



COMMITTEE ON FISHERIES

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TRADE AGREEMENTS AND MARKET ACCESS FOR FISHERIES AND AQUACULTURE PRODUCTS

Executive Summary

As requested by Members, this document complements document COFI:FT/XVII/2019/10 and extends the analysis to three additional trade agreements. These agreements were selected because of their relevance to fisheries and aquaculture and so as to be representative of a broad range of levels of development. The agreements covered are: (1) the Regional Comprehensive Economic Partnership, (2) the China-Peru Free Trade Agreement, and (3) the African Continental Free Trade Area. Each section focuses on one of these agreements, providing a general overview of the agreement in question, its relevance to fisheries and the main provisions relevant to trade in fisheries and aquaculture products. Both traditional market access issues, such as tariffs and non-tariff measures (NTMs), and select non-traditional areas, such as environmental provisions or specific cooperation mechanisms, are covered.

Suggested action by the Sub-Committee

- Share national experiences in negotiating trade agreements and the main associated challenges;
- Comment on preferential access issues, including issues related to compliance documentation, rules of origin, NTMs, non-traditional trade provisions, among others; and
- Provide guidance regarding the possible development by FAO of a comprehensive database compiling the main elements of preferential trade agreements of relevance to fisheries and aquaculture, with the intention of improving transparency and compliance, increasing preferential access and raising awareness within the private sector of new business opportunities, particularly for small-scale operators.

INTRODUCTION

1. At the 17th Session of the FAO Sub-Committee on Fish Trade (COFI:FT), document COFI:FT/XVII/2019/10¹ presented a comprehensive analysis of binding trade provisions within Regional Trade Agreements (RTAs). This included non-traditional disciplines, such as environmental provisions or regulations that prohibit certain forms of fisheries subsidies. The agreements analysed were the Comprehensive and Progressive Agreement for Trans-Pacific Partnerships (CPTPP), the United States-Mexico-Canada Agreement (USMCA), and the European Union-Canada Comprehensive Economic and Trade Agreement (CETA). The current document complements the previous information by extending the analysis to three additional trade agreements: (1) the Regional Comprehensive Economic Partnership, (2) the China- Peru Free Trade Agreement, and (3) the African Continental Free Trade Area.

THE REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP (RCEP)

2. RCEP is a free trade agreement between 10 Members of the Association of Southeast Asian Nations (ASEAN)² and Australia, China, Japan, New Zealand, and the Republic of Korea. Negotiations were concluded in November 2020 and the agreement entered into force for members who ratified the agreement on 1 January 2022. RCEP will be the largest free trade agreement globally, with its participants accounting for about a third of the world's population and 30 percent of global Gross Domestic Product (GDP). It covers trade in goods and services, investment, economic and technical cooperation, electronic commerce, intellectual property, government procurement, competition, and small and medium-sized enterprises. It will remove around 90 percent of import tariffs between its signatories over 20 years.

3. RCEP brings together many of the world's largest producers, consumers, and traders of fisheries and aquaculture products. Nine of the Parties to the Agreement are among the 20 largest fisheries and aquaculture producers, accounting for close to 55 percent of global production. Five of the Parties are among the 20 largest importers globally. Intra-RCEP trade in fisheries and aquaculture products averages USD 23 billion annually, representing 48 percent of all fisheries and aquaculture exports by the Parties and 16 percent of the sector's global trade.

4. The Agreement will progressively remove the majority of tariffs on fisheries and aquaculture products over 20 years, with extensions of up to 35 years for certain products and trading partners. While average nominal rates of protection will have decreased significantly by the end of the transition period, the Agreement will not eliminate all tariffs on fisheries and aquaculture products. Furthermore, each Party can set out specific duty reduction commitments to other Parties, which will result in differing individual schedules.

5. The binding coverage of fisheries and aquaculture products also varies by trading partner. Some Parties will maintain completely unbound tariff lines for a significant share of fisheries and aquaculture products, which will therefore not be subject to tariff reduction commitments under the Agreement. In some cases, the percentage of unbound tariff lines remains significant even after the end of the transition period.

6. Fisheries and aquaculture products will benefit from the tariff cuts envisaged under RCEP if they comply with a detailed set of rules of origin. There are also provisions for cumulative rules of origin, allowing goods originating from any of the Parties to be used as inputs in the manufacture of a new product by another Party, providing greater flexibility in comparison to previous ASEAN+1 agreements and contributing to supply chain integration in the region.

¹ [fao.org/3/nb388en/nb388en.pdf](https://www.fao.org/3/nb388en/nb388en.pdf).

² Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam.

