagging practices. While a trend towards reflagging of vessels is currently observed on the high seas where national rules do not apply it is hard to say in how far trade liberalization would really lead to large-scale reflagging. Other offers for liberalization of services incidental to fishing are of limited scope.

The review of fishery related WTO case law shows that use of the dispute settlement system is mostly related to the application of defence instruments, as well as alleged NTB. The cases demonstrate that the WTO dispute settlement procedures may play an important role as potential a possible corrective to doubtful or protectionist trade practices, as well as in the enforcement of WTO trade law in general. Although the effect of decisions is limited to the specific case it may be argued that the case law nonetheless contributes to a coherent application of WTO rules. The effect of decisions in the framework of the WTO dispute settlement system is not limited to specific cases but contributes to setting standards for national trade practices, if and when a predictable body of case law is established.

In addition to the negotiations in the context of the WTO, the EU engages in a great number of bilateral and inter-regional negotiations on trade liberalisation. An overview of the negotiations most relevant to trade in fisheries products and their potential implications has been presented in Chapter 5. These include negotiations with ACP countries,

Mediterranean countries in the context of the EU-MED partnership, Latin American countries and country groupings, as well as ASEAN and its Member States. Main issues of debate across negotiations are the possibility of preference erosion, compliance with SPS and RoO regulation, and the issue of greater reciprocity in FTAs with developing countries as demanded by the WTO.

Regarding the use of trade defence instruments ADMs are used either to prevent price decreases which would negatively affect domestic producers and/or to achieve a long-term stabilisation of domestic industry. In Economic literature it is pointed out, that these goals are most often not reached. In addition the use of ADMs is often contested and subject to lengthy controversies also within the WTO dispute settlement system. Complicated procedures as well as vague provisions contained in the ADA largely contribute to this situation. However, there is a clear tendency for raising the bar on the use of ADM. WTO case law as well as possible changes to the ADA within the Doha Round negotiations will most likely further contribute to this trend. The use trade defence instruments will probably become more and more difficult.

References

- Abila, R. (2003). Food Safety in Food Security and Food Trade. Case Study: Kenyan Fish Exports. In FOCUS 10 Brief 9. International Food Policy Research Institute.
- Action Aid (2007). Taking the Fish. ActionAid, London, UK. Retrieved from http://www.actionaid.org/docs/taking_the_fish_2007.pdf (accessed 08 January 2009)
- ActionAid (2006). The General Agreement on Trade in Services. ActionAid, London, UK.
- Andina (2009) Peru to protect fishing industry in FTA negotiations with EU. Agencia peruana de noticias. 09 October 2009. Retrieved from <http://www.andina.com.pe/ingles/Noticia.aspx?Id=h3gOsoYsgbY=> (accessed at 28 October 2009)
- Asche & Khatun (2006). Aquaculture: Issues and Opportunities for Sustainable Production and Trade. ICTSD Natural Resources, International Trade and Sustainable Development Series Issue Paper No. 5. Geneva, Switzerland.
- ASEAN-EU Vision Group (2006). Report of the ASEAN-EU Vision Group: transregional partnership for shared and sustainable prosperity. Ha Noi, Vietnam.
- Bangkok Post (2009). Asean-EU trade talks stall. Retrieved from: <http://www.bangkokpost.com/breakingnews/137401/asean-eu-trade-talks-stall> (accessed 09 September 2009)
- Bernasconi-Osterwalder & Sherman (2005). NAMA negotiations: an environmental perspective. CIEL. Geneva, Switzerland.
- BMWi (2008). Stand der Welthandelsrunde (Doha Development Agenda – DDA) August / September 2008. Bundesministerium für Wirtschaft und Technologie. Berlin, Germany.
- Bostock, T., Greenhalgh, P., Kleih, U. (2004). Policy Research – Implications of Liberalization of Fish Trade for Developing Countries: Synthesis Report. Natural Resources Institute. Chatham, UK.
- Botezatu, E. (2007). EU – ASEAN free trade area: regional cooperation for global competitiveness. European Institute of Romania. MPRA Paper No. 4946, posted 07. November 2007 / 04:19. Retrieved from: http://mpa.ub.uni-muenchen.de/4946/1/MPRA_paper_4946.pdf (accessed 09 September 2009)
- Campling L., Havice E. et Ram-Bidesi V. (2007). Pacific Island Countries, The Global Tuna Industry and The International Trade Regime – A guidebook. Forum Fisheries Agency (FFA).
- Campling, L. (2008). Fisheries Aspects of ACP-EU interim Economic Partnership Agreements: Trade and Sustainable Development Implications. ICTSD Series on Fisheries, Trade and Sustainable Development. Issue Paper No. 6. International Centre for Trade and Sustainable Development. Geneva, Switzerland.
- Campling, L. and Havice E. (2009). FFA Fisheries Trade News. Volume 2. Issue 7. July 2009
- CARICOM (2009). CARICOM Member States and Associate Members. Retrieved from http://www.caricom.org/jsp/community/member_states.jsp?menu=community (accessed 20 June 2009)
- Cartwright, I. (2003). A Preliminary Negotiating Framework for Economic Partnership Agreement Negotiations with the European Union. Fisheries study for the Pacific Islands Forum Secretariat. Thalassa Consulting Pty Ltd.
- Cato, J. & Subasinge, S. (2003). Food Safety in Food Security and Food Trade. Case Study: The Shrimp Export Industry in Bangladesh. In FOCUS 10 Brief 9. International Food Policy Research Institute.
- COMEX (2009). Ministerio de Comercio Exterior de Costa Rica. Informe de Resultados Reunión Técnica Comercial. Retrieved from <http://www.aacue.go.cr/informacion/rondas/CA-UE/RTComercial%20junio/2009-06-29%20Informe.pdf> (accessed on 28 October 2009)

