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FISHERIES TRADE

Burst of new fisheries subsidies while the WTO slowly negotiates rules

As the WTO continues its slow-paced negotiation of rules limiting subsidies to marine fishing,[2] some of the largest fishing nations have announced *new* subsidy programmes. The timing may be because these WTO member states are seeking to boost domestic industry before new subsidy rules come into play. It may also be to 'game' emerging rules such as the proposed Australia-USA subsidy 'cap' which will limit public payments to marine fishing at current levels with some commitment to roll back from this height. The timing may also reflect the shifting contours of domestic and geo-politics, a lack of trust on the international stage and the heightening struggle over natural resources.

In the USA, the Trump Administration is shifting away from decades of costly programmes to reduce fishing capacity. In November 2018, the National Marine Fisheries Service (NMFS) proposed making low-interest loans available to industry "to construct fishing vessels or reconstruct fishing vessels in limited access fisheries that are neither overfished or subject to overfishing".[3] NMFS' justifications for the subsidy are that marine fisheries provide economic benefits to the nation, that private finance doesn't properly evaluate the risks of industry, and that new boats will be safer for crew and more fuel efficient. The value of harvesting rights is factored in when considering a beneficiary's collateral, which may encourage a deepening of debt leverage of quota share.

NMFS' new funding stream is not likely to directly finance new tuna vessels in the WCPO because it is only available to operations in federally-managed fisheries. But, it will result in reduced costs to beneficiaries and their old vessels are likely to be sold internationally. It may also push less competitive operators into lower cost areas such as the high seas.[4] Overall, the proposal contains various risks of 'leakage' that will increase overcapacity and the race to fish.

Across the Atlantic, in April 2019, the EU also controversially agreed to backtrack on 15 years of policy by reinitiating support for fleet renewal and modernisation.[5] This means that part of the European Maritime and Fisheries Fund for 2021-2027, worth around €6 billion, will include public support for building new boats. This has been widely criticised by European politicians and environmental NGOs.[6]

Unlike the indirect global effect of the new US subsidies, the EU's programme of fleet renewal will have a *direct* impact on stocks outside of EU waters. Environmentalists and artisanal fisheries in the Seychelles have voiced concern that an enhanced EU fleet will spell trouble for Indian Ocean tuna stocks, where yellowfin stocks are already overfished (see story below).[7]

Meanwhile, China continues to pursue the strategy of subsidising the expansion of its distant water fleet and its onshore processing capacity using raw material from foreign waters, detailed in its 13th Five-Year Plan (2016-2020).[8] Relatively new entrants to industrial tuna fisheries such as India are also unpinning fleet development with 70% public funding to push fishers out of the national EEZ into international waters, such as the construction of a fleet of new longliners in 2019.[9]

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The EU and USA recently rolled back decades of policy reform to offer new subsidises for vessel construction

These influxes of public money to already-industrialised fleets are another reminder to the Pacific islands of the difficulties of competing in the business of industrial tuna fishing. While a truly 'level playing field' will remain a distant dream, disciplining these payments at the WTO would offer PIC industry development more of a fighting chance.

EU and Vietnam sign Free Trade Agreement

On 30 June 2019, the European Union and Vietnam signed a Free-Trade Agreement (EVFTA), that has been under negotiation since 2012. It is anticipated the EVFTA will enter into force by the end of 2019, following consent gained from the European Parliament.[10]

As reported previously in *FFA Trade and Industry News*, while the EVFTA is intended to eliminate over 99% of customs duties on exports for both countries, the tariff preferences awarded to Vietnam for processed tuna imports to the EU (HS 1604) are less favourable, as the EU attempts to protect its own tuna processing industry. The 24% tariff on frozen cooked tuna loins (HS 1604.1416) will be liberalised to 0% over an eight year period. For canned tuna/other finished goods (covered under HS 1604.1411, 1418, 1490, 1949 and 2070), an annual aggregated duty free quota of 11,500 mt has been established; any volumes imported over and above this level will then be subject to 24% duty. The tariff on fresh, chilled or frozen tuna fillets (HS 0304), will reduce from 18% to 0% over four years. All fresh and frozen whole round tuna imports (HS 0302/0303) will be duty-free – previously only whole round tuna intended for manufacture of processed tuna products under HS 1604 were duty free, with all other uses (e.g. processing into fresh/frozen fillets) subject to 22% duty.[11]

To qualify for tariff preferences under the EVFTA, tuna must be 'wholly obtained' from EU or Vietnam registered and flagged vessels fishing outside any country's territorial waters. The vessels must be at least 50% owned by EU or Vietnam nationals or entities. Vietnam is not permitted to cumulate raw material with other ASEAN countries. The EVFTA text regarding value-tolerance is convoluted, but it appears that non-originating fish can be used up to 10% of the ex-works price of the product, provided the products have been sufficiently worked in Vietnam, resulting in a change in tariff heading from Chapter 3 to Chapter 16.

Vietnamese exports of finished goods to the EU already exceed 11,500mt annually. Assuming a fair proportion of 'wholly originating' fish is currently sourced from Vietnam's sizeable domestic purse seine fishing fleet (1,493 purse seine vessels catching 54,592mt in 2016)[12], the EVFTA tariff quota may do little to incentivise Vietnam to further increase finished goods exports to the EU. However, there may be some incentive to increase production and exports of frozen cooked loins for EU markets, as tariffs increasingly reduce over the next eight years.

