



PREFERENTIAL TRADE

EU concludes Free-Trade Agreement with Vietnam

On 4 August 2015, following two and a half years of negotiations, the European Union and Vietnam concluded an in-principle Free-Trade Agreement, which the European Commission considers 'the most ambitious and comprehensive FTA that the EU has ever concluded with a developing country'.² This marks the second EU-FTA concluded with an ASEAN country, the first with Singapore in 2014, and represents another step towards the EU's goal to establish a comprehensive EU-ASEAN FTA. The FTA provides improved reciprocal market access for goods and services between the EU and Vietnam, with over 99% of tariffs to be eliminated.

Canned tuna and pre-cooked frozen tuna loins are classified as 'sensitive agricultural products' under the FTA. According to industry sources, once the FTA comes into effect, canned tuna imports entering the EU from Vietnam will be subject to a Tariff Rate Quota (TRQ): 11,500 mt/year will enter duty free. Any imports in excess of this quota will be charged the most-favoured nation (MFN) tariff rate of 24 percent. The import duty on frozen loins (currently 20.5 percent under GSP) will be partially liberalised by 3 percent per annum over a 7-year period to eventually reach 0 percent. Standard EU Rules of Origin will apply, whereby tuna must be caught by fishing vessels which are Vietnam or EU flagged and are at least 50 percent owned by Vietnamese or EU nationals or companies. The FTA does not permit Vietnam to cumulate originating raw materials with other Asian countries who have also concluded FTAs with the EU (i.e. Singapore, Korea).³ Since Vietnam does not have a significant fishing fleet, this means that the competitive impacts on PIC tuna processors resulting from tariff preference erosion will be less in the short-medium term than if canned tuna/cooked loins imports were fully liberalised as soon as the FTA comes into effect.

The FTA also includes a comprehensive chapter on trade and sustainable development covering conservation and management of fisheries, forestry and biodiversity, labour standards, social and environmental dumping, corporate social responsibility and climate change. However, no information on the content of these provisions is publicly available yet. The final text of the FTA is currently being drafted, after which approval needs to be given by both the European Council and European Parliament. It is expected that the FTA will come into effect by late 2016-early 2017.⁴

The EU is the second largest market for Vietnamese exports following China, while Vietnam is the EU's fourth largest ASEAN trading partner. In 2014, EU-Vietnam trade in goods was over €28.2 billion, with imports to Vietnam totalling €22.1 billion. Vietnam exported around 13,000mt of canned tuna to the EU in 2014, with Germany (59 percent) and Netherlands (19 percent) being the largest importers.⁵

FISHERIES REGULATION

Tri Marine submits petition for purse seine exemption in US waters and high seas

On 21 May the United States brought into effect a rule establishing an Effort Limit Area for Purse Seine (ELAPS). The rule applies to US purse seine vessels in the US EEZ and on the high seas between the latitudes of 20° N and 20° S and set a limit of 1,828 fishing days for 2015.⁶ This rule brings the US into compliance with a Conservation and Management Measure of the WCPFC on the sustainable catch of

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Canned tuna and cooked loins from Vietnam are deemed 'sensitive products' and only partially liberalised

bigeye, yellowfin and skipjack tunas (CMM 2014-01).⁷ The implementation of the rule incorporated fishing days used from January 2015. As a result, the ELAPS limit was met in early June and the fishery in the US EEZ and high seas was shut down after 15 June for the rest of the year,⁸ with serious commercial implications for the US fleet.

Given that the two tuna canneries in American Samoa – operated by StarKist and Tri Marine – depend mostly on US caught fish in part to meet Rules of Origin for government contracts – an important business segment for the canneries – reduced fishing access for the US purse seine vessels delivering to the canneries has serious implications for economic activity and employment on the island. Prior to the new rule, the supply situation had already worsened when Kiribati substantially reduced the number of fishing days available under the US Treaty.⁹

Pre-empting the closure, Tri Marine submitted petitions in May to the US National Marine Fisheries Service (NMFS) requesting American Samoa's status as a Small Island Developing State or Territory (SIDS) at WCPFC be invoked to allow an emergency exemption from the ELAPS for US purse seiners if they deliver at least 50 per cent of catches to processors based in American Samoa.¹⁰

NMFS called for responses to Tri Marine's petition and many submissions were in support. For example, StarKist argued that without the exemption its cannery would close by 17 August if no fish deliveries were made. Letters from the American Samoan Congresswoman, Governor, Chamber of Commerce for American Samoa, local ancillary firms, the Western Pacific Regional Fisheries Management Commission, and dozens of cannery workers emphasised the profound dependence of the economy and households on the tuna industry and, in turn, the supply of US-caught fish. Finally, long-term operators of US purse seiners based in American Samoa stated that the rule would force them to fish further westwards and deliver less fish to American Samoa, with resulting negative economic implications for the territory.

