



COMMITTEE ON FISHERIES

SUB-COMMITTEE ON FISH TRADE

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RECENT TRADE AGREEMENTS AND MARKET ACCESS FOR FISH AND FISHERY PRODUCTS

Executive Summary

This document provides an overview of the main Regional Trade Agreements' (RTAs) provisions applying to trade in fish and fishery products. Some of the most ambitious deep integration agreements concluded recently are presented, covering both traditional market access issues, including tariffs and non-tariff barriers, but also some of the non-traditional areas such as environmental provisions and subsidies disciplines.

Suggested action by the Sub-Committee

- Share national experience in engaging in RTAs and the main associated challenges;
- Discuss the change in the last years of the benefit provided by tariff preferences in RTAs, taking into consideration that applied rates on fish and fishery products are already relatively low;
- Comment on the rules of origin for fish and fishery products to ensure preferential benefits in RTAs;
- Comment on the non-traditional provisions being introduced in RTAs;
- Provide guidance regarding the future development of a comprehensive study by FAO on RTAs focusing on fish and fishery products, in order to facilitate the dissemination of the main aspects and rules involved in preferential access, as well as highlighting new trends;
- Consider mechanisms for providing financial support to develop such a comprehensive study.

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INTRODUCTION

1. RTAs, defined as reciprocal preferential trade agreements between two or more partners, have become a critical *locus* for global trade integration in the last years. The slow progress on trade talks at the multilateral level led many governments to pursue bilateral and regional trade deals with key trading partners, or advance regional integration through preferential agreements. According to the World Trade Organization (WTO), 294 agreements are currently in force, with several more under negotiation. Over time, these agreements have become broader in scope, more sophisticated and deeper in integration.
2. In the case of fish and fishery products, recent deep integration agreements are increasingly incorporating non-traditional disciplines, such as binding environmental provisions or disciplines that prohibit certain forms of fisheries subsidies. When negotiated among large producers, traders or consumers of fish, such disciplines also have the potential to significantly influence global production, management and trade in fish resources.
3. The trade provisions contained in RTAs essentially generate obligations for the involved parties, but their benefits ultimately extend to all trading partners on a Most-Favored-Nation (MFN) basis. In addition, by improving fish stocks management, promoting conservation measures and disciplines on fisheries subsidies and strengthening the fight against illegal, unreported and unregulated (IUU) fishing, parties to the RTAs can also contribute to the preservation of a common good for the benefit of all.
4. With the proliferation of RTAs, navigating the full range, interplay and implications of their provisions becomes increasingly challenging, particularly for developing countries. For countries not participating in these agreements, ensuring that these initiatives do not divert trade but do ensure smooth interoperability with other agreements relevant to their regions is also critical.
5. In this regard, taking into consideration new areas covered by RTAs and the possible effect of these new provisions in other trade agreements and even in multilateral negotiations, the importance of having a comprehensive analysis of this phenomenon and the clauses and particularities involved can better inform Members on this recent trend involving trade regulations.

THE COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIPS (CPTPP)

6. The CPTPP is a free trade agreement signed in March 2018 amongst 11 Members: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Viet Nam.
7. These economies account for 13.3 percent of the world gross domestic product, and trade among them exceeds USD 400 billion a year. These parties are also significant consumers, producers and traders of fish products – six of the 11 CPTPP countries rank among the top 20 producers of marine capture fisheries. Together, they account for nearly 14 percent of the world fisheries and aquaculture production and intra-CPTPP trade in fish products reached about USD 6.3 billion in 2017 and further increased in 2018.
8. The agreement contains 30 chapters covering a wide range of topics from labour standards, through investment to electronic commerce and envisages deep liberalization commitments. Most notably, the agreement is the first to establish binding and enforceable disciplines on fisheries subsidies. It also contains a series of new commitments to eliminate IUU fishing and re-build stocks under its

environmental chapter. The agreement will ultimately eliminate all tariff barriers on fish products providing parties with significantly enhanced market access opportunities. It will also eliminate tariff escalation, where higher rates are applied to transformed or processed products.

