



FFA FISHERIES TRADE BRIEFING

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Fisheries Subsidies

WTO negotiations on fisheries subsidies disciplines are stalled

A meeting to discuss the Chair's matrix covering fisheries subsidies had been planned for the last week of June, but this was cancelled. This was the result of the failure of WTO Members to reach agreement on the core issues of Agriculture and Non-Agricultural Market Access (NAMA, i.e. industrial goods). If the Doha Round is suspended (or collapses), some PIC exporters might breathe a sigh of relief to the extent that the current 24 percent preference for market access to EU markets for canned tuna and tuna loins, and 15-18 percent on fresh and frozen fish fillets respectively, will not be eroded under NAMA tariff liberalisation (see *Fisheries Trade Briefing*, February 2008 for an overview). However, given the ongoing increases in fuel prices and the difficulties for fiscally-squeezed PIC governments to provide fuel subsidies to their domestic industry, without disciplines on fisheries subsidies local firms may face deeper long-term competition from foreign fleets whose governments are in the position to subsidise (see the following report). For example, representatives of the tuna longlining industry in Fiji and PNG already maintain that they cannot compete with vessels from China and the EU, because, among other factors, the latter receive such heavy subsidies from their governments.²

The fuel crisis, fisheries subsidies and suspension of East Asian tuna operations

As noted in last months' *Briefing*, and well known among PIC industry, ever-increasing fuel prices are hitting the profitability of fishing worldwide. This has resulted in heightened demand for fisheries subsidies. In mid-June, the European Commission has agreed to a package of measures, including temporary derogations to the rules of the European Fisheries Fund, to address the problems facing **EU fishers**, which is likely to be passed through the Council of Ministers in July. The measures 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 stoppage of activities.³ The **Korean** government has announced a new subsidy that covers 50 percent of the rise in diesel oil prices to be provided to self-employed drivers, farmers and fishers from July.⁴ Similarly, in the **USA**, the fishing industry in Massachusetts was allocated a relief package of USD13.4 million in June, with the majority provided for the upkeep of vessels and the rest to crew members to meet mortgage payments and health care requirements.⁵

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In terms of impacts specific to the tuna industry, a combination of the fuel crisis, increased demand and issues around the health of several tuna stocks, has led to a boom in tuna prices. Demand has been spurred by the rise in grain prices (which is used as animal feed) leading to tuna being seen as an alternative source of protein. This has led one report by a Korean firm, Woori Investment & Securities, estimating that: 'the demand for tuna used for sandwich fillings and salads has been augmented, a trend which is being led by Europe. With emerging countries such as China and Russia joining in, global demand for canned tuna will go up by 600,000 tons, or 50 percent'.⁶

However, with the doubling of heavy diesel oil (used by longliners) compared to 2008, this demand is unlikely to be met by increased supply, and, citing the *Financial Times*, the report estimated that as much as one-third of the global longline fleet may remain tied up for the rest of 2008.⁷ Important developments have occurred since this report: the impact of rising fuel costs on profitability has led tuna longline associations from China, Japan, South Korea and Taiwan to agree to reduce fishing for several months, which together account for an estimated 90 percent of the global distant-water tuna longline fleet. Vessels from China, South Korea and Taiwan had *already* stopped activities in June. Japan Tuna (the tuna fishing industry association) has stated that it might suspend the operations of 20 percent of its 2,000 boats in July. In total, 30 percent of the global long-line fishing fleet is expected to suspend operations.⁸ The suspension and the associated reduction in supply are expected to lead to higher prices for bigeye and yellowfin tuna, which will have positive implications for PIC longline firms.

Preferential and Free Trade Agreements

EU FTA negotiations with other developing countries

With the current stall in Doha Round negotiations at the WTO countries will only deepen their engagement in strategies for improved market access through Free Trade Agreements (FTAs). In fact, the EU has made it clear that it is actively pursuing a policy of negotiating FTAs because of the problems at the WTO.⁹ The rise of FTAs is important for PICs that use trade preferences to access principal markets (such as the EU) because other developing countries that export the same products as PICs may receive similar preferences. However, unlike the US, the EU does not have a 'model FTA' to form a framework in negotiations with all countries/regional groups, this opens the possibility that market access for fish and fish products will be negotiated in return for more prominent EU interests.