7. Goods obtained by fishing or aquaculture conducted in the territory of a Party qualify as wholly obtained. This also applies to marine catch by vessels registered by the Party and entitled to fly the flag of that Party if they are taken in accordance with international law from the high seas or an exclusive economic zone that the Party has the right to exploit.³ Processed goods from fish fulfilling those conditions will also qualify as originating if they are processed or made on board any factory ships registered in the Party and entitled to fly the flag of that Party. Product-specific rules applied to fisheries and aquaculture products produced using non-originating material generally require a change in tariff classification at the two-digit level.⁴

8. Regarding sanitary and phytosanitary (SPS) requirements, the Agreement essentially incorporates existing World Trade Organization (WTO) disciplines. However, it goes slightly beyond the SPS Agreement in certain areas, such as by recognizing the equivalence of an SPS measure if the exporting Party objectively demonstrates that the measure achieves the same level of protection or has the same effect in achieving the intended objective. There are specific provisions for cooperation on risk analysis, certification, emergency measures and transparency.

9. Unlike the majority of modern regional trade agreements, RCEP does not contain a particular chapter dealing with the environment or sustainable development. Article 17.10 under the chapter on general provisions and exceptions only affirms the Parties' rights and responsibilities under the 1992 Convention on Biological Diversity. Article 17.12 incorporates the general environmental exceptions provided in the WTO under Article XX, clarifying that subparagraph (b) includes environmental measures and that reference to natural resources includes the conservation of both living and non-living exhaustible natural resources.

THE CHINA-PERU FREE TRADE AGREEMENT (FTA)

10. The China-Peru FTA entered into force on 1 March 2010, bringing together two of the largest producers of fisheries and aquaculture products. With an average combined production of around 67 million tonnes, the two countries represented 38 percent of global fisheries and aquaculture production.

11. The Agreement progressively removed most tariffs over a ten-year period. Ninety-two percent of Peru's tariffs were eliminated immediately, with the remaining 8 percent eliminated over five years. In the case of China, 25.8 percent of all tariff lines were eliminated immediately, and 6.5 percent have been exempted from tariff liberalization. The remaining tariff lines in the Chinese schedule follow specific schedules spanning over ten years."

12. Fisheries and aquaculture products benefit from the tariff cuts envisaged under the Agreement if they comply with the rules of origin described in Chapter 3 of the Agreement. The Agreement stipulates that a good qualifies for preferential treatment if it is wholly obtained in the territory of one or both Parties; if the good is produced in the territory of one or both Parties exclusively from originated material; or, in the case of non-originating materials, conforms to a change in tariff classification, a regional value content, a process requirement or other specific requirements.

³ Rights to exploit include those rights of access to the fisheries resources of a coastal State, as accruing from any agreements or arrangements between a Party and the coastal State.

⁴ In a handful of cases, the change in tariff classification envisaged is at the four-digit level.

13. Fish, shellfish and other marine life obtained by fishing or aquaculture in the territories of Peru or China is automatically considered to be wholly obtained.⁵ Catch taken outside these respective areas is considered wholly obtained if fished by a vessel flying the flag of Peru or China or if processed aboard a factory vessel flying either flag.

14. Regarding SPS requirements, the Agreement incorporates existing WTO disciplines. It goes slightly further by stating that the importing Party shall accept the SPS measures of the other Party as equivalent if the other Party objectively demonstrates that the measures achieve an appropriate level of protection.

15. The Agreement creates a Committee on Trade in Goods, comprised of representatives from each Party, to consider market access, rules of origin and trade facilitation matters. Its primary function is to address concerns associated with tariffs and non-tariff measures (NTMs). The establishment of an ad hoc Working Group on Trade in Agricultural and Fishery Goods is also foreseen to address any specific obstacles to trade in such goods.

16. Aside from market access considerations, Chapter 12, which deals with cooperation, lists a range of sectors in which both Parties commit to collaborate. Article 163 is specific to the fisheries and aquaculture sector and calls for cooperation to strengthen the “research and productive capacities for the development of crops and processing of hydro-biological species”, and “facilitate information exchange and the conservation of natural resources, under the approach of responsible fishing”. Parties also commit to strengthen public and private institutions related to fisheries and aquaculture development, promote the consumption of hydro-biological resources, and combat illegal, unreported, and unregulated (IUU) fishing.

17. The China-Peru FTA does not contain a specific chapter dealing with the environment or sustainable development. However, it refers to the general environmental exceptions provided in the WTO under Article XX, clarifying that the measures referred to in subparagraph (b) include environmental measures and that the reference to natural resources includes both the conservation of living and non-living exhaustible natural resources.

THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)

18. The AfCFTA aims to create a single continental market for goods and services, supported by the free movement of businesspersons and investments, while paving the way for a continent-wide customs union. Members have a population of 1.3 billion across 55 countries, with a combined GDP of USD 3.4 trillion; the Agreement can lift 30 million people from extreme poverty.⁶ Estimates suggest that when implemented the deal could boost intra-African trade by 52.3 percent by eliminating import tariffs, or even more if non-tariff barriers are also reduced.⁷ While negotiations are still ongoing in some areas, including on specific schedules of tariff concessions and certain aspects of rules of origin, the Agreement entered into force on 30 May 2019 for the 24 countries that had deposited their instruments of ratification. Currently, 41 countries have complied with their domestic ratification requirements.