9. Fish and fishery products benefit from the tariff cuts envisaged in the CPTPP if they are wholly obtained or produced entirely in the territory of one or more of the parties. Fish, shellfish and other marine life products are considered wholly obtained if they are taken from the sea, seabed, or subsoil outside the territories of CPTPP partner countries or outside the territorial sea of non-partner countries by vessels that are registered, listed or recorded with a CPTPP partner country and entitled to fly the flag of that partner country. This includes processed fish produced from these goods on board a factory ship that is registered, listed or recorded with a CPTPP partner country and entitled to fly the flag of that country. A product can also qualify as CPTPP originating if it is made of non-originating material which has been substantially transformed in a CPTPP country.

10. The chapters of CPTPP on Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT) largely incorporate WTO provisions. They essentially call for science-based SPS measures to be implemented in a transparent, predictable and non-discriminatory manner, while preserving the parties' ability to regulate and protect food safety. TBT measures are subject to enhanced transparency requirements and reducing unnecessary testing and certification costs.

11. Some of the most innovative provisions in trade agreements for fish and fishery products are contained in Chapter 20, dealing with the environment. It aims to promote mutually supportive trade and environmental policies, high levels of environmental protection, effective enforcement of environmental laws and enhanced capacities to address trade-related environmental issues, including through cooperation. The chapter defines general commitment to work cooperatively, but also enforceable substantive obligations across a number of environmental issues including environmental goods and services, the protection of the ozone layer, ship pollution, biodiversity conservation, invasive species, illegal wildlife trade and marine capture fisheries, excluding aquaculture.

12. With respect to marine capture fisheries, Article 20.16 acknowledges that inadequate fisheries management, together with IUU and certain forms of fisheries subsidies, can have significant negative impacts on trade and sustainable development and recognizes the need for individual and collective action. More specifically, parties commit to seek to operate management systems that prevent overfishing and overcapacity; reduce bycatch of non-target species and juveniles; and promote the recovery of overfished stocks for all marine fisheries in which fishing activities are conducted.

13. In order to ensure that such management systems are based on the best scientific evidence available and internationally recognized best practices, Chapter 20 makes direct reference to a long list of international instruments¹. The promotion of the long-term conservation of sharks, marine turtles, seabirds and marine mammals through effective enforcement of conservation and management measures, and the importance of concerted action to address IUU fishing, making specific references to several key FAO instruments², are also present. Parties commit to support monitoring, control, surveillance, compliance and enforcement systems; deter IUU fishing activities; address the transshipment at sea of fish or fishery products caught through IUU fishing; implement port state measures; and strive to act consistently with management measures adopted by Regional Fisheries Management Organizations (RFMOs) of which they are not a member.

¹ The 1995 United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea (UNCLOS) of December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement), the FAO Code of Conduct for Responsible Fisheries, the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement) and the 2001 FAO IUU fishing International Plan of Action.

² The 2001 FAO IUU fishing International Plan of Action, the 2005 Rome Declaration on IUU fishing, the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU fishing, as well as instruments establishing and adopted by RFMOs.

14. For the first time in a free trade agreement, there is a binding prohibition³ of subsidies for fishing that negatively affect fish stocks that are in an overfished condition⁴, and to any fishing vessel listed for IUU fishing by the flag State, a relevant RFMO or Arrangement⁵. Subsidies to overfished stocks are to be phased out within three years after the entry into force of the Agreement. To the extent that a subsidy is not prohibited, parties should refrain from introducing new, or extending, or enhancing existing subsidies. Parties must notify the various forms of support they provide to the sector including not only the prohibited ones but also any other fisheries subsidies that are granted or maintained, including for fuel. Notification requirements include information on the status of the fish stocks, fleet capacity, conservation and management measures, and import and export data per species, among others.