EU FTA negotiations with Mexico, the Andean Community and Central America are an area of concern as all of these countries and regional groups produce a range of tuna products.¹⁰ EU FTA

The fuel crisis has led to new fisheries subsidies in the EU, Korea and the US

The global food crisis has led to increased demand for tuna, but supply is a problem because of fuel costs and stock issues

China, Japan, South Korea and Taiwan agree to reduce tuna longline fishing for several months



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negotiations with the **Andean Community** are now at an advanced stage,¹¹ while the Andean Community countries (including Ecuador, a major tuna processor) all currently benefit from duty-free market access for tuna under the GSP+, it is not known whether or not this will lead to revised rules of origin and thus improved market access. However, like EPAs, these negotiations are not without their problems. Not only is there important opposition to FTAs by social movements in Latin America, but opposition by the Andean Community to a new and highly draconian EU immigration law threatens to stall the talks.¹² In addition, the lobby for EU fishing and fish processing industry (including tuna) has raised concerns 'that this liberalisation would be detrimental to the fisheries industry'.¹³

The EU is also pursuing a strategy of negotiating FTAs with the ASEAN group (which includes Indonesia, the Philippines and Thailand), Korea and India. These FTAs 'are intended to go wider and deeper' than, for example EPAs, and be 'serious, commercially-relevant' agreements with far greater concessions expected on the part of developing country partners.¹⁴

By far the most important of these in terms of competing tuna exports is the proposed FTA with **ASEAN**, although, according to the EC, this is 'at a very early stage' as negotiations have not yet started, discussions are only oriented around the 'informal exchange of information'.¹⁵ Nonetheless, there are long-standing tensions between Indonesia, the Philippines and Thailand and the EU in relation to the historical ACP preference for canned tuna and tuna loins, and Thailand in particular has been pursuing FTAs as a strategy to deepen its market power in the global tuna industry. As such, it is expected that market access for tuna products will figure highly in negotiations when they commence. While market access for fish and fish products will be a relatively low priority for the highly developed economy of **Korea**, the aggressive market access interests of some of its firms (such as Dongwon in the US, see the report on American Samoa below) might mean that fisheries plays a role.

Some commentators claim that an **EU-India FTA** is likely to be limited because India's existing 'FTAs are weak and commercially nonsensical'.¹⁶ But India has started to focus on the development of its export-orientated seafood industry (it already supplies 10 percent of EU imports of frozen shrimps and 21 percent of frozen cuttlefish and squid). As a result there is the possibility that it might demand improved access to EU markets for fish and fish products.¹⁷ For example, fishers in Goa registered a record catch of yellow fin in 2006/7 worth USD 29.54 million, an 88 percent increase over the previous year.¹⁸ Moreover, at the Tuna 2008 conference in Bangkok the Indian government's Marine Products Export Development Authority (MPEDA) unveiled a plan to expand India's tuna exports ten-fold by 2014 to an annual level of USD 500 million. The MPEDA chairman said that, while 'it's an ambitious dream ... India is determined to develop its tuna sector, at least as much as any other part of its seafood industry'.¹⁹

The stall of the Doha Round will deepen the shift to Free Trade Agreements

ASEAN-EU FTA discussions are at a very early stage

An EU-India FTA may end up 'weak', but opportunities for improved market access for tuna are present.



Developments in other FTA negotiations

As reported in last April's issue of this *Briefing*, the **Japan-Philippines FTA** (known as the Japan-Philippines Economic Partnership Agreement or JPEPA) has been under critical scrutiny because of the awarding of constitutional rights to Japanese citizens, as well as because it would provide the Japanese distant water fleet access to the Philippine EEZ. Reports state that Japan has made concessions regarding inconsistencies or violations of the Philippine Constitution, and it is now believed that the Philippine Senate will ratify the Agreement in July.²⁰ The status of the controversial fisheries aspects of the JPEPA are not known.