Growing Chinese influence in the Pacific sparks new interest in international aid

The last issue of *FFA Trade and Industry News* reported on the potential for Papua New Guinea (PNG) to secure a US$168 million loan to advance a long-proposed marine special economic zone in Madang.[13] The PNG and Chinese Governments were aiming to secure the loan at the April China Belt and Road Forum for International Cooperation, a large scale summit hosted by China emphasising China's efforts to build an international cooperation platform. Outcomes related to the PNG deal are not yet publicly available, although the Chinese Government announced that it signed cooperation plans and actions plans with a series of countries around the

Large developing countries like China and India are subsidising distant water fleet development because of overfished domestic EEZs

The EU-Vietnam FTA will likely enter into force by the end of 2019

Only 11,500mt of canned tuna exports from Vietnam to the EU will be duty free; 24% duty will be charged on duties exceeding this quota time of the Forum, including Fiji, PNG and Vanuatu have signed on to China's Belt and Road Initiative; China is courting other PICs, particularly the Solomon Islands, to do the same.[14]

China's international aid influence in the Pacific has grown rapidly in the last decade

This event reflects the growing influence of China across the Pacific Islands region in recent years. A recent analysis by news agency Reuters showed that China's lending programme in the region went from almost zero to over US$1.3 billion in outstanding loans in the last decade. The analysis revealed China as the region's largest bilateral lender, although Australia's significant aid programmes mean it remains the largest financial backer in the Pacific.[15] Traditional diplomatic partners, including Australia, New Zealand and the US, have broadly seen this growth as a geopolitical move by China to exert influence and to encourage the six Pacific Island countries with formal diplomatic relations with Taiwan to sever those ties in favour of diplomatic relations with China instead. While most Chinese lending programmes are focused on infrastructure and telecommunications, fisheries and maritime sectors have been points of interest as well, including for instance, potential support for PNG's Pacific Marine Industrial Zone (which was also slated for a concessional loan from the Chinese Exim Bank in the early 2010s, a deal that reportedly fell through)[16] and Vanuatu's Luganville Wharf.

The US and New Zealand have noted Chinese aid, arguing that it is an attempt to reorder the Indo-Pacific region to China's advantage[17] and highlighted the differences in the forms of international aid they offer: while the majority of China's financial support comes in the form of concessional loans, Australia, New Zealand and the US tend to offer debt-free grants and leave lending to multilateral institutions such as the World Bank and Asian Development Bank. Regardless, China's presence has captured the attention of these historical aid partners and spurred them into action. In late 2018, Australia, Japan and the US agreed to collaboratively finance infrastructure projects in the Indo-Pacific Region to offer an alternative to China's Belt and Road Initiative. Efforts will focus on infrastructure in particular, with the first project recently announced as a US$1 billion loan to PNG's liquefied natural gas (LNG) project.[18] The EU has also increased its lending presence in the region, with the European Investment Bank and European Union financial institutions focused on provided long-term financing arrangements for climate action projects and the issuance of green bonds, as well as cooperation with the Asian Development Bank and the World Bank.[19] Commentators note that ocean-related issues are likely to become among the most pressing needs in the region as the effects of climate change continue to take form.[20]

Historic aid partners are increasing grant making and lending, including for oceans and fisheries projects

Loans and grants specifically for oceans and fisheries-related projects are proliferating. For instance, the Asian Development Bank recently announced that it is making US$5 billion available for financing and technical assistance for marine economic development and ocean clean-ups. ADB's plan, called the 'Action Plan for Healthy Oceans and Sustainable Blue Economies for Asia and the Pacific' ties directly into the UN Sustainable Development Goals, and focuses on four lending areas: sustainable tourism and fisheries, protecting and restoring coastal and marine ecosystems and key rivers, reducing land-based sources of marine pollution including plastics, wastewater and agricultural runoff, and improving sustainability in port and coastal infrastructure development. It will also include an oceans financing initiative to create opportunities for the private sector to invest in projects, including through instruments such as credit risk guarantees and capital market blue bonds.[21] The US Agency for International Development (USAID) recently announced initiatives focused on traceability solutions, such as electronic traceability tools, for fisheries in Papua New Guinea and the Solomon Islands, as well as coral triangle countries Indonesia, Malaysia and the Philippines.[22] As the future of the US Treaty, one of the US's strategic sources of diplomatic relations in the region, remains uncertain (see story below), the US is likely to explore opportunities for using existing institutions, such as USAID, to maintain and enhance diplomatic ties in the region.

Finally, the World Bank Group is continuing its longstanding presence in the region. Early this year, the Group opened an office in Suva, Fiji. World Bank funding has tripled in the Pacific region since 2016.[23] This move builds on longstanding programmes in the region, including the Pacific Islands Regional Oceanscape Programme (PROP), which focusses on fisheries. The original PROP was developed in 2013 as a series of projects to be implemented in three phases, each six years in duration. Phase I began in 2014 and was managed by FFA and implemented in FSM, RMI, the Solomon Islands and Tuvalu. The main species targeted in Phase I are skipjack, bigeye and yellowfin as all countries in this phase are PNA members. Phase II runs from 2019-2024/5, focussing on inshore fisheries and incorporating key members of the Tokelau Arrangement for the South Pacific Albacore tuna fishery.[24]

FISHERIES MANAGEMENT

FFA Ministers agree to minimum terms and conditions for crew employment[25]

From 1 January 2020, all fishing vessels licenced in FFA member waters will be subject to minimum terms and conditions relating to labour conditions for crews

FFA Members regulate fishing access in their waters through Harmonised Minimum Terms and Conditions for Access by Fishing Vessels (MTCs) which are implemented via national legislation and licencing conditions. While originally intended to regulate foreign fishing, FFA members are also applying MTCs to domestic vessels to ensure a level playing field across all fleets operating in the Pacific Islands region.

At the recent 16th Annual Pacific Islands Forum Fisheries Committee Ministers Meeting (FFCMIN16), held in Federated States of Micronesia on 18-19 June 2019, Ministers committed to apply new MTCs on labour conditions for crews working on domestic-flagged fishing vessels. This follows from an FFC Fisheries Officials decision in May 2019 (FFC110) to apply the MTCs to foreign fishing vessels licenced to fish in FFA members' waters. Hence, effective 1 January 2020, all vessels operating in FFA members' waters will be subject to equivalent measures on human rights and labour conditions for crew.

These MTCs are legally binding, strengthening WCPFC's non-binding Resolution for Labour Standards for Crew on Fishing Vessels which was developed from a proposal from FFA members and adopted in 2018. Vessels failing to meet FFA's crewing (and other) MTCs will not be deemed to be in 'good standing' on the FFA Vessel Register, and as such, cannot be licenced to fish in FFA member waters.