However, the petition also faces opposition. Bumble Bee's submission stated that an exemption would violate the US commitment to CMM 2014-01, provide an unfair advantage to StarKist and Tri Marine, and that the American Samoa canneries could source fish from elsewhere. Concerns over compliance with the WCPFC were echoed by Pew Charitable Trusts, which stressed the environmental risks of opening the high seas to unlimited fishing by US seiners. An owner of South Pacific Tuna Corporation (SPTC) raised similar concerns to Bumble Bee, but subsequently withdrew outright opposition to instead request two points of clarification: does American Samoa have the same legal rights as a Small Island Developing State under the WCPFC Convention? And what would stop an exemption from discriminating between residents of different states of the US and thereby contravening national law?

NMFS is yet to release a decision on Tri Marine's petition, but its public nature has shed some light on US industry dynamics. It pits the vertically integrated canned tuna firms – Tri Marine and StarKist – against Bumble Bee. It also exposes a division among the US purse seine fleet between boats traditionally centred on supplying American Samoa and the newer fleet that is more fragmented in ownership.

*The EU-Vietnam
FTA will likely
come into effect
in late 2016*

*US rule to
comply with
WCPFC stops
US fleet from
fishing after
15 June and
threatens
American
Samoa
canneries*

*Dispute over the
petition exposes
divisions within
the US canned
tuna and fishing
industry*



US proposes implementing rule to protect marine mammals in international fisheries

On 10 August 2015 the US National Marine Fisheries Service (NMFS) issued a proposed rule intended to reduce marine mammal bycatch associated with foreign, i.e. non-US, commercial fishing operations. If adopted, the rule will be implemented under provisions of the U.S. Marine Mammal Protection Act (MMPA). According to NMFS, 'The rule, under the MMPA, aims to level the playing field for American fishermen who comply with U.S. marine mammal conservation standards, and is intended to help foreign fisheries support a healthy and diverse marine ecosystem.'¹¹

Under the proposed rule, nations exporting fish and fish products to the U.S. would be required to demonstrate that killing or serious injury of marine mammals incidental to their fishing activities do not occur in excess of U.S. standards. According to the notice published in the Federal Register,¹² the rule would apply to 'incidental serious injury and mortality to marine mammals from commercial fishing operations that export the fish product to the United States...' and to whole fish or processed fish such as tuna tracked by the Harmonized Tariff Schedule. It would not apply to fish products that cannot be traced back to one species of fish or a specific commercial fishing operation. The tuna purse seine fishery in the Eastern Pacific Ocean (EPO) is already covered by MMPA regulations and is not addressed in this proposed rule.

The rule could require nations to institute a marine mammal conservation program that is 'consistent with the United States' program, or develop an alternative regulatory program with results comparable in effectiveness to US regulatory programs for reducing marine mammal bycatch'. NMFS is not proposing to require that a harvesting nation match every aspect of the US regulatory program to obtain a comparability finding for an export fishery. It would, however, be up to NOAA/NMFS to evaluate programs and make a determination on whether or not those efforts are sufficient to allow the export of seafood to the US.¹³

The history of the marine mammal issue with foreign fisheries goes back to at least 2008 when two NGOs petitioned NMFS to apply rules under the MMPA to swordfish fisheries. Later, 21 animal rights and animal welfare organizations urged the US to take action to ban the importation of Canadian and Scottish aquaculture farmed salmon into the US due to the intentional killing of seals, which is prohibited under the MMPA for international and domestic fisheries. The proposed rule is thus intended to be broad in scope, and proposes a procedural approach for certification similar to that used for importing purse seine caught yellowfin from the EPO.