- CTA (2007). Fisheries market access; tariff and non-tariff aspects: Executive brief, 2007. Retrieved from http://agritrade.cta.int/en/fisheries/market_access_tariff_and_non_tariff_aspects/executive_brief (accessed 09 June 2008)
- CTA (2008). Fisheries market access: tariff and non tariff aspects. Agitrade Executive Brief. October 2008.
- Cuyven, L. (2007). An EU-ASEAN Free Trade Agreement: Reflections on issues, priorities, strategies. CAS Discussion paper No 53. Keynote address at the Workshop "The EU-ASEAN FTA: Perspectives of European Business", European Institute for Asian Studies, Brussels, Belgium.
- Development Solutions (2009). EUAndean Trade Sustainability Impact Assessment. Draft Final Report. June 2009.
- Dey, Ahmed, Jahan & Rab (2002). Liberalization vs. Barriers: Experiences from the Leading Fish Exporting Countries. In: Fish Supply & Demand in Asia: Progress Report 2002. World Fish Centre. Penang, Malaysia.
- Domínguez, R. (2006). A New Generation of Agreements between the EU and Latin America: The cases of Mexico and Chile. Jean Monnet/Robert Schuman Paper Series Vol. 6 No. 13. Miami European Union Center, University of Miami. Miami, USA.
- Dordi, C. (2006). Trade defence instruments and globalisations. Brussels, Belgium. Retrieved from http://trade.ec.europa.eu/doclib/docs/2006/august/tradoc_129811.pdf (accessed on 09 September 2008)
- Dunaeva, A. & Mathews, D. (2007). How the shrimp tariff backfired. Retrieved from <http://mises.org/story/2644> (accessed on 09 September 2008)
- EAC (2009). East African Community – About EAC. Retrieved from <http://www.eac.int>
- ECDPM (2009). State of EPA Negotiations in May 2009. Briefing note. European Centre for Development Policy Management. Maastricht, the Netherlands.
- ECORYS (2009). Trade Sustainability Impact Assessment of the Association Agreement to be negotiated between the EU and Central America. Final Report. Rotterdam, Netherlands.
- ECOWAS (2009). ECOWAS Member States. Retrieved from <http://www.comm.ecowas.int/sec/index.php?id=member&lang=en> (accessed 09 September 2009)
- Escabillo, A.V. (2009). Canned tuna may be included in ASEAN-EU Free Trade Agreement. http://www.mindanews.com/index.php?option=com_content&task=view&id=6919
- EU-MED Morocco (2000). Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part. Official Journal of the European Communities L70/2.
- European Commission (2006a). Communication from the European Commission, Global Europe Europe's trade defence instruments in a changing global economy, A green paper for public consultation, COM(2006) 763 final. Brussels, Belgium.
- European Commission (2006b), Trade in agricultural goods and fishery products: Fisheries, Trade Issues, 2006. Retrieved from http://ec.europa.eu/trade/issues/sectoral/agri_fish/fish/index_en.htm (accessed 09 June 2008)
- European Commission (2007). Euromed
- European Commission (2007). Trade and Environment – Work in the WTO. Retrieved from http://ec.europa.eu/trade/issues/global/environment/index_en.htm (accessed 24 October 2008)
- European Commission (2008a). European Fisheries Fund 2007 – 2013– A user's guide.
- European Commission (2008b). About the Common Fisheries Policy: the fisheries sector in the European Union. DG for Maritime Affairs and Fisheries. Retrieved from: http://ec.europa.eu/fisheries/cfp/fisheries_sector_en.htm (accessed 07 June 2009)
- European Commission (2008c). Euromed

- European Commission (2009a). Development relations with ACP states – geographical partnerships. Retrieved from http://eu.europa.eu/geographical/regionscountries_en.cfm (accessed 09 September 2009)
- European Commission (2009b). Update: Economic Partnership Agreements. 17 June 2009.
- European Commission (2009c). State of play of the Free trade agreements and other agreements. Update of 14 October 2009. Retrieved from http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf (accessed 28 October 2009)
- European Commission (2009d). Free Trade Agreement with South Korea – Memo. Retrieved from: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=467> (accessed 28 October 2009).
- European Parliament (2006). The Potential Economic Impact and WTO Compatibility of the Economic Partnership Agreements. Study commissioned by the Directorate-General for External Policies of the Union, Directorate B, Policy Department.
- FAO (2007). Food Outlook – Global Market Analysis. Fish and fisheries products. Retrieved from: <http://www.fao.org/docrep/010/ah876e/ah876e10.htm> (accessed 09 September 2009)
- FAO (2007). The State of World Fisheries and Aquaculture. Rome, Italy.
- Francois et al. (2008). A Quantification of the Economic Effects of the February 2008 Draft NAMA – Summary of Results. Trade Partnership Worldwide, LLC. Washington DC, USA.
- Fredriksson, L. & Wendel, H. (2005). Food Safety Standards and Seafood Exports from Morocco – Catalyst or Barrier? Lund, Sweden.
- Go Euro-Med. (2006). GO-EuroMed Working Package 5: The Political Economy of Euro-Mediterranean Negotiations. Specific Targeted Research Project. FP6. PRIORITY 7: Citizens and Governance in a Knowledge Based Society. Available online: <http://www.go-euromed.org/>
- Gould (2004). Update on the GATS Negotiations: A background paper, TACD. London, UK.
- Henson S., Saquib M. & Rajasenan D. (2005). Impact of Sanitary Measures on Exports of Fishery Products from India: The Case of Kerala. World Bank.
- Henson, S., Brouder, A. & Mitullah, W. (2000). Food Safety Requirements and Food Exports from Developing Countries: The Case of Fish Exports from Kenya to the European Union. In: American Journal of Agricultural Economics, 5, 2000, pp. 1159-1169.
- Henson, S., Loader, R., Swinbank, A., Bredahl, M., Lux, N. (2000). Impact of Sanitary and Phytosanitary Measures on Developing Countries, Centre for Food Economics Research, University of Reading, UK.
- ICTSD (2002). Bridges Trade BioRes, Number 6, Volume 2 of 4 April 2002. Retrieved from <http://ictsd.net/i/news/biores/8720/> (accessed 25 October 2008)
- ICTSD (2003). WTO: EU takes long-awaited new stance on fisheries subsidies. In: Bridges Trade BioRes, Volume 3, Number 9 of 15th May 2003.
- ICTSD (2004). Japan Proposes Disciplining Fisheries Subsidies. In: Bridges Weekly Trade News Digest, Volume 8, Number 20 of 9th June 2004.
- ICTSD (2005). Bridges Trade BioRes Volume 5, Number 8 of 29th April 2005. International Centre for Trade and Sustainable Development. Retrieved from: <http://ictsd.net/i/news/biores/9260/> (accessed 25 October 2008)
- ICTSD (2005). Selected WTO Members' Positions on Fisheries Subsidies.
- ICTSD (2006a). Fisheries, International Trade and Sustainable Development. Policy Discussion Paper. International Centre for Trade and Sustainable Development. Geneva, Switzerland.
- ICTSD (2006b). CITES Stops Trade In Wild Caviar To Save Sturgeon. In: Bridges Trade BioRes, 6(1), International Centre for Trade and Sustainable Development. Geneva, Switzerland
- ICTSD (2006c). WTO talks on fisheries inch towards middle ground. In: Bridges Trade BioRes, Vol. 6 No. 12, 2006.