Negotiations for an FTA between **ASEAN and Australia and New Zealand** (ANZ) are at a fairly advanced stage, with the possibility that substantial progress will be made by end-2008. According to the Australian Minister for Trade, Simon Crean, 'ministers did not identify any issue as being beyond resolution'.²¹ This has minor implications for PIC discussions with ANZ for a Pacific Agreement on Closer Economic Relations (PACER) in terms of market access for fish. However, this is probably a moot point as ANZ MFN tariffs for canned tuna are already very low (5 percent), and ANZ has already concluded FTAs with Thailand (Australia in October 2003 and New Zealand in January 2005), which provide for a phase-out of Australia's tariff on canned tuna to 0 percent by 2009.²² Nonetheless, an FTA with ASEAN is likely to deepen competition for PIC fish exports in ANZ. This competition will certainly be deepened further in light of the signing of an FTA between **China and New Zealand** in April. This was the first FTA between China and a developed country (negotiations with Australia are ongoing). This reflects a new tack by the Chinese government, which reportedly prefers to negotiate FTAs than multilateral liberalisation at the WTO because the 'bilateral negotiation is usually focused on the substantial interests of each partner without paying much attention to the ideological issues'.²³

New study comparing fisheries aspects of interim EPAs: the case of rules of origin

The International Centre for Trade and Sustainable Development commissioned a study to compare the fisheries-aspects of interim Economic Partnership Agreements (IEPAs), including analysis of fisheries chapters, rules of origin and preference erosion.²⁴ The study has not been officially released, but a summary of the comparative assessment of fisheries rules of origin (RoO) was published in the ICTSD *Trade Negotiations Insights*.²⁵ The study found that there is almost no substantive change in the definition of '**wholly obtained**' fish in initialled IEPAs compared to the Cotonou Agreement. It is still defined by the EC's definition of 'qualifying vessels' which still requires the vessel to be flagged, registered and 50% owned by nationals of parties to the agreement. There are however, four differences:

It is believed that the Philippine Senate will ratify the FTA with Japan

ANZ FTAs with ASEAN and China are likely to heighten competition with PIC exports in ANZ markets



1) *Crew requirement*: The requirement under the Cotonou a 'qualifying vessel's' crew had to consist of 50 percent nationals of the parties to the agreement has been deleted. EU industry had requested this change so as to give vessel owners more flexibility in the hiring of crew (including, presumably, cheaper labour).

2) *Vessel ownership*: The definition of a qualifying vessel still requires it to be flagged and registered by one of the parties to the agreement; the only change is a limited degree of simplification to the ownership criteria in relation to *companies*. The straight 50 percent ownership by *nationals* of parties to the agreement remains, but for the alternative option of company ownership it now only has to have 'its head office and ... main place of business' in an EC or EPA state (rather than the additional component that the Chairperson and board members must all be nationals), but 50 percent of ownership must still be held by an entity based in one of the parties to the agreement.

3) *Leasing/chartering of vessels*: Under EPAs, states are allowed to make use of this arrangement if EU fishing interests have *first* been offered (and refused) the opportunity to lease or charter. This is a significant change from the Cotonou rule which demanded that the EU fleet had to first refuse an offer of an *access agreement* by the requesting state before the latter could apply to lease or charter a vessel for the purpose of catching 'wholly obtained' fish. However, the text on this provision in Annex II, Article 3 of the Council Regulation (EC) No. 1528/2007 of 20 December 2007, on Rules of Origin is different from that detailed in all of the IEPA texts, and in fact is exactly the same as under the Cotonou Agreement. The reason for this difference is unclear, and, if the difference became important in that an EPA wanted to utilise the leasing/chartering provision, it is not known which of the texts will hold legal sway (i.e. ACP states did not sign the Council Regulation, but for the EC, it is the ultimate legal document).

4) *Relationship to Overseas Countries and Territories of the European Communities (OCTs)*:²⁶ Unlike in the Cotonou Agreement, OCTs are not included in the text on qualifying vessels. This effectively excludes OCT vessels from being able to supply 'wholly obtained' fish to EPA countries. This is an unexpected flaw in IEPA texts and in operational terms is problematic as some EU-owned vessels are registered in OCTs thereby limiting the total potential supply of originating fish to exporters/processors based in IEPA countries. This issue is probably not in the interests of either the ACP or the EC and as such should be easily ironed out in negotiations for comprehensive EPAs.