The proposed rule intends to classify foreign fisheries exporting to the US as either an 'exempt fishery' or an 'export fishery'. The former would have a remote likelihood of, or no known, incidental mortality and serious injury of marine mammals in the course of fishing operations. The Federal Register notice appears to place the burden of proof primarily on the harvesting nation, although NMFS can make the determination of an exempt fishery on the basis of 'reliable information from the harvesting nation, or other information to support such a finding'. The rule proposes a 5-year grace period during which nations can instigate investigations or programs aimed at compliance.

The general approach is in line with other examples of US policy that attempt to have fishing nations adopt regulations and practices in their fisheries consistent

A proposed US rule would require all countries exporting to the US to meet US standards for marine mammal protection

The proposed rule aims to level the playing field for American fishermen

with those of the US or suffer restrictions on their exports to the US from those fisheries. Examples include efforts pertaining to the use of turtle excluder devices (TEDs) in shrimp trawl fisheries, and the promotion of turtle bycatch mortality mitigation equipment in WCPO tuna longline fisheries.

In the WCPO, the Hawaii-based deep-set longline fishery has experienced interactions with false killer whales, a sub-population of which around the main Hawaiian Islands was listed as endangered in 2012. Although it is unlikely that the Hawaii fleet interacts with that particular sub-population, there have been incidences of interaction with the larger pelagic population. The resulting management measures instigated include certain longline exclusion zones, enhanced reporting of interactions and training in handling and release of those whales caught incidentally. The existence of these interactions could be important to the NMFS rule-making process because the Federal Register notice explains that NMFS expects information on the frequency of interactions in most foreign fisheries to be lacking or incomplete. As a result, the notice states:

'In the absence of quantifiable information or reliable information from the harvesting nation, NMFS would classify fisheries by analogy with similar US fisheries and gear types interacting with similar marine mammal stocks using readily available information or available observer or logbook information.'

According to NMFS, designating a data poor fishery as an export fishery, i.e. subject to the requirements of the rule to enable export to the US, gives harvesting nations an incentive to gather and provide NMFS the reliable information necessary for consideration as an exempt fishery. NMFS encourages nations to provide comments on the proposed rule and to include reliable information about their commercial fishing operations exporting fish and fish products to the United States, their frequency of marine mammal incidental mortality and serious injury, and any regulatory programs to reduce such mortality and serious injury. NMFS has opened the comment period on this proposal until November 9, 2015.

WCPFC Scientific Committee reports record catch, volatile prices

Record breaking catches were reported at the 11th Regular Session of the WCPFC Scientific Committee, held in Pohnpei in early August.¹⁴ The provisional total catch for the WCPFC statistical area was estimated at over 2.8 million mt, more than 170,000mt higher than the previous record catch taken in 2013 and representing 60 percent of the global tuna catch. A closer look at these data reveals that skipjack catch was also the highest on record, eclipsing the previous record catch in 2013 by 115,000mt, as was yellowfin. Bigeye catch, the species of highest ecological concern, was higher than in 2013, but relatively stable compared to the average over the last ten years. Albacore catch declined slightly from 2013 levels; but in the Southern Albacore fishery, total catch was the fourth highest on record. The Scientific Committee attributed the high catches to a strong year class in conjunction with environmental conditions that made skipjack available to purse seine fishing for a prolonged period. Notably, under El Niño type conditions in 2014, purse seine effort was more pronounced in the area east of longitude 160°E than in the areas to the west of that longitude (PNG, FSM and Solomon Islands). With predictions for a more pronounced El Niño for the coming year, this pattern is likely to continue.

**2014 total catch
of 2.8 million
mt smashed the
2013 record**

Despite growing demand in major markets for pole-and-line caught tuna, the fishery continued to decline, posting the lowest annual catch since the late 1960s. The Japanese distant-water and offshore fleets and Indonesian fleets accounted for nearly all of the catch. Total longline catch was slightly above the five year average, with yellowfin catch its highest in more than ten years.

As catch volume surged, total catch value declined year over year by over US\$800 million for a total of US\$5.8 billion. The decline is attributed to plummeting skipjack prices in 2014 compared with 2013, which resulted from high inventories and lower demand. A bright spot for fishing firms was albacore, which experienced improvements across markets: the Bangkok benchmark increased 15 percent and Thai frozen imports increased 14 percent. Fresh albacore in select Japanese ports surged 12 percent.

