

# CAPE

*Coalition pour des Accords  
de Pêche Équitables*

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# CFFA

*Coalition for Fair Fisheries  
Arrangements*

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## What should be the basis of a partnership in fisheries between the EU and ACP countries?

*Notes for presentation at the Seminar on Fisheries Partnership Agreements  
European Parliament – November 8<sup>th</sup> 2006*

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### **Intro**

What issues in FPAs for developing countries. Looking at issues facing countries that have a FPA with the EU, ie ACP.

How are these issues dealt with through FPAs but also through other framework like the EPAs to be, or cooperation

Way forward: some food for thought

Access to resources: Surplus?

Fight against IUU? Access to EU markets? What to put in FPAs?

Market access: sps application

not only EU market access but regional markets

Means

Role of joint ventures?

Value adding? What is value adding?

Standardisation of FPA framework – make it easier to integrate EPA and FPAs

## **Key Fisheries Issues for ACP countries<sup>1</sup>**

ACP countries are faced with a double challenge:

- ensuring the conservation and sustainable exploitation of their fisheries resources and ecosystems
- increasing and redistributing the benefits derived from fisheries resources.

### ***Sustainable Management of fisheries resources***

The key issue in fisheries for ACP countries today is declining fish catches due to over-fishing by both national and foreign fleets.

Over-fishing has various causes: the non-existence of ACP national policies and the lack of clearly defined resource access rights; the increasing use of unselective and destructive fishing methods (such as trawling and dynamite fishing), and general over-capacity of the fishing fleets, both in the industrial (national and foreign) and artisanal sectors. It must be noted that over-capacity in the fishing fleets of the (foreign) developed countries' fleets that fish within ACP EEZs, as in the case of the EU, has been fuelled by massive subsidies.

Many ACP countries also suffer from "IUU" (Illegal, Unregulated and Unreported) fishing activities. IUU fishing has important ecological as well as socio-economic impacts. A recent report<sup>2</sup>, based on case studies from 10 ACP coastal countries, estimates that the average value of IUU catches in these countries is 23% of the value of declared catches.

### ***Creation and redistribution of benefits from fisheries resources***

To be able to draw benefits from fish resources, provided they are managed in a sustainable way, ACP countries are also faced with issues concerning value adding and market access.

#### *Value adding*

In the case of ACP small scale processing activities, adding value operations also serve to increase the shelf life of the fish products, making it more transportable and therefore more accessible to, for example, inland populations.

In most ACP countries there is a need for investment in infrastructure – basic infrastructure (water, electricity) as well as fish processing infrastructure - in order to increase the value derived from fishery resources. Improving the returns from value adding fish processing demands an understanding of the markets and their dynamics at

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<sup>1</sup> Work with CTA etc

<sup>2</sup> Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries, MRAG, June 2005. Downloadable at

<http://www.dfid.gov.uk/pubs/files/illegal-fishing-mrag-synthesis-report.pdf>

both regional and international levels, as well as the facilitation of regional integration in ACP states.

### *Market Access*

Market access issues arise for ACP countries both at regional and international level, notably with regard to EU market access.

#### ⇒ *Issues for Regional Market Access*

The potential of regional fish trade in ACP countries is yet to be fully realized. It should be encouraged with a gradual dismantling of existing barriers to trade. These include the lack of transport infrastructure, import tariffs and burdensome bureaucratic measures.

#### ⇒ *Issues for EU Market access*

##### *Tariffs elimination – Erosion of ACP margins of preference*

Although no consensus has been reached, it is likely that under WTO rules, import duties on fish and fishery products will be further reduced. As a consequence, ACP countries margins of preference will be eroded.

In the case of the EU, the main ACP trading partner for fisheries products, trade negotiations may provide longer implementation times for the liberalization of fish trade or mechanisms for compensation. Reducing tariff escalation between raw fish and processed fish products is also needed. This is particularly important when ACP fish products can't meet the rules of origin requirements, and must pay high tariffs.

##### *Technical Barriers – Sanitary and Phyto-sanitary issues*

Non-tariff barriers, particularly Sanitary and Phyto-sanitary standards, increasingly present obstacles to ACP exports. Such non-tariff barriers are frequently linked to technical standards or procedures.

Two WTO agreements are of particular relevance: the WTO agreements on Technical Barriers to Trade and on Sanitary and Phyto-sanitary issues.