- ICTSD (2007). Trade in Environmental Goods and Services and Sustainable Development. Policy Discussion Paper. Geneva, Switzerland.
- ICTSD (2008). Europe looking at major fishery policy shakeup. In: Fisheries, Volume 2, Number 3 of October 2008.
- ICTSD (2008). WTO Cases, Volume 12, Number 3 of 30th January 2008. Retrieved from: <http://ictsd.net/i/news/bridgesweekly/12436/> (accessed 25 October 2008)
- ICTSD (2009). Colombia and Peru in Final Trade Talks with EU. In: Bridges Weekly Trade News Digest of 07 October 2009. Retrieved from: <http://ictsd.net/i/news/bridgesweekly/56531/> (accessed 28 October 2009)
- IBM (2008). Trade Sustainability Impact Assessment of the EU-Korea FTA: Final Report. June 2008. Retrieval from: <http://www.eu-korea-sia.org/pub/>
- INTAL-ITD (2004). Rules of Origin in FTAs in Europe and the Americas: Issues and implications for the EU-Mercosur Inter-Regional Association Agreement. Working Paper 15. Buenos Aires, Argentina.
- Khalilian, S. (2008). Trade measures – a legitimate tool for environmental protection? A comprehensive analysis and the case of India. Berlin, Germany.
- Kleih, U., Greenhalgh, P., Marter, A. & Peacock, N. (2006). Sustainability Impact Assessment of proposed WTO negotiations., Final Report for the Fisheries Sector Study. Natural Resources Institute. Greenwich, UK.
- Klom, A. (2003). Mercosur and Brazil: a European Perspective. In: International Affairs 79(2), 351-368.
- Mahfuz, A. (2006). Market Access and Trade Liberalisation in Fisheries, ICTSD. Geneva, Switzerland.
- Malvarosa, L. (2002). The Fish Trade of North African Mediterranean Countries: Intra-Regional Trade and Import-Export with the European Union. FAO Fisheries Circular No. 978. FIIT/C978 (En).
- Mandelson, P. (2008). Opening remarks on LAC Summit/Food prices/Doha. Press conference 6 May 2008. Brussels, Belgium.
- Maskus, K.E. & Wilson, J.S. (2000). Quantifying the Impact of Technical Barriers to Trade: A review of Past attempts and the New Policy Context. Paper prepared for the Workshop on "Quantifying the Trade Effect of Standards and Regulatory Barriers: Is It Possible?" at the World Bank
- Mbithi Mwikya (2006). Fisheries Access Agreements: Trade and Development Issues. ICTSD Natural Resources, International Trade and Sustainable Development Series Issue Paper No. 2. ICTSD. Geneva, Switzerland
- Melchior, A. (2005). Tariffs in World Seafood Trade. Paper written for FAO (Food and Agriculture Organisation). Rome, Italy.
- Moltke, A. v., (2007). Fisheries subsidies. In: Najam, A., Halle, M. & Meléndez-Ortiz, R. Trade and Environment: A resource book, International Institute for Sustainable Development (IISD), International Centre for Trade and Sustainable Development (ICTSD) and the Regional and International Networking Group.
- NHO (2006). Input from the Confederation of Norwegian Enterprise (NHO) on the ongoing review of the EU trade defence instruments. Confederation of Norwegian Enterprise. Oslo, Norway.
- Nowak-Lehmann, F., Herzer, D., Vollmer, S. (2005). The Free Trade Agreement between Chile and the EU: Its Potential Impact on Chile's Export Industry. Discussion paper No. 125. Ibero-America Institute for Economic Research. University of Göttingen. Göttingen, Germany.
- Oceanic Développement, Poseidon Aquatic Resource Management Ltd, MegaPesca Lda (2005). The European Tuna Sector. Economic Situation, Prospects and Analysis of the Impact of the Liberalisation of Trade. Final Report. Project Fish/2003/02. Retrieved from:

http://ec.europa.eu/fisheries/publications/studies/tuna_2005_en.pdf (accessed 09 September 2009)