The other major aspect of EU fisheries RoO is the definition of '**sufficiently worked or processed products**'. The global sourcing RoO negotiated by the PACP was already reported in last December's issue of this *Briefing* and will not be repeated here, except to note to PIC firms that this rule allows global sourcing for *all* fish products under Chapters 16.04 and 16.05 of the Harmonised System of Tariff Classification (HS), not just canned tuna and tuna loins. The other

There are four differences between EPA rules of origin on 'qualifying vessels' compared to Cotonou rules



change in EPA RoO for fish is the new 'value tolerance' (or *de minimis*) provision of 15 percent, which is identical in all Agreements initialled to date. The 'concession' here is that up to 15 percent of the post-processing (or 'ex-works') value of the fish may be non-originating. For example, a manufacturer of canned fish may use non-originating fish to a maximum value of 15 percent of the total value of *the fish* that is canned using the ex-works price. All other inputs – such as the can, packing material (e.g. oil or water) – may be non-originating.

The practical benefit of the new value tolerance rule is potentially very limited, in part depending upon how it is interpreted. For sure it still requires 85 percent of the value of fish to emanate from originating sources. But there are two interpretations on how this rule might work in practice: first, that the 15 percent value tolerance can only be applied if 85 percent of the fish *in a consignment* is wholly obtained;²⁷ second, that the 15 percent can be used at a point in a year when there is no originating fish (i.e. *an entire consignment* may be of non-originating fish). The issue of interpretation is clearly a point that the EC must be asked to clear-up not least because – if the first interpretation is applied – the rule may actually be more onerous than under the Cotonou Agreement in terms of the value of non-originating fish that may be used. Consider the following stylised example:²⁸ Under the old value tolerance provisions of the Cotonou Agreement the following scenario would be compliant:²⁹

Cost of processed canned fish including mark up = \$150

Cost of fish material = \$100

Packaging, etc. = \$30

15 percent value tolerance means that 22.5 percent non-originating fish could be used, provided that *all* the other materials (packaging, etc.) are local (which is unlikely as, for example, the metal for cans is imported by all PIC processors).

Under the *revised* value tolerance rules for fish, based on the above scenario:

15 percent value tolerance on fish material = only \$15

All packaging, etc., is permitted be non-originating, so \$15 non-originating fish plus \$30 non-originating packaging = \$45 total non-originating inputs.

Thus the new rule translates into a higher non-originating allowance in *total*, but less non-originating *fish* is allowed. In other words, under the old regime there was *theoretically* better access to non-originating *fish*. In *practice* this scenario may be defunct, because, as already noted, no PIC fish processor uses 100 percent non-originating packaging, but in principle it serves to highlight the potential weaknesses of the new provision. However, if the second interpretation stands – that *an entire consignment* may be non-originating if it is under 15 percent of annual exports to the EU – then the new rule probably has commercial utility.

There are two interpretations on how the EPA 'value tolerance' rule of origin works in practice



Fisheries Trade-related Regulation

Fiji stopped from exporting fish to the EU: As reported in the *Fisheries Trade Briefing* February 2008, the Fijian Competent Authority was being sanctioned by the European Commission because it failed to provide the necessary guarantees that the export of fish products from Fiji was not a risk to EU consumers. Accordingly, European Commission Regulation No 439/2008 of 21 May 2008 declared that Imports into the EU of fishery products from Fiji is no longer be authorised.³⁰ In other words, Fiji was struck off the EC's 'List II', which details all developing countries that are able to export fish to the EU under certain conditions. According to one estimate, prior to this ban, Fiji exported Euro 10 million of fish products to EU, which is the fastest growing market for Fijian seafood exports.³¹ However, the Trade Advisor to the European Commission Delegation in Fiji maintained that this ban would be lifted and Fiji's List II status restored when the EC could be assured that Fijian stakeholders could ensure that fish exports to the EU met with sanitary and phyto-sanitary standards and regulations.³²

New guidebook on negotiating access agreements released: This comprehensive 'reference manual' was produced for coastal developing countries by Kwame Mfodwo of Monash University (Melbourne).³³ At over 300 pages it cannot be adequately summarised here. It addresses a wide-range of aspects of negotiating access arrangements, from tactics and strategy to psychology and methodology, and provides chapters on the specific approaches of a range of distant water fishing nations (including China, the EU, Japan, Korea and Taiwan). This excellent manual should serve as an important tool for PIC governments in improving their positions in future agreements. It is available to download here:

<http://www.csrpsp.org/documents/doctechnique/CSRP%20manuel%20en%20smv.pdf>

'Total lack of progress' in the EU Common Fisheries Policy: The Common Fisheries Policy (CFP) was revised in 2002, in part to improve the management and enforcement of sustainable fishing effort. Importantly for PICs, the European Commission has found that its system of using days-at-sea to manage fishing effort has failed. While the EC notes that most fishers and governments followed this system correctly, some have found ways of getting around it, including a complex system of derogations, 'effectively neutralising the scheme'. In addition, the EC has stated that the CFP system of the allocation of total allowable catch (TAC) has failed, not least because 'short-term political pressures' means that they are set above the level advised by fisheries scientists, which was worsened by inaccurate catch reporting.³⁴ Lessons learnt from the EC's experience using days-at-sea to manage fishing effort might be useful to FFA members in implementing the Vessel Day Scheme (VDS) of the Parties to the Nauru Agreement.

This excellent manual should serve as an important tool for PIC governments in improving their positions in future access agreement negotiations.

The EC has found that its 'days-at-sea' system to manage fishing effort has failed.



Tuna Markets

Issues affecting the Starkist cannery in American Samoa³⁵

In April 2008 Starkist Seafood (the US market leader in canned and pouched tuna) announced that it was introducing cost-cutting measures in order to cope with increases in the minimum wage as legislated by the US Department of Labour.³⁶ In addition, Starkist requested the government to lower the tax rate it was paying on profits so that it could remain in business. Tax concessions were already available but tied to employment levels and investment in infrastructure, factors which Starkist stated should not be part of tax negotiations.³⁷

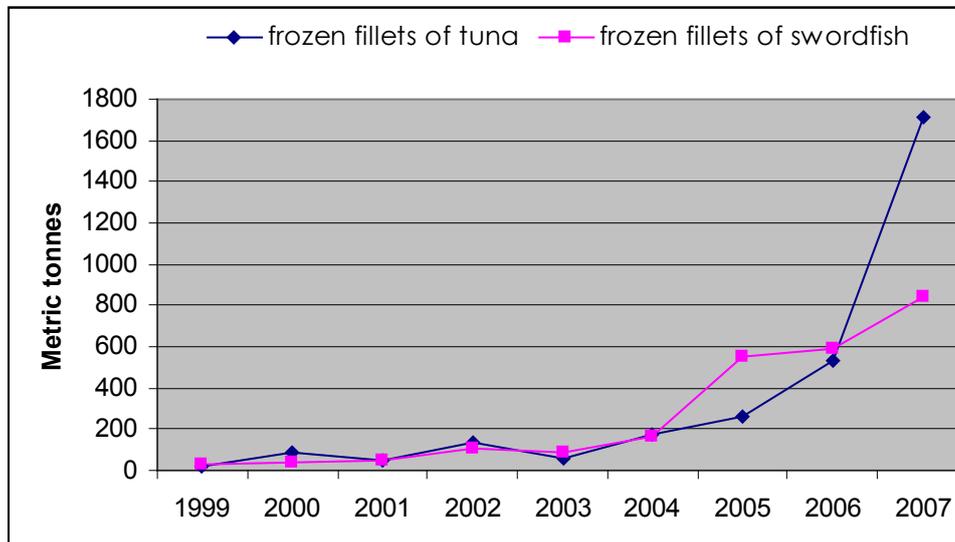
However, Del Monte Foods Company (USA),³⁸ which owns Starkist Seafood, had also made it clear that it wanted to sell Starkist as early January this year, but neither of the other big US tuna brands (Bumble Bee and Chicken of the Sea) were interested in taking it over.³⁹ The reasons behind this move by Del Monte were the high price of fish and the difficulty in increases in retail price because US consumers would shift to a substitute product (i.e. another form of canned protein).⁴⁰ The Dongwon Group (which controls 75 percent of the South Korean market for canned tuna) emerged as the likely candidate to buy Starkist Seafood in a deal worth over USD360 million, as part of its hoped-for expansion into the US market.⁴¹ But the deal was yet to be sealed by end-June, due to disagreements over terms and rumours that other companies were still in the offing.⁴² The implications of this move for the Starkist plant in American Samoa are not yet known.