##### *Rules of origin (ROO) requirements*

Duty-free access for fishery products is qualified by the rules of origin applied to fishery products under the Cotonou Agreement (Protocol I, Annex V). To obtain duty-free access, ACP fishery products must be 'wholly obtained' in the ACP state concerned, as defined by Article 3. The main criteria for originating products are registration and flag, ownership and crewing arrangements on the fishing vessels and factory ships.

The restrictions imposed by the rules of origin have for long been a source of contention in EU-ACP fisheries relations. The way "originating fish" is defined effectively forces ACP processors to purchase from EU high priced suppliers (as

they do not have their own tuna fleets), in order to produce originating tuna products.

This creates an incentive for ACP States to grant EU vessels preferential access to their EEZs so as to ensure that their tuna canneries are supplied with “originating tuna”. The preferential margin offered to the ACP States for originating canned tuna (and the relatively high price they pay for the raw material) could therefore be considered as a form of upstream subsidies to EU vessels via fishery access agreements rather than a trade concession to ACP States.

## **Countries with an ACP-EU fisheries agreement**

Depending on the type of fish resources, two kinds of fisheries access agreements have been signed by the EU with ACP countries: tuna agreements and mixed<sup>3</sup> agreements.

### ***Issues arising for countries having signed a Tuna Agreement with the EU***

The tuna species of greatest commercial importance are highly migratory, and move between waters under the national jurisdiction of some coastal ACP States and international waters. This migratory habit provides considerable challenges for ACP States, particularly for small islands with large Exclusive Economic Zones (EEZs), particularly as concerns monitoring and controlling the activities of EU (and other foreign) vessels, and verifying whether the catches of tuna are being made within or outside their respective EEZs. As the compensation payments made through the ACP-EU tuna fisheries agreements are set, *pro rata*, according to the level of catches made, this may create an incentive for vessel operators to under-report their catches.

In this regard, the recent introduction of vessel monitoring, surveillance and control systems (MCS), which use satellite based positioning systems, is an important development. However, the surveillance information is only of value if it is provided on a continuous and real time basis. Its effectiveness is also highly dependent on the capacity of the coastal state to back up such systems with patrol vessels and the ability to monitor catches directly. The latter is more readily achieved if there are enforceable compulsory local landing provisions integral to the fisheries agreement.

Generally the EU tuna fleet operating under ACP-EU tuna fisheries agreements does not compete with local ACP fishing fleets. In some cases, the sustainability of tuna fishing operations has been questioned, particularly in the case of tuna fishing operations using purse seines<sup>4</sup> and fish aggregating devices<sup>5</sup>, as these operations tend to take significant levels of by-catch and juvenile tuna.

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<sup>3</sup> A mixed fisheries agreement establishes fishing opportunities for a variety of fish stocks, such as crustaceans, small pelagic species, demersal species and tuna

<sup>4</sup> A type of fishing net used to surround and catch large schools of fish, particularly tuna species. The net (or seine) is pulled in a circle to surround the school then drawn shut at top and bottom, much like a purse.

ACP countries having signed a tuna fisheries agreement with the EU are from two main ACP regions:

#### *Indian Ocean*

ACP countries in the Indian Ocean like Comoros, Madagascar, Mozambique, and the Seychelles have important (seasonal) tuna resources. The fisheries relations with the EU are based on tuna agreements. In the case of the Comoros and Seychelles, in 2004 each signed an FPA with the EU.

The distance and extent of the Indian Ocean fishing grounds necessitates the use of local ports by the EU fleets for refuelling and other requirements (transshipping, provisioning, maintenance, etc). These agreements are also important for the local export processing sector (tuna canning) that are highly dependent on the supply from EU vessels for exporting on EU market.

#### *Pacific Ocean*

There are 3 tuna fisheries agreements with countries in the Pacific Ocean (Kiribati, the Solomon Islands and the Federated States of Micronesia (FSM)<sup>6</sup>. For the countries concerned, the financial compensation provided makes a significant contribution to the overall Government revenue. It's interesting to note that, unlike other fisheries-rich ACP regions, the Pacific only accounts for 1% of fish imports onto the EU market. This can be partially explained by the fact that EU fleets have only recently started fishing in Pacific waters, and that, with notable exceptions, the Pacific Island States generally lack their own tuna fleets and tuna processing sectors. Other fleets – notably the US and Japan, are active there, supplying their own markets.

#### ***Issues arising for ACP countries having signed a mixed agreement with the EU***

The main ACP region where mixed agreements have been signed is West Africa, including the agreements with Mauritania, Senegal, Guinea Bissau, Guinea, Ivory Coast, and Gabon.