- OECD (2003). Liberalising fisheries markets: scope and effects. Organisation of Economic Cooperation and Development. Paris, France.
- OECD (2007). Globalisation and Fisheries, OECD, Paris, France.
- Palmer, A. & Tarasofsky R. (2007). The Doha Round and Beyond: Towards a lasting relationship between the WTO and the international environmental regime. The Royal Institute of International Affairs, London, UK.
- Panagariya, A. (2002). EU Preferential Trade Policies and Developing Countries. Center for International Economics. University of Maryland. MD, USA.
- Paris Summit of the 'Barcelona Process: Union for the Mediterranean' (2008). Final Statement. Marseille, France.
- Peacock, N. (2004). Trade Issues Background Paper: The Impact of Dumping on Trade in Fisheries Products. Paper written for FAO (Food and Agricultural Organization). Rome, Italy.
- Roheim C. & Sutinen J. (2006). Trade and Marketplace Measures to Promote Sustainable Fishing Practices. ICTSD Natural Resources, International Trade and Sustainable Development Series Issue Paper No. 3. Geneva, Switzerland.
- SADC (2009). SADC Profile. Retrieved from <http://www.sadc.int/index/browse/page/52> (accessed 09 September 2009)
- Schorr D. (2008). Will the WTO produce effective new disciplines on fisheries subsidies?. In: El Anzuelo, European Newsletter on Fisheries and the Environment, Vol. 20, 2008, p. 4.
- SICE (2007a). Association Agreement Between the European Union and Chile. Foreign Trade Information System. Retrieved from: http://www.sice.oas.org/Trade/chieu_e/Chieu1_e.asp#Article_25 (accessed 09 September 2009)
- SICE (2007b). Mexico-European Union, Background and Negotiations. Foreign Trade Information System. Retrieved from: http://www.sice.oas.org/TPD/MEX_EU/MEX_EU_e.asp (accessed 09 September 2009)
- SICE (2007c). MERCOSUR-European Union, Background and Negotiations. Foreign Trade Information System. Retrieved from: http://www.sice.oas.org/TPD/MER_EU/MER_EU_e.asp (accessed 09 September 2009)
- SICE (2007d). Central America-European Union, Background and Negotiations. Foreign Trade Information System. Retrieved from: http://www.sice.oas.org/TPD/CACM_EU/CACM_EU_e.ASP (accessed 09 September 2009)
- SICE (2007e). Andean Countries- European Union, Background and Negotiations. Foreign Trade Information System. Retrieved from: http://www.sice.oas.org/TPD/AND_EU/AND_EU_e.ASP (accessed 09 September 2009)
- Sumaila, R. & Pauly, D. (eds.) (2006). Catching more bait: A bottom-up re-estimation of global fisheries subsidies. Fisheries Centre Research Reports 14(6). Vancouver, Canada.
- Sumaila, R., Khan, A., Watson, R., Munro, G., Zeller, D., Baron, N. & Pauly, D. (2007). The World Trade Organization and global fisheries sustainability. In: Fisheries Research 88, pp. 1-4.
- UNCTAD (2003). Dispute Settlement. World Trade Organization. Anti-dumping Measures. New York, USA & Geneva, Switzerland.
- UNEP (2004). Analyzing the Resource Impact of Fisheries Subsidies: A Matrix Approach, United Nations Environmental Programme/WWF. Geneva, Switzerland.
- UNEP (2008). Fisheries Subsidies – A critical issue for Trade and Sustainable Development at the WTO. United Nations Environmental Programme, Geneva, Switzerland.
- United Nations (1998). International merchandise trade statistics: Concepts and definitions. Department of Economic and Social Affairs/Statistics Division Studies in Methods Series M, No.52, Rev.2. Rome, Italy.

- Wold, Ch. & Fullilove, G. (2000). Analysis of the WTO Appellate Body's Decision in Shrimp/Turtle, International Environmental Law Project. Retrieved from: <http://www.lclark.edu/org/ielp/turtlebriefing.html> (accessed on 04 December 2008)
- Working group on European Union-Mercosur negotiations (2000). Available online: http://www.chairemercotur.sciences-po.fr/index.php?option=com_content&task=view&id=14&Itemid=16 (accessed 09 September 2009)
- World Bank (2004). Cost of Compliance with SPS Standards Impact of Sanitary Measures on Exports of Fishery Products from India, Agriculture and Rural Development Discussion Paper 17, 2004, p. 13.
- World Bank (2005c). World Bank Report No. 31207: Food Safety and Agricultural Health Standards: Challenges and Opportunities for Developing Country Exports, 2005, pp. 37-41.
- WTO (2004). Overview of Proposals submitted (TN/MA/9/Rev.1), Negotiating Group on Market Access. Geneva, Switzerland.
- WTO (2005a). Synthesis of Submissions on Environmental Goods and Services. Informal Note by the Secretariat. (TN/TE/W/63) of 17 November 2005.
- WTO (2005b). Market access for non-agricultural products: Liberalisation of trade in fish and fish products (TN/MA/W/63), Geneva, Switzerland, 2005
- WTO (2006a). NAMA 11 Ministerial Communiqué, 29 June 2006. Geneva, Switzerland.
- WTO (2006b). World Trade Report 2006, World Trade Organization. Geneva, Switzerland.
- WTO (2007a). Sectoral Negotiations in Non-Agricultural Market Access (NAMA): Communication from Canada et al. (TN/MA/W/97 and TN/MA/W/97/Rev.1), Geneva, Switzerland.
- WTO (2007b). WTO NAMA Negotiations: Draft modalities – Chair's text of 17 July 2007 JOB(07)/126 – Business Response, South Africa.
- WTO (2008a). Non-agricultural market access negotiations. Retrieved from http://www.wto.org/english/tratop_e/markacc_e/markacc_negoti_e.htm (accessed 09 June 2008)
- WTO (2008b). The Rules Negotiations. Retrieved from http://www.wto.org/english/tratop_e/rulesneg_e/rulesneg_e.htm (accessed 09 June 2008).
- WTO (2008c). WTO Jargon Buster, retrieved from: http://www.wto.org/english/tratop_e/tariffs_e/tariff_data_e.htm (accessed 25 October 2008)