The FFA crewing MTC is underpinned by the ILO Work in Fishing Convention (No. 188) and covers the following requirements:

i) A written contract in a language each crew member can understand;

ii) Protection of the basic human rights of the crew in accordance with accepted international human right standards; this includes provisions to ensure that crew are not assaulted or subject to torture, cruel, inhumane or degrading treatment, ensuring the treatment of all crew with fairness and dignity;

iii) Procedures covering the death of crew and for advising next of kin in the event of an emergency;

iv) Full travel costs from the point of hire to and from the vessel at no cost to the crew;

v) Decent and fair remuneration;

vi) Full insurance coverage to and from, and on, the vessel;

vii) Provision of medical care;

viii) Rest periods;

ix) Provision for health and safety including a safe vessel while the crew is on board throughout the duration of the contract;

x) Safety equipment and tools; and

xi) Proper accommodation, sanitary facilities and suitable meals and water.

In the context of growing public understanding and market pressure on working conditions in fisheries value chains, the FFC Fisheries Officials decision to incorporate labour standards in MTCs may provide tuna caught in PIC waters with a commercial advantage on several major markets, including the EU and USA.

IOTC agrees to yellowfin conservation; seen as necessary but far from sufficient

Indian Ocean yellowfin is overfished, but IOTC failed to agree meaningful rebuilding measures

A 2018 Indian Ocean Tuna Commission (IOTC) stock assessment determined that the yellowfin tuna is overfished and subject to overfishing. IOTC has not provided explanation for the decline to below MSY "due to various uncertainties".[26] However, one NGO noted that a leaked letter saw the South African Government complain to the European Commission that Spanish boats were abusing catch quota.[27]

At its 23rd annual meeting in Hyderabad, India in June, IOTC members agreed to a number of new conservation and management measures, including agreement on a 10% reduction in yellowfin catch; the roll-over of over-catch in Parties' annual limits where its boats exceeded prior catch limits; the mandatory use of non-entangling FADs from 2020, which reduce bycatch such as sharks, and the use of biodegradable FADs from 2022, which will contribute to reducing pollution in the oceans and coastlines; and a reduction in FAD numbers to 300.[28]

However, these moves have been criticised by a range of players, most of all for not achieving the 20% catch reduction recommended by the IOTC's own Scientific Committee – necessary to have a chance of achieving a healthy spawning biomass by 2024. A number of NGOs had called for a 25 to 30% reduction.[29] For its part, the European Commission, itself the target of much criticism, also remarked that the outcome on yellowfin was not ambitious enough "to reduce current overfishing".[30]

NGOs and Retailers put pressure on IOTC members to act

In addition to emphasising the urgent need for IOTC to rebuild the yellowfin stock, the International Seafood Sustainability Foundation (ISSF) highlighted the comparatively very low 5% observer coverage on the region's purse seiners, as well as weak compliance processes.[31] The International Pole & Line Foundation (IPNLF) welcomed the commitment to FAD reduction but emphasised that the industrial purse seine fishery was making widespread use of drifting FADs (dFADs) and argues that they should be reduced further, especially given their contribution to yellowfin overfishing, as well as marine pollution.[32]

Meanwhile, UK buyers of fresh yellowfin tuna, including Sainsbury's, Waitrose, Marks and Spencer, Tesco, Asda, Morrisons, Co-op and New England Seafood International, had urged the IOTC to follow the advice of its Scientific Committee, collectively noting their "serious concerns that … the stock continues to be in a vulnerable state due to the lack of an effective rebuilding plan, nor the adoption of a robust harvest strategy.

Retailers and their suppliers have all made firm commitments to source responsible seafood from well managed fisheries. Regrettably, this stock does not meet these requirements at present."[33] WWF and Blue Marine Foundation campaigners in the UK are calling for seafood buyers and consumers to boycott Indian Ocean-caught yellowfin because it is overfished. Importantly, they are not calling for a blanket ban, and note the WCPO yellowfin stocks are healthy.[34]

The IOTC catch reduction combined with potential market-oriented boycotts, may give a boost to the WCPO yellowfin tuna price; once again highlighting the long-term benefits of an effective RFMO and its members' compliance with scientific recommendations. It also signals to responsible seafood buyers that some oceanic regions are more reliable than others.

TUNA INDUSTRY

Eight US purse seine vessels to be sold, implications for US Treaty uncertain

In recent years, the US Treaty – a multilateral agreement that has given the US fleet fishing access in the WCPO – has been under increasing pressure as it needed to be modified in response to changing access conditions following the PNA's introduction of the Vessel Day Scheme, and as US fleet dynamics have also been in flux. When the PNA introduced the VDS, the US Treaty was initially a refuge as it continued to offer unlimited fishing for up to 40 vessels at a fixed rate until it expired in 2013. As a result, several vessels re-flagged from Taiwan and Korea into the US fleet to capitalize on the Treaty while the price of access under other bilateral arrangements was increasing.[35]

Treaty renegotiations following 2013 proved complicated as the US fleet, US State Departments and the Pacific Island Parties to the Treaty grappled with how to integrate the US fleet into the Vessel Day Scheme. Years of tense negotiations resulted in three interim agreements before the entire Treaty framework almost collapsed. In December 2016, negotiating groups were able to agree to a dramatically revised, six-year Treaty that offered the PNA and non-PNA Pacific Island Parties to the Treaty and the US vessels a more flexible approach to access that more closely resembled the access conditions other foreign vessels were working with in the region. The six-year Treaty specifies a total number of fishing days and allocated them across the Pacific Island Parties' EEZs. It also set the price for fishing days for the first four years of the agreement, with prices being renegotiated for the final two years.[36] It is also worth noting that the US State Department plays a role in the Treaty, offering an additional US$21 million aid package, making the Treaty a major vehicle of US diplomacy and financial assistance in the region.

The future of the Treaty has remained uncertain, and that uncertainty continues to intensify as several vessels have left the US fleet, reducing its numbers from 39 to 33 in 2017.[37] Most recently, the South Pacific Tuna Corporation announced that it will sell eight of its 14 US flagged purse seine vessels to foreign operators. The South Pacific Tuna Corporation is affiliated with Taiwan-based trading company FCF. The sale of these vessels will reduce US-caught tuna volume by approximately 70,000 short tons (~63,500 mt) per year.[38]

South Pacific Tuna Corporation has vocally argued that the US fleet is non-competitive because of the high costs of fishing under the US flag and has urged the US government to offer more support for its fleet.[39] In its announcement, the firm argued that the sale is a result of what it describes as 'anti-industry and anti-

In recent years, the US fleet has declined from 39 to 33 vessels; South Pacific Tuna Corporation has announced the sale of eight vessels trade' US Government policies and emphasized that the sale will contribute to the further decline of US geopolitical presence in the region as China, Korea and Russia's roles continue to grow.[40] The firm was also quick to point out that this reduction will increase the US seafood deficit by between US$80 million and US$100 million and will reduce the volume of MSC-certified FAD-free tuna for the global tuna market. In an appeal to the PNA group, South Pacific Tuna Corporation also notes that its vessels participate in PNA's MSC certification, supplying fish under the Pacifical programme.[41] South Pacific Tuna Corporation indicated that it will supply current customers with its remaining operations and will continue to evaluate the "opportunities and challenges", but with "guarded hope". All Parties to the US Treaty will surely have this news in mind as they come together to negotiate on the price of vessel days for the final two years of the Treaty and the terms of any Treaty agreement beyond 2022.