These data raised several questions about effort and capacity in the fishery – a continuing concern as capacity has increased dramatically in recent years in the fishery. For example, FFA members noted that record catches suggest a continuing increase in the number and efficiency of purse seine vessels and that longline data suggests effort creep. FFA members thus suggested directing future work towards technical controls and catch limits. PNA members suggested that catch increases show that longline bigeye catch limits, purse seine effort limits and the FAD closure measure need to be tightened in updates to CMM 2014-01. In the purse seine fishery, total vessel size was stable at 180-220 vessels between 1990 and 2006. Since that time, the number of vessels has increased to a record level of 303 vessels in 2013 and 302 vessels in 2014. In 2014, 95 of these vessels were part of the Pacific Islands' fleet, which in recent years has been a significant source of vessel growth in the fishery. Total estimated effort tends to track the increase in catch over time, though in 2014, effort was lower than in 2013, suggesting better catch rates. The Scientific Committee recommended investigating present trends in purse seine fishing capacity using additional metrics, such as gross tonnage and carrying capacity that are used in other t-RFMOs.

TUNA ACCESS ARRANGEMENTS

New US Treaty terms, limited to one-year agreement

A new, one-year agreement has emerged from ongoing negotiations between the US and the Pacific Island Parties on tuna fishing access. Details of the new agreement include:¹⁵

- Total package value of US\$89,271,350.
- The US industry portion of the payment of US\$68,271,350.
- The US State Department payment has remained steady at US\$21million over the last several Treaty renewals.
- The agreement grants 5,700 fishing days in PNA waters where the VDS is being applied, excluding Kiribati. The agreement includes 300 days in the Kiribati EEZ.
- The eight PNA countries will receive US\$12,600 per fishing day, which according to the PNA office is a 34 percent increase over the US\$9,380 paid under the current agreement.
- Each of the Pacific islands involved in the Treaty will receive a payment of US\$680,397.

Expected strong El Niño conditions will push fishing activity eastward

Total 2014 catch value plummeted as a result of high inventory and low demand

A new US Treaty agreement boosts fishing value and is limited to one year

New features of the agreement include:

- The agreement will last only one year.
- 250 fishing days under the VDS for the Cook Islands, with the possibility for more days negotiated on a bilateral basis. Notably, since Cook Islands is not a signatory of the Palau Arrangement, these days are not eligible for transfer to other PNA countries.
- 300 fishing days in Fiji, Niue, Samoa, Tonga and Vanuatu for 'exploratory' fishing.
- All fishing activities defined under the Treaty are counted as fishing days as per the rules of the VDS. The annual payment for non-PNA fishing days is calculated as an upfront payment of US\$150,000, and an additional US\$6,000 for any fishing days that include catching, taking or harvesting fish. No payment is made for fishing day that consist of searching for fish or deploying FADs.
- The US fleet agreed to not fish in the two high seas pockets in the PNA region.

The US Treaty continues to be a bellwether for the changes in the terms and conditions of resource access in the region since the PNA countries introduced the VDS. While the PNA office in particular underscored the agreement as a success story, the future of the Treaty beyond 2016 remains uncertain, not least because parties have not found resolution on several negotiating issues. For example, the US was not granted a requested exemption to the VDS provision that large vessels are charged 1.5 days for each day of fishing. A return to longer term agreements seems will be challenging given the highly dynamic nature of fisheries access in the WCPO.

TUNA INDUSTRY

Thai Union halts fundraising in wake of US anti-trust investigations

In July, Thai Union revealed it was suspending a public share offering because of a US Department of Justice (DOJ) anti-trust investigation of the firm's planned US\$1.51 billion acquisition of Bumble Bee. Combined with its existing ownership of Chicken of the Sea, the take-over would have made Thai Union dominant in the branded canned seafood segment in North America.¹⁶ The new shares were to have been made available to existing shareholders to part-finance the acquisition.¹⁷

On the back of the DOJ investigation, a separate antitrust class action lawsuit was filed in early August by Olean Wholesale Grocery Cooperative against all three of the big US branded-firms: Bumble Bee Foods, StarKist and Thai Union.¹⁸ Olean alleges that starting in July 2011, the big three conspired to fix canned tuna prices in the US.¹⁹ It also argues that the industry is already oligopolistic and the Thai Union-Bumble Bee merger would create a duopoly.