Here EU fishing operations may compete directly with local ACP fishing sectors both for resources and markets. There are a number of issues arising from such competition. These include:

- by-catch and its utilisation;
- access to the EU market; and
- capacity for monitoring, control and surveillance (MCS).

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<sup>5</sup> A man-made floating object set at sea to attract pelagic fish such as tuna.

<sup>6</sup> The main relevance of these agreements is that they provide an opening for the EU to legitimately expand its tuna fishing activities in the Pacific. The EU has recently signed the "Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western Central Pacific Ocean (WCPTC)", and these agreements will provide it with the necessary catch histories for future quota allocations.

Certain fishing activities, notably prawn trawling, generate significant quantities of by-catch. Such by-catch may consist of both high and low value non-target species, and of juvenile fish of both target and non-target species. From an economic point of view, by-catch of valuable non-target species by EU vessels represents an economic loss to the ACP States. From a social and economic point of view, compulsory landings of low value non-target species may disrupt local markets and undermine the economic viability of local artisanal fisheries. From a conservation perspective, high levels of by-catch may damage the ecosystem and undermine fisheries sustainability.

In some cases ACP States fish catching and processing sectors compete directly with EU fishery enterprises for access to lucrative value-added export markets. In such cases, particularly where there is resource scarcity and over-fishing, ACP States may find the costs of compliance with EU hygiene and food safety regulations too high. They may therefore have no choice but to enter into fisheries agreements that discriminate against their own catching and processing sectors.

Effective monitoring, control and surveillance programmes are also highly important for providing good information for fisheries management, and to regulate fishing activities. There are various methods that can be used to verify both catch size and location where catches were made, including on-board observer programmes, compulsory landing provisions, vessel monitoring systems (VMS), and log books. However, often ACP States lack the capacity to implement such programmes, and lack access to log books and “real time” full information from VMS.

Many West African states have important small-scale fisheries, which provide an important source of livelihood and food security. There is evidence<sup>7</sup> that EU and other foreign fishing activities compete both directly (for space and resources) and indirectly (for markets) with these fisheries.

The West African fishing grounds provide the basis of the so-called “pay, fish and go” EU-ACP fisheries agreements<sup>8</sup> and are, with notable exceptions (Cape Verde has a tuna agreement with the EU), mixed agreements. The proximity of the EU (notably the port of Las Palmas in the Canary Islands) means that EU fishing fleets prefer not to land their fish locally. This in turn means that local landing provisions

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<sup>7</sup> See for example OECD publication “Extracts from the Development Cooperation review series concerning policy Coherence, pg 48 <http://www.oecd.org/dataoecd/23/16/25497010.pdf>

<sup>8</sup> *Given the proximity of EU landing ports, West African fisheries access agreements have been described as “pay, fish and go”, in as much as the EU fishing vessels, once the financial compensation is paid to the West African country, come to fish and go away, without landing in the ACP country.*

set up in the access agreements<sup>9</sup> are either not respected, or that only lower quality fish is landed.

### **2.3. Key issues where broad all-ACP consensus could be built**

Areas where broad ACP consensus could be built in fisheries have been explored at various recent occasions<sup>10</sup>. They include:

- A. **The need for improved fisheries management** - Two particular aspects where consensus could be reached are:

#### **Fisheries Research for sustainable management of resources**

Given the scarcity of human and financial resources in ACP countries, fisheries research needs to focus on providing information of use for fisheries management, both at ACP national and regional level. This practically oriented fisheries research must contribute to formulating the regulatory mechanisms necessary for adjusting fishing capacity in line with available resources and stock productivity. It should also help address policy issues arising for the sector, such as the allocation of access rights to resources and the integration of artisanal fisheries into national economy.

Common challenges facing ACP fisheries research include: primary data collection (qualitative and quantitative aspects); the development of an understanding of marine eco-systems, and an ecosystems approach to fisheries management; harmonisation of systems for data analysis at regional level, and the capacity to disseminate the research results on a regular basis; the incorporation of social, environmental and economic data into fisheries analysis and management decision taking; the setting up of structures and mechanisms to enable dialogue between researchers, fishery managers and the professionals (in particular the men and women from coastal fishing communities).

#### **Monitoring, Control and Surveillance**

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<sup>9</sup> *most of the fisheries access agreements have provisions for landings, but very seldom are these landings obligatory since there are also provisions in the agreement that allow EU boat owners to default on their obligations to land fish if they make a compensation payment. The quality of the landings are not stipulated, and EU boats tend to land lower value fish (both in quality and species).*

<sup>10</sup> These include an electronic consultation on ACP-EU fisheries relations, organised by the CTA in November 2004, and a ACP/COMSEC/CTA meeting on the same subject, organised in December 2004.