There is uncertainty about the implications for US Treaty

Containerized shipment of purse seine-caught tuna expanding in the WCPO

The number of WCPO ports capable of handling direct deliveries from purse seiners for containerized shipping has increased over the past 1-2 years. While containerization of frozen longline catch has been taking place for some time in WCPO ports such as Suva, Pohnpei, Apia and Noro, the increase in containerized shipment of purse seine catch is a relatively new development in ports such as Kosrae. Although not yet being conducted on a scale that would come close to threatening transhipment operations where fishing vessels unload catches into refrigerated fish carriers (reefers), the nascent activities in several locations are providing some measure of revenue and employment at ports that have not seen much or any purse seine transhipment activity in the past.

Two Maersk 'Starloaders' have been installed in Noro, Solomon Islands to speed up container stuffing directly from fishing vessels

Containerization of purse seine catches is prevalent in the western Indian Ocean purse seine fishery where Maersk, the world's largest container shipping company, has been instrumental in developing equipment to efficiently load containers dockside directly from purse seiners at the Port of Victoria in Seychelles. Anecdotal information suggests loading rates of 300-500 mt/day are not uncommon in the Seychelles operation.[42] This equipment is now making its way to operations in the WCPO and enhancing ongoing operations. Under a partnership between Maersk, Solomon Islands Port Authority and National Fisheries Developments (Tri Marine's fishing subsidiary in Solomon Islands), two Maersk 'Starloaders' have been installed in Noro, comprised of a receiving hopper and extendable conveyor which deploys directly into a container.

Containerization of purse seine catches would seem to have the greatest opportunity for expansion in locations that include tuna processing, since onward transport of containerized purse seine catch can benefit from shipping schedules and destinations already arranged for a plant's production. Both Majuro and Noro have been shipping out frozen products (loins) and containerized whole round tuna for some time. In the case of Noro, containers are picked up by Maersk and taken directly to its container marshalling facility in Tanjung Pelapas, a Malaysian port about 45 km from Singapore, which handled around 4.5 million 40 foot containers in 2018.[43] From there, containers can be shipped to processors in Bangkok, China or other Asian processing destinations by feeder vessels, or to Europe on some of the largest container ships afloat.[44] The efficiencies and scale of such large operations can contribute to competitive prices in the shipment of purse seine-caught tuna.

Containerization provides an opportunity for better monitoring of unloading by government officials

Containerization offers several advantages over the use of refrigerated fish carriers. Monitoring of shore-side unloadings is easier and provides more precise data, as fish are weighed and, in some cases, sorted by size and species prior to loading into containers, whereas rough estimates of volume and catch composition are made for carrier transhipments. Segregation of catch on-shore by species/size also provides vessel owners with the opportunity to separate individual fish lots and sell to multiple markets to maximize catch value. Containerized shipment may also minimize unloading and shipping delays in times when carrier space is limited.

In order to advance beyond the relatively small quantities of tuna currently unloaded directly into containers in the in the WCPO, major improvements will have to be made in shoreside infrastructure. So far, Marshall Islands and Kosrae are attempting to undertake some facility expansion, with both being led by private companies – Pacific International Inc in Majuro and Luen Thai on Kosrae. However, a major constraint in all Pacific Island ports is the limited land available for establishing/expanding dockside operations and container storage. For example, in Majuro, the local stevedore company currently has about 100 power plugs for reefer containers and expects to have 200 by the end of 2019. Even if all available plugs are utilized for fish unloaded into containers are cycled every month, the total volume shipped would represent only about 19% of the estimated reefer carrier volume transhipped in Majuro in 2018. The current reality is far less than that, with the use of containers representing perhaps about 2%-3% of transhipped fish utilizing reefer carriers.[45]

For containerization to move forward in any large measure in Pacific Island ports in lieu of reefer shipments, ports will have to be capable of providing better services and at less cost than traditional reefer carriers. Wharves will need to be of adequate depth and length to accommodate fishing and container vessels in a timely manner. Increased container storage space will be required, providing reliable electricity and manpower and facilities for sorting catches. Unloading at a port also triggers a separate set of legal port state requirements – procedures for clearing fishing vessels to berth alongside the wharf will need to be efficient. Not all Pacific Island countries are well-equipped to shoulder these responsibilities, and this can limit the attractiveness of a port to the tuna industry. The cost of port charges for such items as wharfage, container handling, storage and other fees must also be taken into account when competing with reefer carriers for business. In addition, provision will have to be made for obtaining a sufficient number of refrigerated containers, since most Pacific Island ports do not have enough inbound refrigerated cargo to be able to provide the large number of containers required for loading and shipping of purse seine-caught fish. For example, at around 25mt per 40-foot container, a typical purse seiner unloading of 800 mt would require 32 containers. Hence, containerized shipment has a long way to go before gaining a significant share of the tuna transhipment market in the WCPO.

PIC ports will need to provide better services and at less cost than traditional reefer carriers for containerized shipments of purse seine fish to significantly move forward

Legal problems mount for US canned tuna firms: new class action lawsuits over Dolphin Safe claims

The tuna-dolphin debate between the US and Mexico finally concluded at the WTO, however, the US firms' dolphin troubles appear to have re-emerged in a new form. Class action suits have been brought against StarKist, Chicken of the Sea, and Bumble Bee, as well as Nestle-Purina Petcare Company. The suit has been filed by a group of consumers claiming that the companies' dolphin safe label is misleading and fraudulent. The complaint argues that these firms' tuna products rely on fishing practices that injure or kill dolphins. It specifies longline fishing and the use of Fish Aggregating Devices as incurring harm to dolphins.[46]

US canned tuna brands have been hit with a lawsuit alleging fraudulent use of the dolphin-safe label

In the US, the *1990 Dolphin Protection Consumer Information Act* requires that in order to use the dolphin safe label on products, producers must ensure that no dolphins were killed or seriously injured in the sets or other gear deployments. The label must also be supported by the Tuna Tracking and Verification Programme (known as the TTVP), administered by the US National Oceanic and Atmospheric Administration (NOAA).