Annexes

Annex 1: Global and EU trade flows

Table 1 World trade of fish products by product type (import value, billion Euros)

Origin	Product type			
	Unprocessed fish for food	Processed fish products	Fishmeal & fish oil for feed	Total
Developed countries	23,1	18,5	1,5	43,1
Developing-nonLDC	9,6	3,0	1,2	13,8
LDC	0,1	0,0	0,0	0,1
World	32,7	21,5	2,7	57,0

Source: UNCTAD database

Table 2 World major importers of fish products including fishmeal and fish oil Imports from developed countries, LDC countries and non-LDC developing countries (import value, billion Euros)

Top nine importers	Countries of origin			
	Developed	Developing-nonLDC	LDCs	World
EU 1)	6,1	9,9	1,1	17,1
USA	2,6	8,4	0,2	11,2
Japan	2,5	8,3	0,3	11,1
China	1,1	2,1	0,0	3,3
Rep. of Korea	0,5	1,7	0,0	2,2
China. Hong Kong SAR	0,8	0,8	0,1	1,6
Canada	0,6	0,8	0,0	1,4
Thailand	0,2	0,7	0,3	1,2
Russian Federation	0,7	0,4	0,0	1,1

Source: UNCTAD database 1) intra EU trade not included

Table 3 World major importers of fish by product type (import value, billion Euros)

Importing nation/block	Product type			
	Unprocessed fish for food	Processed fish products	Fishmeal & fish oil for feed	Total
EU-27	8,9	7,6	0,6	17,1
USA	5,9	5,2	0,1	11,2
Japan	6,8	4,0	0,3	11,1
China	2,5	0,1	0,8	3,3
Rep.of Korea	1,6	0,5	0,1	2,2
China, Hong Kong SAR	1,1	0,5	0,0	1,6
Canada	0,7	0,6	0,1	1,4
Thailand	1,1	0,1	0,0	1,2
Russian Federation	0,8	0,3	0,0	1,1

Source: UNCTAD database

Table 4 World major exporters of fish products including fishmeal and fish oil Imports from developed countries, LDC countries en non-LDC developing countries (import value, billion Euros)

Top exporters	Countries of origin			
	Developed	Developing-nonLDC	LDCs	World
China	5,2	2,0	0,0	7,1
Norway	3,3	1,1	0,0	4,4
Thailand	3,3	0,8	0,0	4,2
USA	2,4	1,1	0,0	3,5
Canada	2,5	0,5	0,0	2,9
Chile	2,1	0,8	0,0	2,8
EU -27 1)	1,1	1,5	0,0	2,7
Indonesia	1,3	0,3	0,0	1,6
Iceland	1,3	0,1	0,0	1,4
Peru	0,7	0,7	0,0	1,4
Japan	0,2	0,9	0,0	1,1

Source: UNCTAD database 1) intra EU trade not included

Table 5 World major exporters of fish by product type (export value, billion Euros)

Exporting nation/block	Product type			
	Unprocessed fish for food	Processed fish products	Fishmeal & fish oil for feed	Total
China	1,8	5,4	0,0	7,1
Norway	2,9	1,4	0,1	4,4
Thailand	1,4	2,7	0,1	4,2
USA	2,3	1,1	0,1	3,5
Canada	2,2	0,7	0,0	2,9
Chile	0,9	1,5	0,4	2,8
EU-27	1,7	0,7	0,2	2,7
Indonesia	1,2	0,4	0,0	1,6
Iceland	0,3	1,0	0,1	1,4
Peru	0,2	0,1	1,1	1,4

Source: UNCTAD database

Table 6 EU-27 exports by product type and by origin (million Euros)

Destination	Product type			
	Unprocessed fish for food	Processed fish products	Fishmeal & fish oil for feed	Total
Developed countries	574	377	170	1 121
Developing-nonLDC	1 067	350	71	1 487
LDC	19	14	0	33
World	1 660	740	241	2 641

Source: Comext database, Eurostat

Table 7 EU-27 imports by major suppliers and by product type (EU import value million Euros)

Countries of Origin	Product type			
	Unprocessed fish for food	Processed fish products	Fishmeal & fish oil for feed	Total
Norway	1 773	998	73	2 843
China	292	872	2	1 166
Iceland	234	847	77	1 158
USA	418	359	21	798
Morocco	461	264	19	744
Argentina	504	165	0	669
Chile	136	356	77	569
Thailand	192	361	0	554
Vietnam	181	362	0	543
Ecuador	247	265	1	513
India	443	25	1	470
Peru	115	40	293	448
South Africa & Namibia	254	189	0	444
Russia	188	242	0	430
Canada	217	169	6	392

Source: Comext database, Eurostat

Table 8 EU-27 exports by major clients and by product type (EU export value million Euros)