Many coastal ACP countries have sizeable EEZs to police, particularly island states. But they often lack the capacity to do so in an efficient way. This leads to IUU (Illegal, Unreported, Unregulated) fishing. It also creates difficulties for ACP states to assess the quantities and value of the fish caught by local and distant-water fishing fleets in its EEZ.

The harmonisation of measures to fight IUU (Illegal, Unregulated, Unreported) fishing at regional level is a priority for most ACP coastal countries: agreement on the right to pursue<sup>11</sup>, joint surveillance missions (at sea and aerial surveillance), regional register of offending fishing vessels, harmonisation of legislation on technical measures (prohibited fishing gears, infractions and sanctions).

## **B. The need to create an enabling environment for maximising benefits from the fisheries sector**

Particular attention needs to be given to small and medium scale enterprises (SMEs), including the artisanal sector<sup>12</sup>, both in the catching and processing sub-sectors, as these SMEs form the vast majority of ACP enterprises in the fisheries sector.

Two aspects deserve special attention:

### **Improvement of value adding operations**

In general, ACP countries have an interest in developing joint ventures with European operators in fish processing, in order to create a local added value, rather than develop projects in the catching sector. Through joint ventures Europeans can bring capital and know-how, which is needed to create new processing plants or rehabilitate existing ones for the processing of fisheries products.

### **Improving access for ACP fish products to EU markets**

There is a general ACP concern that, as preferences are eroded,

=> Some EU tuna fleets may be replaced by other fleets with low running and low labour costs, and which tranship on the high seas

=> ACP States, especially small island states, would be the net losers as they will not be able to compete, and the value adding will be done elsewhere.

Regional market

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<sup>11</sup> In this case, the “right to pursue” refers to the right granted by a government to another to pursue and apprehend vessels engaged in illegal fishing activities if and when they escape into its waters.

<sup>12</sup> See FAO paper COFI/2005/5 “Supporting Small-scale Fisheries Through an Enabling Environment” and comments in Samudra Magazine  
[http://icsf.net/jsp/publication/samudra/pdf/english/issue\\_40/art15.pdf](http://icsf.net/jsp/publication/samudra/pdf/english/issue_40/art15.pdf)



### **3.1. Key issues for the EU (and its member states) in fisheries**

The two main features of EU fisheries of relevance for ACP States are:

- resource depletion in EU waters, where there has been a failure to achieve a sustainable balance between resources and their productivity on the one hand and fishing effort on the other;
- increasing EU dependence on external fish supplies to meet the demands of both its market (processing and consumption) and fishing sectors (employment and investment).

The declining stock levels in EU waters, and the growing supply deficit in the market place are the main forces driving EU external fishing policy. Its fishing policy for ACP countries is therefore driven by the need to gain access to ACP fishery resources (both fishing grounds and fishery products). The fishery situation in the EU today (over-capacity, depleted resources, supply deficit, etc) is both potentially promising and perilous for ACP states.

Today about 60 % of fish consumed or processed in the EU comes from outside EU waters. The growing demand for fish is for both quantity and quality. Food safety standards have been established, and strict controls are applied to ensure compliance with sanitary and phyto-sanitary standards. These standards provide a strong check on the potential for ACP States to benefit from any value addition to its fishery products, rather encouraging the export of fish in a raw or semi-processed form.

As of 2003, the EU is the world's largest market for fish imports, importing more than €12 billion worth of fish and fishery products (consumption and processing); with its exports amounting to more than €2 billion.

#### **How is it supplied?**

The EU market has enormous potential for ACP fish exporters. On the one hand it has recently enlarged the number of Member States from 15 to 25, and on the other, due to over fishing and resource depletion it is able to supply less than 50% of its market demand from its own fishing grounds. It is also highly significant that the EU fish supply deficit is growing.

In order to address the short fall in fish supplies in its own waters, the EU seeks supplies from third countries. It does this either through trade (which may involve “free trade” agreements), or through arrangements that enable its vessels to catch fish in third country waters (within the waters under jurisdiction of non-EU Member States).

In the case of trade, the provisions of the CPA, under its GSP arrangements, allow ACP States tariff free access to the EU market for “originating” (governed by the Rules of Origin - RoO) fish and fishery products. Similar tariff concessions are granted to other countries through specific Free Trade Agreements (FTAs) and through the General System of Preferences as granted to non-ACP LDCs and other countries (see below).