Plaintiffs argue that while the 'big three's' products carry the dolphin safe label, fishing practices used to catch some of their products do cause harm to dolphins. The brands' own practices of differentiating product lines based on production practices seems to have been a key opening for the lawsuit.[47] For instance, in the suit against Bumble Bee, the allegations point out that Bumble Bee's 'Wild Selections' brand specifies that fish were caught only by more sustainable pole-and-line methods. It is worth noting that the 'big three' bands have long been wary of differentiating their product around sustainability claims for exactly this reason: a fear that labelling some of their product lines as 'sustainable' will draw negative attention to their other product lines, which constitute a far larger percentage of their sales portfolios than eco-labelled products. This concern has been a part of their long, but now eroding, reluctance to move towards MSC certification. In the present case, the plaintiffs are claiming more than US$5 million for historical tuna purchases and associated costs. The consumers also want the courts to order the companies to pay for corrective advertising and statutory and punitive damages, restitution and attorney fees and costs in each case.

US-based NGO Earth Island Institute (EII) facilitates the label and has been criticised for its lax approach to oversight. In recent years, there was a particular concern that EII would not have robust enough monitoring for new US rules required to comply with WTO decisions on the tuna-dolphin labelling debate.[48] To date, EII is not known to have commented on the litigation.

Earth Island Institute facilitates the label but has not made any public statements about the lawsuit

StarKist argues that it cannot pay price fixing fine, implications for American Samoa

As reported in prior issues of *FFA Trade and Industry News*, StarKist is facing a US$100 million fine for its role in the price-fixing scandal. In recent months, StarKist has argued that it does not have the money to pay the fine and that doing so would bankrupt the company and prevent it from being able to pay restitution to companies and individuals harmed by the price-fixing. The company has been arguing for a reduction in its fine to US$50 million, noting that Bumble Bee's fine was reduced and smaller than StarKist's fine. The US Department of Justice's (DOJ) Antitrust Division argues that the company can afford to pay in full, citing evidence that the firm is the market leader, is larger than Bumble Bee and that it has intentionally accelerated business-related expenditures and dividend payouts to its parent company and related subsidiaries to deplete its cash reserves and build the argument that it cannot afford to pay the assigned fine.[49]

StarKist and the US Department of Justice are sparring over the size of StarKist's price-fixing fine

StarKist also owns Indian packaging technology firm TechPack, which is valued at US$155 million and has an investment in Silver Bay Seafoods, a salmon supplier based in Seattle, Washington, worth US$12 million. Given the size of the TechPack investment, StarKist has been ordered by the judge overseeing the hearing to explore a sale. StarKist countered that TechPack is a strategic key asset.[50] The DOJ also argued that parent company Dongwon could assist in paying the fine to protect its investment in the subsidiary, but StarKist countered that the same request has not been made to Bumble Bee's parent company, private equity firm Lion Capital. DOJ also pointed out that in its financial outlook, StarKist emphasized that its canned tuna sales were declining, but did not include information on its sales of pouched tuna, which is a growing and a higher-margin market segment than canned tuna.[51]

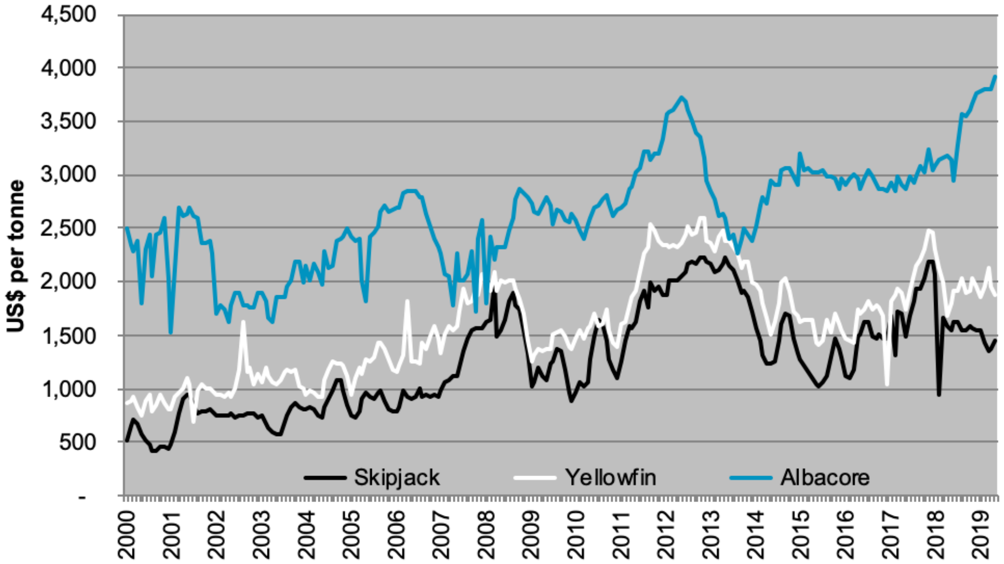
StarKist has put plans on hold for an expansion of pouch production in American Samoa

Starkist proposed that its civil settlements with retailers and other groups could count against the US$100 million total fine. Thus far, Starkist has paid out US$55 million in such settlements; about 75 per cent of lawsuits filed by those involved in direct sales have been settled.[52]