	Product type			
Countries of Origin	Unprocessed fish for food	Processed fish products	Fishmeal & fish oil for feed	Total
Japan	248	42	14	304
Switzerland	138	125	9	272
Russia	184	60	8	252
Norway	49	61	136	246
China	193	11	2	206
USA	95	98	4	197
Nigeria	116	2	5	123
Morocco	63	11	0	74
Seychelles	62	0	0	62
Ukraine	34	24	2	60
Croatia	39	13	5	57
Hong Kong	16	37	1	54
Egypt	40	2	1	43
South Korea	20	12	5	37

Source: Comext database, Eurostat

Table 9 EU-27 imports from ACP countries by EPA area and by product type (EU import value, million Euros)

	Product type			
Area of destination	Unprocessed fish for food	Processed fish products	Fishmeal & fish oil for feed	Total
ACP EPA West Africa	322	202	0	524
ACP EPA Central Africa	20	0	0	20
ACP EPA East Southern Africa	176	465	0	641
ACP EPA Southern Africa	179	249	0	429
ACP Caribbean	62	4	0	66
ACP Pacific	1	40	0	41
Total ACP	759	961	1	1 720

Source: Comext database, Eurostat

Table 10 EU-27 exports to ACP countries by EPA area and by product type (EU export value, million Euros)

	Product type			
Area of destination	Unprocessed fish for food	Processed fish products	Fishmeal & fish oil for feed	Total
ACP EPA West Africa	146	4	6	156
ACP EPA Central Africa	2	1	0	4
ACP EPA East Southern Africa	115	1	0	116
ACP EPA Southern Africa	3	12	0	15
ACP Caribbean	4	5	0	9
ACP Pacific	0	0	0	0
Total ACP	269	24	6	299

Source: Comext database, Eurostat

Table 11 EU-27 imports from MED countries by product type (EU imports value, million Euros)

	Product type			
Area of destination	Unprocessed fish for food	Processed fish products	Fishmeal & fish oil for feed	Total
MED countries	586	271	19	875

Source: Comext database, Eurostat

Table 12 EU-27 exports to MED countries by product type (EU exports value, million Euros)

	Product type			
Area of destination	Unprocessed fish for food	Processed fish products	Fishmeal & fish oil for feed	Total
MED countries	121	25	2	149

Source: Comext database, Eurostat

Annex 2: Global and EU tariff barriers

Definitions - WTO terminology (WTO, 2008c)

Tariff line:	a product, as defined by a system of code numbers for tariffs.
Ad valorem (AV):	a tariff rate charged as a percentage of the price.
Bound rates:	a commitment not to increase a rate of duty beyond an agreed level. Once a rate of duty is bound, it may not be raised without compensating the affected parties. The market access schedules are not simply announcements of tariff rates. They represent commitments not to increase tariffs above the listed rates — the rates are “bound”. For developed countries, the bound rates are generally the rates actually charged. Most developing countries have bound the rates somewhat higher than the actual rates charged, so the bound rates serve as ceilings. Countries can break a commitment (i.e. raise a tariff above the bound rate), but only with difficulty. To do so they have to negotiate with the countries most concerned and that could result in compensation for trading partners’ loss of trade.
Applied rates:	duties that are actually charged on imports. These can be below the bound rates.
MFN:	(most-favoured-nation) tariff: normal non-discriminatory tariff charged on imports (excludes preferential tariffs under free trade agreements and other schemes or tariffs charged inside quotas).

Other definitions

CCT	The EU common customs tariff which is generally equal to MFN.
TS	Tariff suspensions constitute an exception to the CCT. During their period of application suspensions allow imports at better rates for an unlimited amount of imports independent of their origin. Suspensions permit the total or partial suspension of the CCT.
TRQs	<p>Tariff rate quotas allow access for a limited volume of imports at lower tariffs. All subsequent imports which are greater than the volume allowed by the TRQ are charged at a higher tariff, which is generally the CCT. Therefore, TRQs consist of three components:</p> <ol style="list-style-type: none"> 1. an over-quota tariff (CCT) 2. a quota that defines the maximum volume of imports charged for the in-quota tariff. 3. The in-quota tariff on all quantities which are imported within the tariff quota. This in-quota tariff is in the EU case often defined at zero level.

Table 1 Average bound and applied tariffs in 4 emerging markets

		Rep. of Korea	Thailand	Brazil	India
	Unprocessed	12,2	7,0	35,0	0
<i>Bound tariffs</i>	Processed	20,0	8,3	29,8	102,5
	Fish oil & fishmeal	5,3	0,0	33,3	67,5
	Unprocessed	15,2	7,5	9,4	30,0
<i>Applied tariffs</i>	Processed	20,0	9,2	12,1	30,0
	Fish oil & fishmeal	3,5	10,0	7,3	23,8
	Unprocessed	13,9	5,1	9,7	30,0
<i>Weighted applied tariffs</i>	Processed	20,0	6,2	6,6	30,0
	Fish oil & fishmeal	4,6	6,2	6,7	6,4

Source: WTO

Table 2 MFN custom revenues of four developed economies (MFN tariff*imports value, million Euros, 2006)

		China	Japan	USA	EU
	Unprocessed	250	250	28	1 421
	Processed	9	268	131	1 251
	Fish oil & fishmeal	27	0	0	14
	Total	287	518	159	2 687

Source: WTO

Table 3 MFN custom revenues of 4 emerging markets (MNF tariff*imports value, million Euros, 2006)

		Rep. of Korea	Thailand	Brazil	India
	Unprocessed	224	57	10	4
	Processed	55	10	16	1
	Fish oil & fishmeal	2	1	0	2
	Total	282	69	27	7

Source: WTO

Table 4 Tariff peaks for main blocks (tariffs > 15)