19. Specifically, regarding fisheries and aquaculture products, the combined production of the countries involved in the AfCFTA negotiations averages 12.2 million tonnes annually, representing close to 7 percent of global production. Intra-regional trade between potential AfCFTA members is equivalent to 18.6 percent of the continent's total fish exports.

⁵ Crustaceans, molluscs and other aquatic invertebrates produced from aquaculture shall be deemed originating even if they were cultivated from non-originating fry or larvae, provided they meet specific requirements in terms of weight and time spent in the grow-out phase.

⁶ openknowledge.worldbank.org/bitstream/handle/10986/34139/9781464815591.pdf.

⁷ tralac.org/resources/our-resources/6730-continental-free-trade-area-cfta.html.

20. Starting in 2020, the majority of Parties will eliminate duties on 90 percent of tariff lines over five years. Different commitments apply in the case of Least Developed Countries (LDCs), which will eliminate 90 percent of tariff lines over 10 years. From 2025 onwards, duties on an additional 7 percent of tariff lines will be progressively removed over five years, although LDCs will have 8 years to follow suite. Parties can exclude up to 3 percent of their total tariff lines from any liberalization commitments, provided that these lines do not account for more than 10 percent of intracontinental imports.⁸ Several countries and regional communities had already circulated their tariff offers and schedules of trade liberalization, which include fisheries and aquaculture products. Currently, negotiations on the exact coverage and pace of trade liberalization by product were still ongoing.⁹

21. While certain aspects of the AfCFTA rules of origin are still under negotiation, the overall agreement will follow the general approach used in most regional economic communities on the continent. Given the large number of Member countries, provisions for cumulative rules of origin, which will de facto consider the whole continent to be a single territory when determining origin, will be highly advantageous. Any processing of inputs from another African country will be regarded as originating in the country where the final processing occurs.

22. Generally, a product is considered originating if it has been wholly obtained in a Party or has undergone substantial transformation based on value addition criteria, a change in tariff heading, specific processes, or non-originating material content. Fish is considered wholly obtained if fished within the 12 nautical mile territorial sea. In the case of aquaculture, fish must be born, raised, or born and raised in a Party's territory, from eggs, larvae, fry, or fingerlings that were obtained from a Party to the Agreement. Beyond the territorial sea, products are considered wholly obtained if taken by a Party vessel, or processed aboard a Party factory ship with fish taken by a Party vessel. To qualify as a Party vessel or factory ship, the vessel must be registered in a Party and carry its flag. At least 50 percent of the officers or the crew must be nationals of the Parties. Alternatively, the majority of the equity holding must be held by nationals, institutions, agencies, enterprises, or corporations of a Party. Under Chapter 3 of the Harmonized System, products should be wholly obtained to qualify as originating.

23. The AfCFTA seeks to eliminate NTMs and discourage countries from introducing new ones. It largely incorporates existing WTO provisions for SPS measures. It also introduces a "Dashboard Continental Online Mechanism for Monitoring, Reporting and Elimination of Non-Tariff Barriers" open to small, including informal traders, medium, and large companies to identify and report obstacles encountered when trading goods across the continent, such as excessive delays, ad hoc fees, cumbersome requirements and restrictive product standards.

24. Additional aspects, including environmental provisions or possible areas of cooperation on fish, were still outstanding and could be covered in the future under additional protocols.

CONCLUSION

25. Trade agreements that give preferential access are becoming more complex, involving specific rules of origin for fisheries and aquaculture products, additional complying rules addressing sustainability aspects, different transition periods and product coverage, among other elements. The development of a comprehensive database by FAO on trade agreements from a fisheries and aquaculture angle can foster information dissemination, generating multiple benefits to the private sector and governments, particularly considering the existing specificities, including the origin of products and the NTM aspects. The preferential trade flow between the involved parties can be facilitated and increased through a widely and systematically organized dissemination of preferential tariffs, concession schedules and different transition periods, the rules of origin applicable to fisheries and aquaculture products, new non-traditional trade rules (sustainability aspects, IUU clauses, fisheries subsidies

⁸ afcfta.au.int/en/schedules-tariff-concessions.

⁹ tralac.org/documents/resources/infographics/4276-afcfta-comparative-tariff-offer-analysis-march-2021/file.html

limitations), among other associated elements of preferential access. Finally, disseminating information about trade agreements from a fisheries and aquaculture perspective can also technically support Members in engaging in other preferential negotiation processes by informing about past examples, current trends and new approaches.