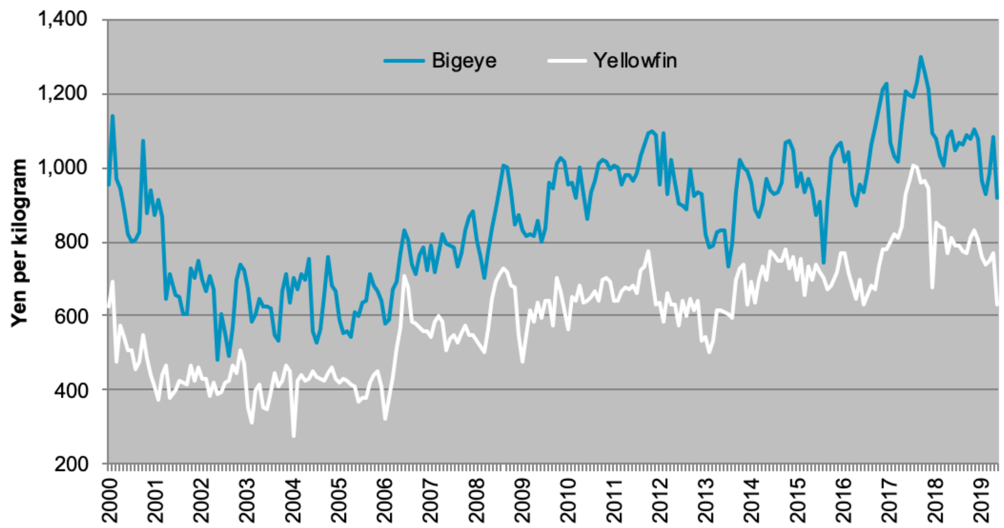
There are implications of the price-fixing fine in the Pacific. In pleading for a reduction, StarKist announced that it can no longer afford a planned US$77 million expansion of its processing facility in American Samoa, so plans are on hold. The expansion was aimed at growing the firms' production of pouched tuna products. There has been no conclusion to the debate and the judge will resume hearings in August.[53]

TUNA PRICE TRENDS[54]

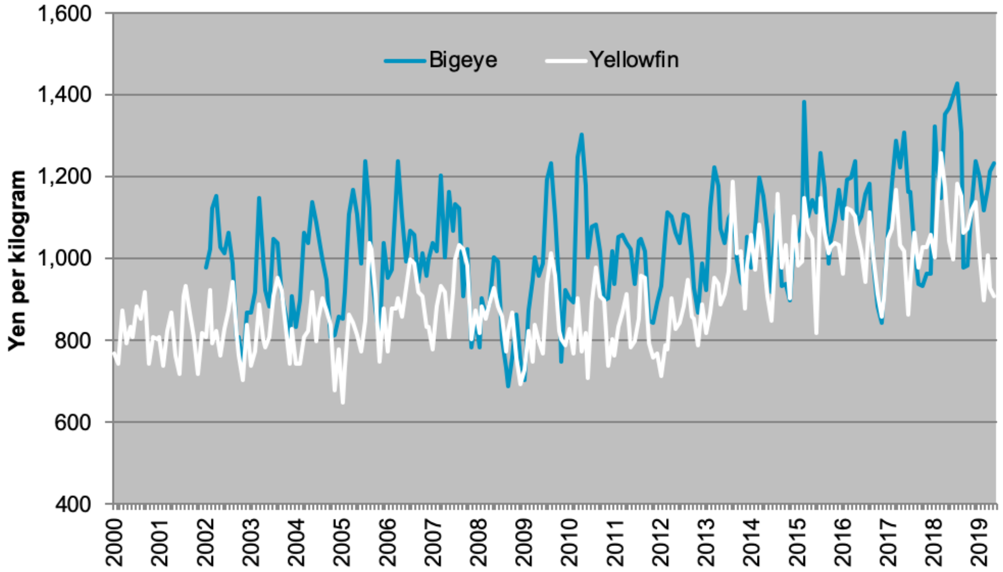
Bangkok canning-grade prices to June 2019[55]



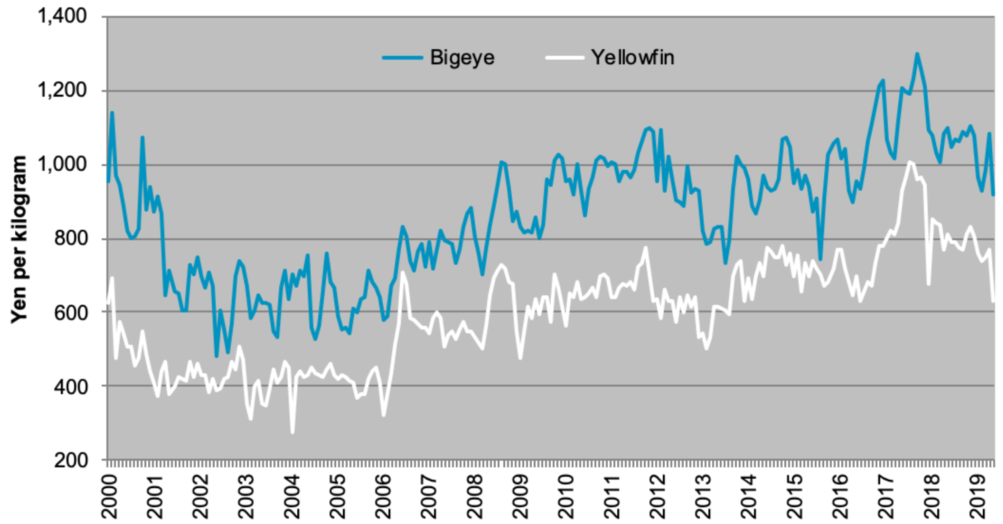
Japan frozen sashimi prices (ex-vessel, Japanese ports) to May 2019[56]