		China	Japan	USA	EU
	Unprocessed	4	0	0	8
<i>Bound tariffs</i>	Processed	6	0	0	11
	Fish oil & fishmeal	0	0	0	0
	Total	10	0	0	19
	Unprocessed	4	0	0	16
<i>Applied tariffs</i>	Processed	6	0	0	13
	Fish oil & fishmeal	0	0	0	0
	Total	10	0	0	29

Source: WTO

Table 5 Tariff peaks of 4 emerging markets (tariffs > 15)

		Rep. of Korea	Thailand	Brazil	India
	Unprocessed	31	6	0	71
<i>Applied tariffs</i>	Processed	24	4	10	29
	Fish oil & fish meal	0	0	0	3
	Total	55	10	10	103

Source: WTO

Table 6 Examples of MFN and effective EU tariffs for specific species by trade block

	MFN applied	Average Applied Duty	DdC	EEA Faroeer	MED Turkey	SPGE Chile	GSP	EPA EBA
Fresh fish								
Salmon	2,0	0,0	2	0	0	0	0	0
Tuna	22,0	10,9	3	0	0	0	19	0
Herring	15,0	8,9	10	9	0	0	0	0
Cod	12,0	1,3	0	0	0	0	3	0
Unspecified	15,0	0,7	13	3	0	0	0	0
Frozen fish								
Salmon	2,0	1,8	2	2	0	0	0	0
Tuna	22,0	7,0	19	0	0	0	19	0
Herring	15,0	0,2	3	0	0	0	0	0
Cod	12,0	2,2	2	0	0	0	3	0
Unspecified	12,4	0,9	10	1	0	0	0	0
Fresh fillets								
Salmon	2,0	2,0	2	2	0	0	0	0
Cod	18,0	0,2	18	0	0	0	15	0
Frozen fillets								
Salmon	8,0	0,8	8	2	0	0	0	0
Cod	7,5	2,8	6	2	0	0	4	0
Hake	7,5	2,6	6	0	0	0	4	0
Allaska Pollock	7,5	0,0	0	0	0	0	0	0
Unspecified salt water	11,4	5,8	8	0	0	3	8	0
Unspecified fresh water	9,0	4,8	9	3	0	0	6	0
Dried/salted cod	13,0	7,1		8	0	0	0	0
Shellfish								
Frozen shrimps	12,0	3,5	12	11	0	4	4	0
Frozen cuttlefish, octopus	8,0	1,8	8	2	0	0	3	0
Processed products								
Salmon	5,5	4,7	6	0	0	0	2	0
Herring	20,0	12,1	11	11	0	0	20	0
Sardines	12,5	1,0	11	0	0	0	9	0
Tuna	24,0	5,4	22	1	0	1	21	0
Processed shrimps	20,0	6,9	17	1	0	1	8	0

Source: TARIC Homepage. *) conditional

Annex 3: The Swiss formula

Table 1 **Examples of Swiss formula for processed fish and shellfish: “coefficient” 8**
(Based on MFN tariffs)

Examples fish sector					
Product		Canned sardines	Canned tuna	Processed shrimps	Fishmeal
HS-code		1604.13	1604.14	1605.20	2301.20
Coefficient	A	8	8	8	8
Present MFN tariff	X	12,5	24,0	20,0	0,0
	AX	100	192	160	0
	A+X	21	32	28	8
Reduced tariff	Z	4,9	6,0	5,7	0,0
Year					
0		12,5	24,0	20,0	0,0
1		11,2	21,0	17,6	0,0
2		10,0	18,0	15,2	0,0
3		8,7	15,0	12,9	0,0
4		7,4	12,0	10,5	0,0
5		6,1	9,0	8,1	0,0
6		4,9	6,0	5,7	0,0
Annual steps (%points)		1,3	3,0	2,4	0,0
% cut over 6 years		61,0	75,0	71,4	0,0
Market share of EU import value countries subject to GSP		11%	25%	49%	

Annex 4: Exemplary EPA fisheries chapters

Table 1 Selected elements of the EAC/ESA Fisheries Chapters (Articles 25-35)