THE UNITED STATES-MEXICO-CANADA AGREEMENT (USMCA)

15. The USMCA will replace the current North American Free Trade Agreement (NAFTA), which governs trade between Canada, Mexico and the United States of America. However, it still needs to be ratified by the United States of America and Canada. The agreement provides an updated framework to govern the USD 1 trillion trade among the parties, including roughly USD 5 billion in fish and fishery products. Its environment chapter provides one of the most comprehensive sets of enforceable environmental obligations, including disciplines on fisheries subsidies.

16. Tariff barriers among the three countries have already been removed under NAFTA. Applied tariffs among the three parties are therefore at zero and the USMCA maintains this duty-free commitment. The rules of origin recognize origin if a good is entirely produced or wholly obtained in a USMCA country. For certain products, including fish products, contain non-originating material, a change in tariff classification is sufficient to meet the rules of origin requirements. On SPS and TBT, the USMCA introduces a new mechanism to seek technical consultations to resolve issues before using the formal dispute settlement mechanism. On TBT, the USMCA includes a commitment to engage with public sector experts on standards, harmonization and assessment.

17. The enforceability of domestic environmental law⁶ obligations is emphasized by stating that no party shall waive or derogate from environmental law to encourage trade or investment. In addition, the text establishes enforceable substantive obligations across a number of environmental issues, such as marine litter, air quality, sustainable forest management or corporate social responsibility. References to implementing commitments under multilateral environmental agreements include the Montreal Protocol, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the UNCLOS and various FAO instruments related to fisheries management, including IUU fishing.

18. Issues involving marine capture fisheries, sustainable fisheries management, the conservation of marine species, fisheries subsidies and IUU fishing are also present in the Agreement⁷. The text recognizes the importance of conservation and management of fisheries resources and the need to promote and facilitate sustainable trade. In this respect, it recognizes that trade restrictive measures applied to protect or conserve fish or other marine species shall be based on the best scientific evidence available, tailored to conservation objectives, and implemented after consultations with exporting parties. Regarding sustainable fisheries management, provisions are present to prevent overfishing and

³ Only applicable to specific subsidies as defined under Article 2 of the WTO Agreement on Subsidies and Countervailing Measures.

⁴ Overfished stocks are defined in the CPTPP agreement as stocks which are at “such a low level that mortality from fishing needs to be restricted to allow the stock to rebuild to a level that produces maximum sustainable yield or alternative reference points based on the best scientific evidence available”. In addition to this definition, fish stocks that are recognized as such by the national jurisdiction where the fishing is taking place or by a relevant RFMO shall also be considered overfished.

⁵ Article 20.16(5).

⁶ Chapter 24.

⁷ Articles 24.17 to 24.21.

overcapacity, reduce bycatch and promote stocks recovery, complemented by the protection of marine habitat and a commitment to prohibit the use of poisons and explosives for commercial fish harvesting and to ban the practice of shark finning. The long-term conservation of sharks, marine turtles, seabirds and marine mammals⁸ includes a list of measures that shall be taken by the parties, such as the use of bycatch mitigation devices or modified gear to limit bycatch of non-target species. It also includes a binding prohibition on the killing of great whales for commercial purposes, unless authorized in a multilateral treaty.

19. Fisheries subsidies⁹ largely replicate the approach taken by the CPTPP¹⁰. The prohibitions apply to both subsidies to IUU fishing and subsidies negatively affecting stocks that are in an overfished condition, with requirements in terms of standstill, transparency and notification. In the USMCA, the IUU prohibition refers not only to vessels but also operators, which can broaden the scope of the disciplines in cases where the same operator owns different fishing vessels. The text also calls for annual notifications of vessels and operators that have been identified as having engaged in IUU fishing. Finally, the text includes a commitment by the parties to work in the WTO towards strengthening international rules and transparency on fisheries subsidies.

THE EUROPEAN UNION-CANADA COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA)

20. The CETA is a deep integration agreement between the European Union and Canada signed in October 2016. The European Commission has proposed it as a “mixed agreement,” requiring ratification of both the European Union parliament and each of the European Union member states. Since 21 September 2017, the Agreement – with the exclusion of investment provisions – has been applied on a provisional basis, while individual European Union member states go through the ratification process. The 30 chapters of the CETA cover a wide range of topics ranging from digital trade through regulatory cooperation to investment protection, and sets the rule governing the USD 70 billion trade in goods, including USD 600 million in fish and fishery products. The countries involved account together for 4.6 percent of the world’s fisheries and aquaculture production.