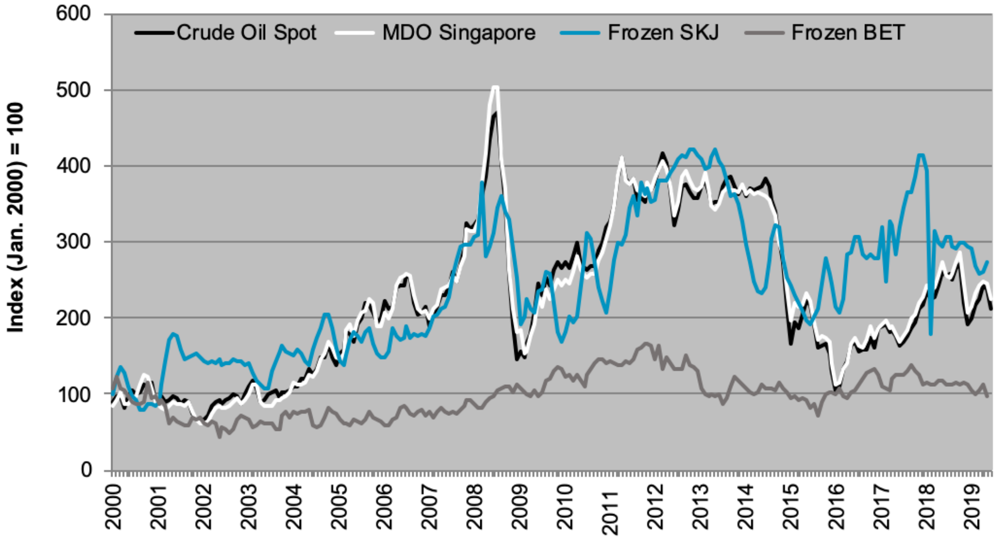
Japan fresh sashimi prices (origin Oceania) to May 2019[57]



US imported fresh sashimi prices to May 2019[58]



Crude oil, canning-grade frozen skipjack (SKJ) and frozen bigeye (BET) price index to June 2019[59]



[1] Prepared for the FFA Fisheries Development Division by Dr Liam Campling, School of Business and Management, Queen Mary University of London, Dr Elizabeth Havice, University of North Carolina at Chapel Hill and Mike McCoy, independent consultant, all Consultant Fisheries Trade and Market Intelligence Analysts, Fisheries Development Division, FFA. Desktop publishing by Antony Price. The authors would like to thank Len Rodwell Batty for his input on an earlier draft of this briefing. The contents of this briefing (including all analysis and opinions) are the responsibility of the authors and do not necessarily reflect the positions or thinking of the FFA Secretariat or its Members.

[2] *FFA Trade and Industry News* will report on the state of WTO negotiations in the next issue.

[3] National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), 'Shipping Act, Merchant Marine, and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fishing Vessel, Fishing Facility and Individual Fishing Quota Lending Program'. *Federal Register*, 83(213), November 2, 2018 / Proposed Rules, p. 55137-41. Available at: https://www.federalregister.gov

[4] Martin D. Smith 2019, 'Subsidies, efficiency, and fairness in fisheries policy', *Science*, 364 (6435), 34-35. DOI: 10.1126/science.aaw4087; Martin D. Smith 2019, 'How not to fish: New rule would turn back clock for US fishing industry', *The Hill*, 09 April 2019. Available at: https://thehill.com

[5] Martine Valo 2019, 'Le Parlement européen vote le retour des aides pour de nouveaux navires de pêche', *Le Monde*, 05 April 2019. Available at: https://www.lemonde.fr

Ignacio Fresco Vanzini 2019, 'The EU must bury the debate on harmful fisheries subsidies once and for all', EURACTIV.COM, 27 March 2019. Available at: https://www.euractiv.com

[6] For example: WWF press release, 'Harmful subsidies will deplete EU seas, dooming fishers' future', 4 April 2019. Available at: http://www.wwf.eu/?uNewsID=345451

[7] Sasha Marivel 2019, 'New European subsidies for EU fishing fleet could devastate Seychelles' tuna stocks', *Seychelles News Agency*, 26 April. Available at: http://www.seychellesnewsagency.com

[8] See Elizabeth Havice, Liam Campling and Mike McCoy 2019, 'China's growing leadership in global fisheries governance is challenged by poor score on new IUU Fishing Index', *FFA Trade and Industry News*, 12(1): January-February. Available at: https://www.ffa.int/trade_news

[9] *The Hindu*, 'Four tuna longliner vessels expected soon', 13 May 2019. https://www.thehindu.com

[10] European Parliament, EU-Vietnam Free Trade Agreement (EVFTA), Legislative Train, June 2019. Available at: http: http://www.europarl.europa.eu

[11] Havice, McCoy & Campling, 'Lack lustre tariff preferences under EU-Vietnam Free Trade Agreement', *FFA Trade and Industry News*, Volume 9: Issue 1, Jan-Feb 2016. Available at: https://www.ffa.int/trade_news

[12] Vietnam, Annual Report to the Commission: Part 1, 14th Regular Session of the Scientific Committee, WCPFC, 8-16 August 2018. Available at: http://www.wcpfc.int

[13] L. Campling, E. Havice and M. McCoy, 2019. 'Potential loan breathes life into PNG's proposed industrial zone', *FFA Trade and Industry News*, 12(2): Mar-April. Available at: http://www.ffa.int

[14] SCMP Editorial, 2019. 'Why the tiny Solomon Islands matter – to East and West', *South China Morning Post*, 23 June. Available at: http://www.scmp.com

[15] Charlotte Greenfield, Jonathan Barrett, 2018. 'Payment due: Pacific islands in the red as debts to China mount', *Reuters*, 30 July. Available at: http://www.reuters.com

[16] Liam Campling, Elizabeth Havice and Mike McCoy, 2019. 'Potential loan breathes new life into PNG's proposed industrial zone', *FFA Trade and Industry News*, 12(2): March-April. Available at: http://www.ffa.int

[17] Charlotte Greenfield, Jonathan Barrett, 2018. 'Payment due: Pacific islands in the red as debts to China mount', *Reuters*, 30 July. Available at: http://www.reuters.com

[18] Hisao Kodachi, 2019. 'Japan, US and Australia begin own "Belt and Road" in South Pacific', *Nikkei Asian Review*, 25 June. Available at: http://www.asia.nikkei.com

[19] Emanuele Scimia, 2019. 'EU offers aid alternatives for island nations', *Asia Times*, 11 May. Available at: http://www.asiatimes.com

[20] SCMP Editorial, 2019. 'Why the tiny Solomon Islands matter – to East and West', *South China Morning Post*, 23 June. Available at: http://www.scmp.com

[21] 'Asian Development Bank sets aside $5bn to boose marine economy, clean up oceans', *Undercurrent News*, 9 May 2019. Available at http://www.undercurrentnews.com

[22] 'US development arm focusing on Pacific fishing traceability', *Undercurrent News*, 26 June 2019. Available at: http://www.undercurrentnews.com

[23] 'World Bank Group Pacific hub opens in Suva', *The Jet: Fiji's First Community Newspaper*, 19 March 2019. Available at: http://www.thejetnewspaper.com

[24] Details of the PROP and country level projects are available at: http://projects.worldbank.org/country?lang=en&page=

[25] Forum Fisheries Agency, Information Note on the Agreed Minimum Terms and Conditions in Relation to Crewing Employment Conditions, June 2019; Statement of Outcomes from the Sixteenth Annual Session of the Forum Fisheries Committee Ministers Meeting (FFC Min16), June 2019. Available at: http://www.ffa.int

[26] IOTC 2018, 'Status of the Indian Ocean yellowfin tuna (YFT: Thunnus albacares) resource' (Updated December 2018), Mahe: Indian Ocean Tuna Commission.