At least 20% of the EU's direct fish supplies that come from its own fleet originate outside EU waters, in international waters and waters under the jurisdiction of third countries. Access for the EU fleet to third country waters is achieved through the

negotiation of fisheries agreements. These are either bilateral agreements with financial compensation (known widely as “cash for access”<sup>13</sup> agreements).

Establishing an equitable framework for fisheries partnerships between the EU and ACP States for sustainable and responsible fisheries

, and with both fisheries and development objectives, will require full transparency *viz à viz* access rights granted to other DWFNs.

The EU is a major world market for fish and fishery products, but faces an ever increasing shortfall in supplies from its own waters. It therefore seeks to bridge this supply gap by importing from other fish producing countries, and through catching fish in the waters of third countries (through fisheries agreements). Although fisheries access agreements have been important in the past, an increasing proportion of EU fish supplies are provided through trade agreements (FTAs).

An important recent development (as in the case of the EU-Chile Association Agreement) has been to link tariff free access to the EU market for third country fish and fishery products to allowing direct investment for EU companies in the third country fishing sectors. Such a linkage is also being pursued by the EU in its on-going negotiations with the MERCOSUR countries.

With regards to fishery relations, EU FTAs with DCs fall into two main categories:

- (1) those where the access provided for third country fishery products on the EU market is not made conditional on meeting any provisions for fisheries access for the European fleet to third country resources or EU investment in the partner’s country fishing enterprises. Thus, the market access provisions contained in the Cotonou Agreement, the MED Agreements, and the Mexico Agreement are not conditional on meeting any fishery agreement provisions;
- (2) those where market access is conditional on meeting fishery agreement provisions. In the case of the TCDA with South Africa, this is explicitly laid out in the agreement. In the EU-Chile Association Agreement, a separate Protocol on Fishing Enterprises establishes the possibilities for EU companies for direct investment, and to fully own Chilean companies, to transfer EU vessels to Chile (to Chilean fishing companies), and to purchase licences to fish in Chile and Chilean fish quotas. The Association Agreement with Chile ties trade liberalisation to European investment in Chilean fishing enterprises.

The development co-operation components in fisheries of the EU-third country trade and fisheries access agreements tend to highlight the development priorities of the third

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<sup>13</sup> Under the provisions of these agreements the EU pays an agreed amount of compensation to the third country concerned in exchange for an agreed amount of access (usually based on the number of vessels or a measure of their fishing capacity)

country as regards fisheries management (including monitoring, control and surveillance) and the non-tariff barriers to accessing the EU market. In the case of the EU-Chile Association Agreement, there is a separate component that deals specifically with sanitary and phytosanitary issues.

In the case of EU cash for access fisheries agreements, development co-operation provisions are financed as part of the overall financial compensation. This means that the third country has the option of either using the part of the financial compensation for implementing these provisions, or using the moneys for other budgetary priorities. In most cases, the latter option tends to be preferred.

With the EU proposal to move from the current cash for access fisheries agreements to FPAs, the way that the development co-operation components are addressed will change. For a fuller discussion on FPAs, see the *In Brief* on EPAs and Fisheries.

It is therefore prerequisite for their success that FPAs are built into a wider fisheries and development framework that addresses the issue of foreign fleets as a whole (and not just restricted to EU fleets), whilst paying heed to the regional aspect of certain issues.

It is also important to recognise that there are some contradictory interests between the EU and developing countries, and that some political arbitration will be necessary to clarify the priorities. Therefore, there is a need for a wide ranging discussion of these issues (of contradictory interests) in the parliaments whilst consulting with the fisheries sector stakeholders. In the case of the ACP States, organising such a debate with proper participation must be supported by appropriate means.

It is also important that, if partnerships for sustainable fisheries are to be developed on a long term basis, the “access” component of the FPA must be temporary, and should decrease (and disappear) if and when the local capacity to exploit fisheries resources is developed. In particular, socio-economic and environmental impacts assessment studies should be made public and widely debated prior to any renewal of the FPA.

- Fisheries partnerships need to respect the provisions of article 62 of the United Nations Convention on the Law of the Sea: “*Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements... give other States access to the surplus of the allowable catch*”.

- Fisheries partnerships also need to respect the provisions of the FAO Code of Conduct for Responsible Fisheries that deal with the Precautionary Principle (as in articles 6.5 and 7.5), conservation of fisheries resources and habitats (as in articles. 6.1 and 6.8), and artisanal and small-scale fishing (as in article 6.18)..