Embroidment in two unrelated antitrust investigations is likely to result in Thai Union's acquisition of Bumble Bee being severely delayed or even cancelled.²⁰ It is unclear whether the option of Thai Union selling the Chicken of the Sea brand to make way for purchasing Bumble Bee is still possible. This could be a strategic move for Thai Union because Bumble Bee is reportedly the 'highest performing brand in the US' with 'a better margin than the rest'. The brand also opens the door to

All fishing activities under the Treaty will now be measured as fishing days as per the rules of the VDS

Thai Union acquisition may be delayed or cancelled

the Canadian market, as well as shrimp and sardine product segments. In contrast, Chicken of the Sea has to 'follow below [StarKist's] price point' on lightmeat and is 'at the mercy of the competition'.²¹

Thailand ranked again in lowest tier in US Trafficking in Persons report

For the second year running, Thailand has been placed in Tier 3 - the lowest rank - in the US' Trafficking in Persons (TIP) report. Last June, Thailand was downgraded from Tier 2 to Tier 3 for human trafficking and forced labour violations specifically related to Thailand's commercial fishing and seafood processing sectors.

The TIP report indicates that the Government of Thailand is not in full compliance with the minimum standards of trafficking and is not making significant efforts to do so. Various fishing and processing industry representatives have expressed dissatisfaction on the Tier 3 rating given significant efforts on both industry and the Thai Government's part to address human trafficking-related issues over the past year. These representatives are hopeful of a revision to at least Tier 2 next year. The Prime Minister has calmly responded to the Tier 3 ranking and indicated that Thailand will continue working to address these issues, some of which will take more time. However, 25 NGOs have supported the US State Department's continued Tier 3 ranking on grounds that Thailand needs to demonstrate enforcement of newly established laws, regulations and mechanisms before graduating to a higher ranking tier.²²

As reported previously in TIN, many human trafficking and forced labour issues relate to Thailand's non-tuna seafood sectors including shrimp and fish meal. However, sanctions applied in the EU and/or US markets for Thai seafood products would be disastrous for Thailand's tuna processing industry that relies heavily on these markets. Thailand's largest tuna processor, Thai Union, has taken huge efforts to ensure raw materials for fish meal production, as well as coastal tonggol and bonito for canning, are not sourced from local fishing vessels engaged in illegal activities and/or vessels unwilling to participate in traceability programs (raw materials for canned tuna production are imported). The company has committed to auditing 100% of its supply chain by 2016.²³ All members of the Thai Tuna Industry Association (TTIA) have had third party audits conducted of their processing facilities and supply chains as part of an effort to ensure compliance with national and international legislation regarding social and ethical standards.²⁴

The implications of Tier 3 status could potentially include restrictions on non-humanitarian and non-trade-related US bilateral assistance to Thailand, as well as US opposition in obtaining assistance from the International Monetary Fund and World Bank.²⁵ However, to date, the US has not applied any aid or trade-related sanctions to Thailand. Thailand continues to be the largest supplier of canned tuna to the US market, with no reduction in supply volumes since the 2014 Tier-3 downgrade.

Enslaved Myanmar fishers abandoned in Indonesia

The role of fishing boats and fishing in violent crime has recently been in the international media spotlight. Much of this has focussed on Thailand (see story above), but extreme human exploitation and brutal violence are also in evidence elsewhere. A four-part series in the *New York Times* on [The Outlaw Ocean](#) in July picked up a number of cases involving murder, slave labour, illegal fishing and other