Vietnam expands processed tuna exports: According to EC statistics, Vietnam only began exporting canned tuna to the EU in 2007 at a value of Euro 10.6 million.⁴³ However, for frozen tuna fillets exports have grown from 23mt in 1999 to 1,710mt in 2007, and from 32mt to 839mt for frozen swordfish steaks (see Figure 1). According to the Ministry of Industry and Trade, the first three quarters of 2008 saw an 23 percent expansion in the value of Vietnam's exports of processed tuna – worth USD 26 million (5,800mt) – compared to the same period in 2007.⁴⁴ In order to better compete with the world's largest seafood exporter, China, the Vietnam Association of Seafood Exporters has called on government to lift import duties on fish, and claimed that the domestic seafood processing industry was only operating at around 30 percent of capacity because of the lack of supply of imported fish.⁴⁵ However, firms had previously experienced problems exporting to France and Spain because of bans on Vietnamese tuna and swordfish products. This was because Vietnam was not a member of – nor had entered into a cooperation agreement with – the West and Central Pacific Fisheries Commission.⁴⁶

The South Korean Dongwon Group has bought Starkist Seafood



Figure 1: Vietnam exports of frozen tuna and swordfish steaks to the EU, 1999-2007



Source: Eurostat <http://ec.europa.eu/eurostat>

Fijian Government objects to 'Fiji Ocean' tuna brand: Canned tuna produced in Chile is being marketed in Canada under the brand name 'Fiji Ocean'. The Fijian Solicitor-General has lodged a formal objection with the Canadian Intellectual Property Registry.⁴⁷

Namibia announces ban on bulk exports of tuna: The rationale behind this government initiative is to encourage domestic processing, which is expected to generate 600-800 additional jobs in the local fisheries sector.⁴⁸ The Namibian Minister of Fisheries informed all firms holding quotas that they had until end-July to submit proposals to set-up processing plant (Namibia receives an annual quota of 4,000 tonnes of bluefin from the International Commission of Atlantic Tuna (ICCAT)).

Follow-up on the food miles/carbon footprint debate

Last month's *Fisheries Trade Briefing* speculated that air-freighted fish products would result in a far higher carbon footprint than those sent by sea. A new report by *Seafish* (the industry authority in the UK) confirmed this point.⁴⁹ It found the following total greenhouse gas (GHG) emissions for three modes of transport:

- For seafreight, a one ton shipment produced 0.017kg of GHG emissions per mile (based upon a shipment from China to London – a distance of 10,900 miles).
- For road transport, one ton produced 0.47kg of GHG per mile (based upon a truck driving the 536 miles from Aberdeen, Scotland to London).

The Vietnamese fish processing industry was operating at around 30 percent of capacity because of the lack of supply of imported fish



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- For air-freight, a ton of product created 3.12kg of GHG per mile (based upon a flight of 1,042 miles from Iceland to London).

However, the situation is not quite so simple: while air-freighting product clearly generates substantial highly GHG emissions than sea and road freight, seafood is very often (almost exclusively in PICs) placed in the cargo-holds of passenger planes leading to a more efficient utilisation of aircraft carrying capacity.

The biggest problem facing the industry in this debate is the very high GHG emissions created by fishers themselves. The study found that the activities of fishers (and fish farmers) generally account for up to 80 percent of the GHG emissions of any seafood product, while the activities of processors and packers constitutes only 10 percent.

Developments in the Greenpeace campaign

Greenpeace released its Retail Seafood Sustainability Scorecard on 17 June, which ranks US supermarkets according to Greenpeace measures on the sustainability of retailers sourcing of seafood, the level of product labelling and transparency, and the number of 'red list' fish species that the firm retails (including bluefin tuna). Out of a potential ranking of 100, the best ranking retailer (Whole Foods Market) received only 36.5 points. Fifty percent of the US retailers covered in the Scorecard received the lowest score possible (i.e. 1). The accompanying report, *Carting Away the Oceans: How Grocery Stores are Emptying the Seas*,⁵⁰ did recognise that some large retailers were developing significantly improved sustainable seafood policies and were in the process of removing 'red list' species from their inventories.