Key component	Discussion
The “precautionary approach shall be applied in determining levels of sustainable catch, fishing capacity, and other management strategies to avoid or reverse undesirable outcomes such as over-capacity and over-fishing, as well as undesirable impacts on the ecosystems and artisanal fisheries” (Article 32(a)(1))	<p>The precautionary approach is adopted as a mandatory component in determining the core elements of fisheries management. This is a more cautious science- and information-based approach to fisheries management, especially where reliable data are not available. It is already supposed to be applied to the high seas and into EEZs for highly migratory species and straddling stocks under Article 6 of the UN Fish Stocks Agreement (1995). There is some ambiguity as to whether the precautionary approach under this IEPA chapter would apply to other stocks or whether these would fall under the more general norms of Article 5 of the United Nations Convention on the Law of the Sea (1982) (UNCLOS). Despite this, importantly the text does make reference to negative impacts on ecosystems and the artisanal sector (the latter point may prove useful in cases where there is evidence that industrial fisheries, for example, are registering deleterious effects on local fishers’ livelihoods).</p> <p>The problem here is putting the adoption of a precautionary approach into practice when coastal states generally lack the means to do so. This serves to reiterate the importance of sustainable development issues, cooperation and fisheries-related investment in the negotiation of comprehensive EPAs.</p>
“Each ESA State may take appropriate measures, including seasonal and gear restrictions in order to further protect its territorial waters and ensure the sustainability of the artisanal and coastal fishery” (Article 32(a)(2))	<p>Fishing restrictions may be applied unilaterally by the EAC/ESA state, but these are limited to the 12-mile zone. This clause is highly problematic as it contradicts Article 61 of UNCLOS, which stipulates the management responsibility (e.g. seasonal closures, gear restrictions, etc.) of coastal states to the whole EEZ. Moreover, it is illogical to delineate management measures to the 12-mile zone as actual fisheries often transcend this manmade boundary.</p> <p>In addition, this is incoherent with the approach adopted in the EC FPAs approach, wherein the coastal state has to consult with the European Community before applying a new management measure that would affect EU fleets (including within the 12-mile zone).</p>
All “Parties would promote the membership of all the concerned States to IOTC [Indian Ocean Tuna Commission] and other relevant fisheries organizations” (Article 32(a)(3))	This component simply encourages signatories to take part in regional fisheries management organizations (RFMOs), but there is no mandatory requirement.
“[T]he EC Party and the ESA coastal and island States shall ensure compliance by vessels flying their flags with relevant national, regional and sub-regional fisheries management measures and related national laws and regulations” (Article 32(a)(6))	<p>Flag state responsibility is made mandatory here. This may prove important for those countries that maintain open vessel registries (flags of convenience) as the costs of ensuring compliance of flagged vessels will rise.</p> <p>This is also important in terms of EU activities, which has sometimes taken a relaxed approach to its responsibility as flag state. If this clause were applied to EU vessels, then it might assist the European Community in taking greater action against some EU vessels (e.g. for underreporting).</p>
“A Vessel Monitoring System (VMS) will be set up for all ESA coastal and island States, and all ESA states will use a compatible VMS. Those ESA states which do not have a VMS will be assisted by the EC Party to set up a compatible VMS”	This element makes the implementation of regionally compatible VMS a mandatory requirement. Importantly, the European Community appears to accept an obligation to provide assistance (presumably technical and financial) to any EAC/ESA state that currently does not comply with this requirement.

(Article 32 (b)(2))	
"[A]ll ESA coastal and island states, in conjunction with the EC Party, will develop other mechanisms to ensure effective Monitoring, Control and Surveillance (MCS) and the EC Party will support ESA states to put such an agreed system in place and assist in implementation" (Article 32(b)(3))	Additional areas of monitoring, control and surveillance (MCS) are asserted here and, as with VMS, the European Community appears to offer a degree of commitment to support EAC/ESA states to set up and implement such mechanisms, although any initiatives here must first be agreed. ACP states should make sure that the scope of these mechanisms remain non-discriminatory (i.e. that it applies equally to EU vessels).
"Both parties shall cooperate to modernise landing or transshipment infrastructure in ports of ESA countries, including development capacity of fish products" (Article 32(b)(6))	This clause on the modernization of port infrastructure is too weak, as it provides little legal commitment on the part of the European Community (i.e. "shall cooperate to"), but as with several other elements of the fisheries chapter it does have cross-cutting linkages with other aspects of the IEPA text, in this case with Articles 45–48 on infrastructure.
"All vessels that land or tranship their catches within the ESA Coastal or Island State shall do it in ports or outer-port areas. No transshipment shall be allowed at sea, except on particular condition foreseen by the relevant RFMO under special conditions" (Article 32(b)(6))	This asserts the requirement for landing/transshipment in-port, which is important in terms of the local provision of goods and services to EU vessels. However, it also allows transshipment in "outer-port areas" (e.g. from fishing vessel direct to carrier vessel), which means that the fish may never touch the EAC/ESA state and thus will have far more limited knock-on socioeconomic benefits. The caveat allowing transshipment at sea "on particular condition" refers to the ability of certain long-line operations to do so as provided for by the IOTC. Regardless, vessels will only land fish in an EPA state if it is commercially attractive for it to do so (e.g. high price, sufficient infrastructure, services). There is thus a direct linkage between the practical realization of this and provisions on investment and other forms of cooperation.
"All vessels should endeavour to use the facilities of the ESA countries and undertake to make use of local supplies" (Article 32(b)(7))	This clause on the use of local inputs/supplies links to Article 32(b)(6) on the requirement to land/tranship in-port or in outer-port areas in that if the vessel transships in-port the vessel "should" make use of local goods and services. However, the obligation is very weak, merely committing EU vessels "to endeavour" to do so, and thus contains no legally binding contribution to domestic economic development.
"Fishing vessels involved in IUU fishing should be prosecuted and should not be allowed to fish again in ESA waters" (Article 32(b)(10))	This is an important component on IUU fishing, but given the use of "should" the agreement to prosecute and ban the offending vessel is weakened. It is unclear why this qualifier was included as it is surely in the interests of all parties to take a strict line on IUU fishing.
"The Parties undertake to cooperate in promoting the setting up of joint ventures in fishing operations, fish processing, port services, enhance production capacity, improve competitiveness of fishing and related industries and services, downstream processing, development and improvement of port facilities, diversification of the fishery to include non-tuna species which are under- exploited or not exploited" (Article 32(c))	This coverage of joint ventures and domestic fisheries development is, in effect, a wish list. Unsurprisingly, the European Community has offered a very weak commitment here (i.e. to "undertake to cooperate"), which is probably motivated partly by the fact that Brussels cannot direct EU industry to invest. But, it may also be because of the possibility that if EAC-/ESA-based companies were to fulfil the "wish list", then they would be competing directly with EU firms. However, Article 38 and the Development Matrix do contain some more tangible commitments by the European Community towards EAC/ESA domestic development

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **B** STRUCTURAL AND COHESION POLICIES

Role

The Policy Departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

Policy Areas

- Agriculture and Rural Development
- Culture and Education
- Fisheries
- Regional Development
- Transport and Tourism

Documents

Visit the European Parliament website: <http://www.europarl.europa.eu/studies>

PHOTO CREDIT: iStock International Inc., Photodisk, Phovoir