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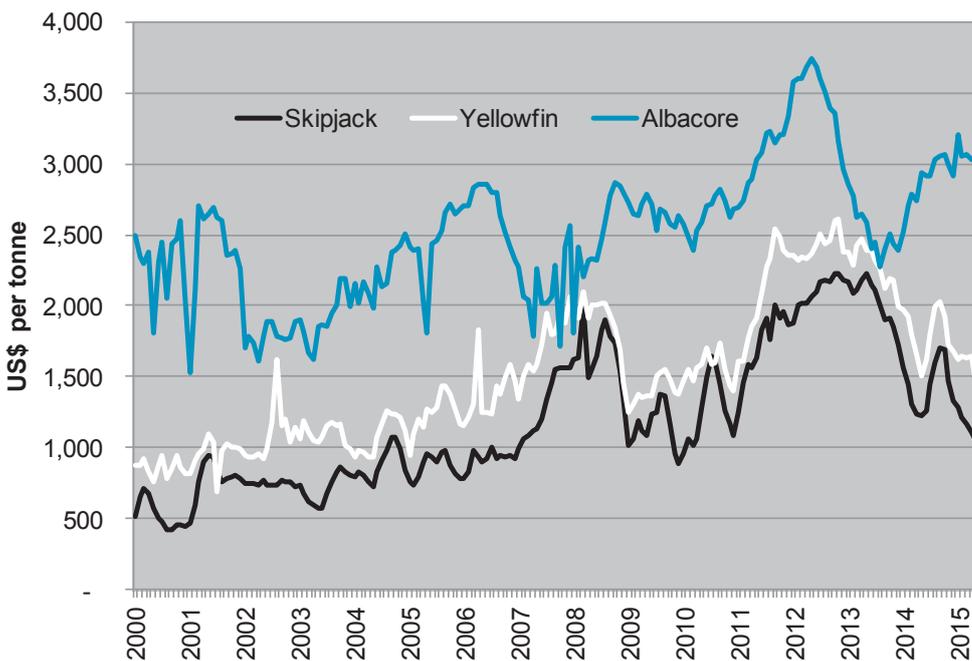
forms of criminality at sea. This followed a year-long Associated Press investigation published in March interviewed over 40 enslaved Myanmar fishers in Benjina, Indonesia.²⁶ It showed that fish caught by slave-like labour could eventually be traced to principal market products, including pet food in the US. The crew claim that they worked shifts for 20-22 hours, without time off and were subject to systematic physical violence by captains.

This is not an isolated incident. In May, the International Transport Workers' Federation (ITF) collected testimony from 70 Myanmar fishers on Ambon Island, Indonesia. The evidence indicates systematic human trafficking.²⁷ The men were abandoned on Ambon, with no way home. The ITF is playing a role in supporting them in their plight. ITF Maritime Coordinator Jacqueline Smith said, 'We will continue to work with the Indonesian and Myanmar governments to get these men back home to their families'.

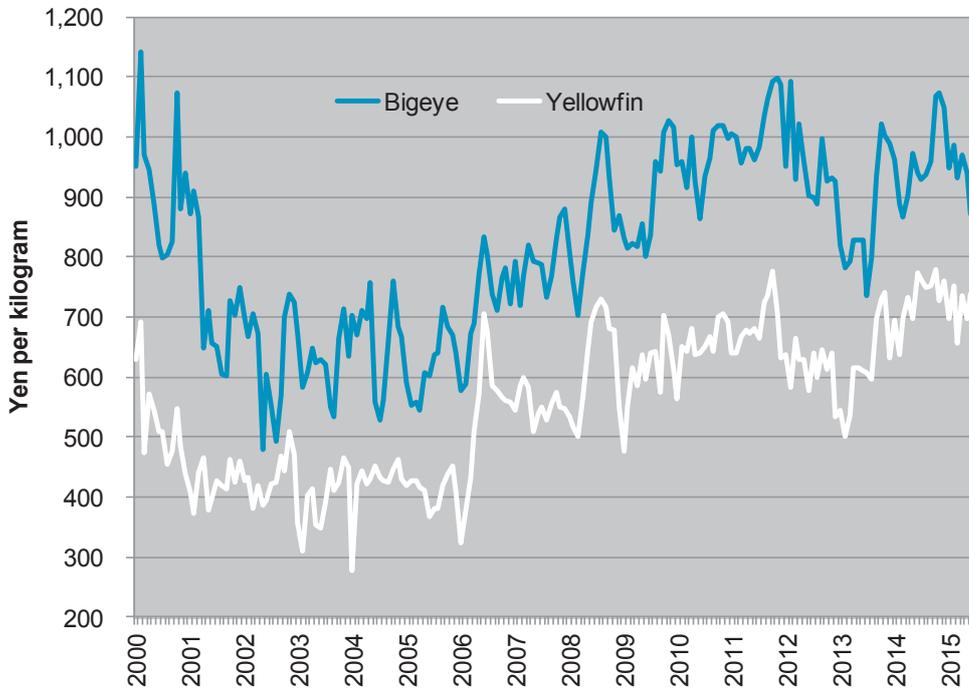
Slave-like conditions in evidence in fishing in Indonesia