21. The agreement eliminates all tariffs on fish and fishery products for the participating countries of the Agreement. In the case of Canada, where applied rates on an MFN basis are relatively low and mainly concentrated on processed products, all tariffs will be eliminated upon entry into force of the agreements. In the case of the European Union, 96 percent of all tariff lines will be eliminated immediately. The remaining 4 percent will be phased out over a transition period of up to seven years, with all products being allowed duty-free on the eighth year of implementation. The European Union will also maintain transitional tariff-rate quotas on frozen cod fillets and prepared and preserved shrimp, to be phased out after seven years¹¹.

22. Fish products that wholly originate in the territory of a party are eligible for preferential market access under CETA. These include fish caught within Canadian or European Union territorial waters. Beyond the territorial waters, however, fish and fishery products caught in the exclusive economic zone of a party or the high seas are not automatically considered as originating from one of the parties. Instead, there is a series of complex requirements granting the origin status based on the nationality of the fishing fleet, including the need to be registered or authorized to fly the flag of a party, but also requirements regarding the ownership of the vessel, and the location of the head office of the owner. As a general rule, processed products only qualify for preferential market access if made exclusively of wholly originating products. However, the agreement provides for exceptions in the form of

⁸ Article 24.19.

⁹ Article 24.20.

¹⁰ Article 20.16 (5)–(12).

¹¹ These quotas allow for duty-free access of 23 000 tonnes of shrimps and 1 000 tonnes of cod annually.

alternative and more liberal rules of origin for certain fish and fishery products, subject to annual quantitative limits.

23. As in most trade agreements, the CETA incorporates the WTO TBT and SPS Agreements and subjects them to the CETA dispute settlement. It also includes commitments to encourage cooperation through information exchange and transparency early in the regulatory development process. The SPS chapter, in particular, establishes a framework for Canada and the European Union to recognize each other's SPS measures as equivalent, including for fish and fishery products.

24. On sustainable development¹², CETA calls for coordination and integration of environmental and trade policies; dialogue and cooperation between the parties; enhanced enforcement of their respective laws and international agreements; and the use of impact assessment and stakeholder consultations¹³. Beyond cooperation, the parties are also encouraged to promote ecolabelling and fairtrade schemes, corporate social responsibility and the improvement of environmental performance goals and standards¹⁴.

25. Environmental provisions, both general commitments and specific obligations on a range of topics such as forestry, and trade in fish and fishery products, are dealt in Chapter 24. General commitments include a reaffirmation of the parties' right to regulate, and a commitment to implement their respective Multilateral Environmental Agreements¹⁵ and the use of no waiver or derogation from its environmental law to encourage trade or investment. It also contains a commitment to collaborate on a wide range of trade-related environmental issues, including climate change, green technologies, biodiversity, life-cycle analysis or waste reduction.

26. Trade in fish and fishery products is included in Article 24.11. It recognizes the importance of conservation and sustainable management, and calls the parties to undertake effective monitoring, control and surveillance measures and associated sanctions aimed at the conservation of stocks and prevention of overfishing. A similar commitment applies to actions to combat IUU, including through exchange of information and measures taken to exclude IUU products from trade flows. Finally, the article calls for cooperation with RFMOs by advocating for science-based decisions, related decision-based compliance and the promotion of sustainable aquaculture.

27. The shared objective of the European Union and Canada to develop a global, multilateral resolution to fisheries subsidies is mentioned in Article 7.4. It states that if a subsidy granted by any party is adversely affecting, or may adversely affect, interests of the parties, consultations should start. Based on the consultations, the responding party will use its best endeavour to eliminate or minimize any adverse effects of the subsidy.

¹² Chapter 22.

¹³ Article 22.1.

¹⁴ Article 22.3.

¹⁵ Articles 24.3 and 24.4.