[27] Emily Beament 2019, 'Consumers urged to boycott yellowfin tuna from Indian Ocean over unsustainable fishing, *The Independent*, 8 June. Available at: https://www.independent.co.uk

[28] Claire van der Geest and Holly Koehler 2019, 'IOTC Takes Decisive Action on FADs But Fails to Adopt Effective Measures to Rebuild Yellowfin Stocks', *ISSF Blog*, 28 June 2019. Available at: https://iss-foundation.org; Cliff White 2019, 'IOTC adopts 10 percent catch reduction for yellowfin tuna', *Seafoodsource*, 25 June 2019. Available at: https://www.seafoodsource.com

[29] White 2019

[30] DG MARE, European Commission, press release, 'Indian Ocean Tuna Commission (IOTC) meeting: some progress, but sustainability remains a concern', 24 June 2019. Available at: https://ec.europa.eu

[31] van der Geest and Koehler 2019.

[32] IPNLF press release, 'IPNLF disappointed by latest IOTC outcomes, urges accelerated progress', 26 June 2019. Available at: http://ipnlf.org

[33] IOTC-2019-S23-INF16 ,'IOTC UK Market Statement', read out at the Regional IOTC meeting week of 17th June 2019. Available at: https://iotc.org See also: Bernadette Carreon 2019, 'At IOTC meeting, calls made to save yellowfin tuna stocks from potential collapse', *Seafoodsource*, 19 June. Available at: https://www.seafoodsource.com

[34] Beament 2019; WWF press release, 'Statement from WWF at the conclusion of the 23rd annual meeting of the Indian Ocean Tuna Commission (IOTC) in Hyderabad, India', 21 June 2019. Available at: http://wwf.panda.org

[35] Elizabeth Havice and Liam Campling 2012, 'United States and FFA countries nearing agreement on US Treaty renewal', *FFA Trade and Industry News*, 5(4): July-August. Available at: http://www.ffa.int

[36] Elizabeth Havice 2018. 'Unsettled sovereignty and the sea: mobilities and more-than-territorial configurations of state power', *Annals of the American Association of Geographers*, 108(5): 1280-1297. Contact ehavice@email.unc.edu for a copy.

[37] WCPFC Record of Fishing Vessels, available at: http://www.wcpfc.int

[38] 'SOPAC Tuna Corp vessel sale announcement', *Business Wire*, 2 July 2019. Available at: http://www.businesswire.com

[39] Cliff White, 2019. 'South Pacific Tuna Coporation executive director criticizes global tuna trade', *Seafood Source*, 26 April. Available at: http://www.seafoodsource.com

[40] 'SOPAC Tuna Corp vessel sale announcement', *Business Wire*, 2 July 2019. Available at: http://www.businesswire.com

[41] 'SOPAC Tuna Corp vessel sale announcement', *Business Wire*, 2 July 2019. Available at: http://www.businesswire.com

[42] Author interviews, Seychelles, January 2014.

[43] www.porttechnology.org/news. June 11, 2019

[44] In late June 2019, the vessel Monaco Maersk sailed from Tanjung Pelapas for Europe with a reported world record 19,284 TEU (equal to about 9,600 40-foot containers).

[45] Author's own analysis

[46] Christine Blank, 2019. 'US tuna companies face class-action lawsuit over "Dolphin Safe" claims', *Seafood Source*, 15 May. Available at: http://www.seafoodsource.com; 'Big 3 canned tuna firms taken to court over alleged "Dolphin Safe" fraud', *IntraFish Media*, 14 May 2019. Available at: http://www.intrafish.com

[47] Mike LaSusa, 2019. 'Tuna giants caught in trio of suits over "Dolphin Safe" labels', *Law 360*, 14 May. Available at: http://www.law360.com

[48] Liam Campling and Elizabeth Havice, 2013. 'US to strengthen its dolphin-safe tuna rules to comply with WTO ruling', *FFA Trade and Industry News*, 6(6): November-December. Available at: https://www.ffa.int/trade_news

[49] Jason Smith, 2019, 'DOJ: StarKist spent cash reserves seeking lower price-fixing fine', *Undercurrent News*, 24 May. Available at: http://www.undercurrentnews.com

[50] Cliff White, 2019, 'Judge demands Starkist explore sale of TechPack to pay price-fixing fine', *Seafood Source*, 17 June. Available at: http://www.seafoodsource.com

[51] Cliff White, 2019, 'Judge demands Starkist explore sale of TechPack to pay price-fixing fine', *Seafood Source*, 17 June. Available at: http://www.seafoodsource.com

[52] Cliff White, 2019. 'Court hearing reveals state of Starkist's finances, delay in American Samoa investment', *Seafood Source*, 19 June. Available at: http://www.seafoodsource.com

[53] Hannah Albarazi, 2019. 'StarKist says $100M fine for tuna price fixing it too high', *Law360*, 12 June. Available at: http://www.law360.com; Cliff White, 2019. 'Court hearing reveals state of Starkist's finances, delay in American Samoa investment', *Seafood Source*, 19 June. Available at: http://www.seafoodsource.com

[54] All databases are provided by the Fisheries Development Division at FFA.

[55] Customs Department, Thailand. http://www.customs.go.th/Statistic/StatisticIndex.jsp

[56] FFA database

[57] Japan Customs. http://www.customs.go.jp/toukei/info/index_e.htm

[58] US National Marine Fisheries Service. http://www.st.nmfs.gov/st1/trade/index.html

[59] US Energy Information Administration. http://tonto.eia.doe.gov/dnav/pet/pet_pri_spt_s1_m.htm