TUNA PRICE TRENDS²⁸

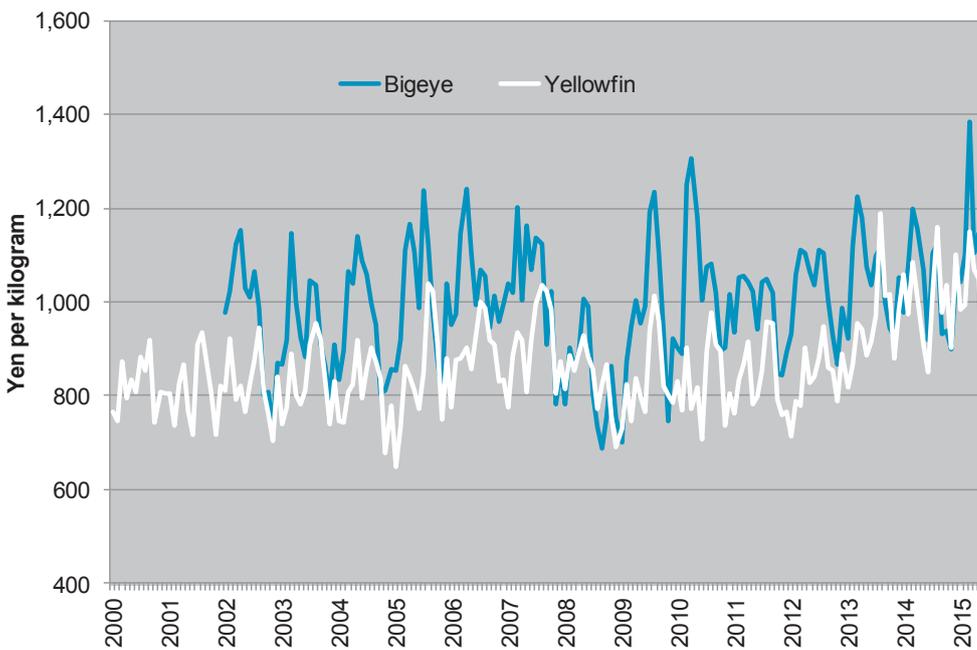
Bangkok canning-grade prices to June 2015²⁹



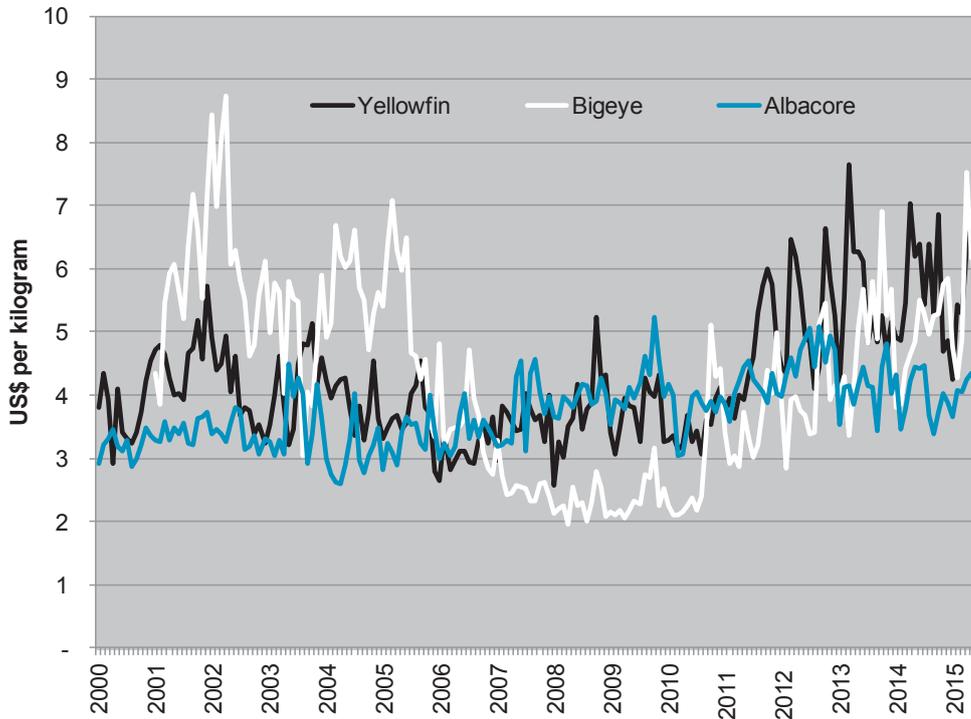
Japan frozen sashimi prices (ex-vessel, Japanese ports) to June 2015³⁰