Greenpeace also targeted Canadian supermarkets in a separate report, 'Out of Stock: Supermarkets and the Future of Seafood'.⁵¹ It found that eight of the largest chains had not set-up sustainable seafood procurement policies, and contrasted this with a recent consumer survey which found that 75 percent of Canadians would purchase sustainable seafood if supermarkets provided them with the necessary information to make such a choice.⁵²

However, Greenpeace has been critiqued from several corners as a result of this new campaign. The US National Fisheries Institute (NFI) – a seafood industry association that represents business interests from fisheries through to restaurants⁵³ – maintained that the Sustainability Scorecard does not use a science-based assessment and as such 'the retailer rankings ... have no credibility'. Similarly, the US salmon industry lobby (Salmon of the Americas) claimed that: 'Retailers should keep in mind that [Greenpeace] are a radical group and not a science driven environmental organization'.⁵⁴ In addition, several US retailers that featured in the Scorecard claimed that they were following sustainable procurement practices, but, while not

The biggest problem facing the seafood industry in the carbon foot print debate is the emissions generated by fishers

Greenpeace has released critical reports ranking supermarkets in the USA and Canada based on sustainability criteria



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necessarily agreeing with Greenpeace's approach, all conceded that there was room for improvement. A spokesperson for the fourth best ranked supermarket in the Scorecard (Wegmans, a New York-based chain) neatly summed up the issue from this firm's perspective: 'The journey of sustainability is one we will never finish. Sustainability in and of itself means constantly looking for ways to improve'.⁵⁵

On a separate note, Greenpeace continued its direct action campaign against vessels fishing in the 'donut holes' between PIC EEZs and targeted a Korean purse seiner (the *Juventus*) owned by Dongwon, which was operating to the east of the Solomon Islands EEZ. The Greenpeace vessel *Esperanza* escorted the *Juventus* back into the Solomon Islands EEZ.⁵⁶ The Parties to the Nauru Agreement closed fishing in these areas of the Pacific Commons effective from 15 June. Until such time that action is taken to make this management measure legally binding (i.e. incorporated into regulations or fisheries legislation), vessels with agreements to access PIC EEZs will have to agree not to enter the protected areas.⁵⁷ Greenpeace subsequently called on retailers to stop selling tuna that was caught in the Pacific Commons.⁵⁸

Kenya will demand all vessels active in EEZ to call at domestic ports:

Following on from a recent announcement by the Kenyan Revenue Authority that all vessels fishing in Kenya's EEZ will have to declare their catch and pay tax from this September, the Minister of Fisheries announced that another new law was being developed that would require all such foreign vessels to call at domestic ports so that the quantity and species of catch could be verified.⁵⁹ The effect on the operating costs of these foreign vessels' activities will probably be negative given the additional sailing days required. But given the decline in catch from Lake Victoria (this inland fishery is a major Kenyan export product), Kenya is currently attempting to expand its tuna fisheries interests in the Indian Ocean. It already has a tuna loining plant based locally, Kenya-Wanaichi Marine Products Ltd which has a processing agreement with Tri Marine (the same firm involved with Sol Tai).

**US fishing industry
representatives
criticise
Greenpeace for
not using science-
based assessments**

Coming in the next issue (July 2008, Vol. 1: Issue 8)

- Analysis of new WCPO marine protected areas and the PIC tuna trade
- Developments in the US debate on the mercury content of tuna



- 1 Liam Campling is Consultant Fisheries Trade Analyst, FFA. The contents of this briefing (including all analysis and opinions) are solely the responsibility of the author and do not necessarily reflect the positions or thinking of the FFA Secretariat or its Members. The author would like to thank two individuals for their invaluable input on an earlier draft of this briefing.
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27 In this case, it allows a processor to mix originating and non-originating fish (which would still have to be compliant with EU SPS measures) and thus offers a minor concession in situations where RoO compliant fish are in shorter supply (e.g. it might be of use during periods of know seasonal fluctuation and decline). But this scenario assumes that there is sufficient supply of originating fish to meet the 85 percent value requirement in the first place, that the processor has enough (or any) cold storage to keep sufficient stocks of originating fish, and that it had enough previous supply to accumulate such stocks.

28 The following is based upon correspondence with Eckart Naumann. I am very grateful for his insights here.

29 It is important to note that this Cotonou RoO was very rarely used by ACP fish processors because of its complexity, and was never used by PICs. The Cotonou Agreement value tolerance rule also allowed 15 percent of non-originating inputs in the ex-works product price, but was not specific to the fish itself. However, in practice, it required the exporter to apply the rule on a single species, single consignment and single consignee basis. The only EU customs authority that accepted imports under this Cotonou rule was the UK. The only known processors to have used it were a tuna cannery in Mauritius, which made use of a maximum of eight percent (rather than the full 15 percent) and, to a much lesser degree, a cannery in Madagascar.

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