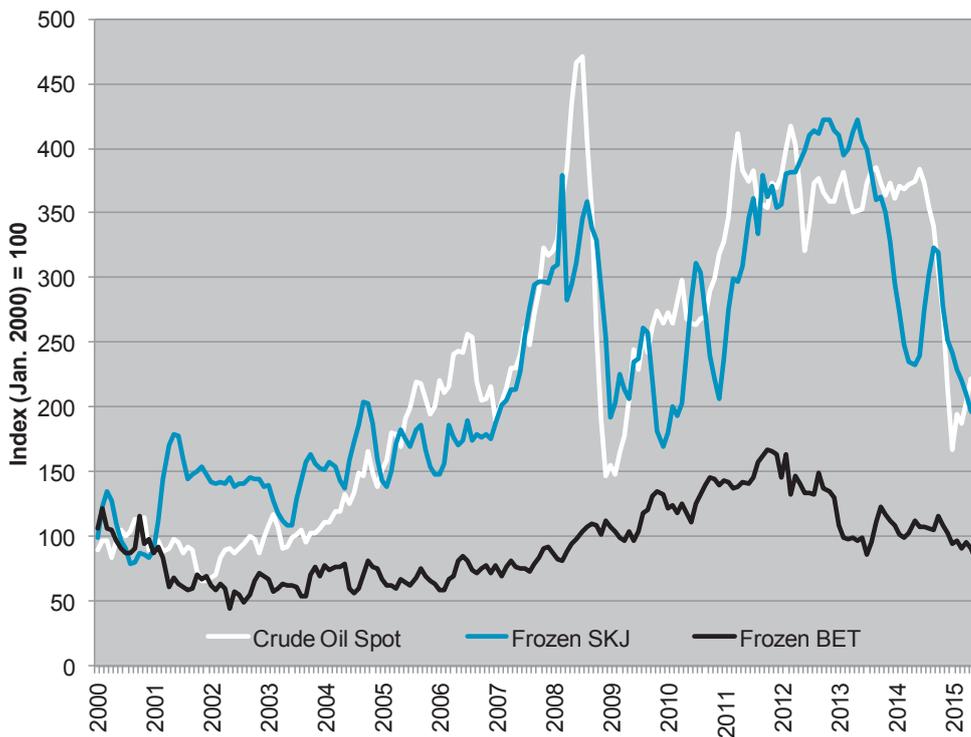
Japan fresh sashimi prices (origin Oceania) to June 2015³¹



US imported fresh sashimi prices to June 2015³²



Crude oil, canning-grade frozen skipjack (SKJ) and frozen bigeye (BET) price index to June 2015³³



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³ Industry representative 2015, pers. comm.

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⁵ Op.cit. EC 2015; Eurostat 2015. Available at: <http://ec.europa.eu/eurostat/data/database>

⁶ A simplified Compliance Guide is available here: <http://www.fpir.noaa.gov/Library/IFD/BF03-compliance-guide.pdf> And full rule in the US Federal Register and supporting documentation is available here: <http://www.regulations.gov#!docketDetail;D=NOAA-NMFS-2015-0058>

⁷ The CMM is available here: <http://www.wcpfc.int/doc/cmm-2014-01/conservation-and-management-measure-bigeye-yellowfin-and-skipjack-tuna-western-and>

⁸ United States of America, Federal Register 80 (137): 42464-6, 17 July 2015

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- ²⁹ Customs Department, Thailand. <http://www.customs.go.th/Statistic/StatisticIndex.jsp>
- ³⁰ FFA database
- ³¹ Japan Customs. http://www.customs.go.jp/toukei/info/index_e.htm
- ³² US National Marine Fisheries Service. <http://www.st.nmfs.gov/st1/trade/index.html>
- ³³ US Energy Information Administration. http://tonto.eia.doe.gov/dnav/pet/pet_pri_spt_s1_m.htm