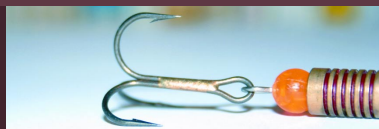


ICTSD Project on Fisheries, Trade and Sustainable Development



The Importance of Sanitary and Phytosanitary Measures to Fisheries Negotiations in Economic Partnership Agreements



By Martin Doherty

Head of Research with the international trade consultancy, Cerrex Limited



International Centre for Trade
and Sustainable Development

Issue Paper No. 7

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Published by

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Acknowledgments

We wish to thank Liam Campling and Amanda Hamilton for their comments to this paper.

We are grateful to the participants of the Regional Dialogue on Fisheries Aspects of the African Caribbean and Pacific (ACP) - European Union (EU) Economic Partnership Agreements, held in Windhoek, Namibia, 28 - 29 August 2008.

For more information about ICTSD's Programme on Fisheries, visit our website at www.ictsd.org.

ICTSD welcomes feedback and comments on this document. These can be forwarded to Paolo Ghisu at pghisu@ictsd.ch.

Citation: Doherty, M. (2010). *The Importance of Sanitary and Phytosanitary Measures to Fisheries Negotiations in Economic Partnership Agreements*. ICTSD Series on Fisheries, Trade and Sustainable Development. Issue Paper No. 7, International Centre for Trade and Sustainable Development, Geneva, Switzerland.

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The views expressed in this publication are those of the author(s) and do not necessarily reflect the views of ICTSD or the funding institutions.

ISSN 1563-0544

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LIST OF ACRONYMS

ACP	African Caribbean and Pacific
BCLME	Benguela Current Large Marine Ecosystem
CA	Competent Authority
CARIFORUM	Forum of Caribbean States
CFFA	Coalition for Fair Fisheries Arrangements
CIFA	Committee for Inland Fisheries of Africa
CPA	Cotonou Partnership Agreement
DG SANCO	Directorate General for Health and Consumer Affairs (EU)
DFID	UK Department for International Development
EBA	Everything But Arms
EC	European Commission
ECDPM	European Centre for Development Policy Management
EPA	Economic Partnership Agreements (Cotonou)
ESA	East and Southern Africa
EU	European Union
FAO	Food and Agricultural Organisation
FVO	Food and Veterinary Office (DG SANCO)
FTA	Free Trade Agreement
GATT	General Agreement in Tariffs and Trade
GHP	Good Hygiene Practice
GLP	Good Laboratory Practice
HACCP	Hazard Analysis Critical Control Points
IEPA	Interim Economic Partnership Agreements
ISO	International Standards Organization
ICTSD	International Centre for Trade and Sustainable Development
LDC	Least Developed Countries
LDCF	Least Developed Countries Fund
MED	Mediterranean Region
MRA	Mutual Recognition Agreement
NTB	Non-Tariff Barriers
NEPAD	New Partnership for Africa's Development
OCT	Overseas Countries and Territories (EU)
SADC	Southern African Development Community
SCCF	Special Climate Change Fund
SOFIA	State of World Fish and Aquaculture (FAO)
SFP	Fisheries Support Programme (EU)
SPS	Sanitary and Phytosanitary
STDF	Standards and Trade Development Facility
TBT	Technical Barriers to Trade Agreement (WTO)
TDCA	Trade Development and Cooperation Agreement
UNFCCC	United Nations Convention on Climate Change
UNIDO	United Nations Industrial Development Organization
WTO	World Trade Organization
WWF	World Wildlife Federation

FOREWORD

Sanitary and phytosanitary standards (SPS) have become an increasingly important topic of debate in international trade. These SPS measures are a major cause of market access concern for many developing countries, even beyond tariff barriers in certain sectors such as fisheries. This is due to the complexity in number and nature of food safety requirements that countries have to meet in order to access the European Union (EU) and other global markets and the capacity of developing countries to comply with such requirements.

Indeed, many countries from Africa, the Caribbean and the Pacific (ACP) have inadequate human, financial or technical resources to meet the required standards of food safety. The Global Financial Crisis has placed further restrictions on developing countries' ability to raise funds to upgrade their food safety capabilities. This aspect is seen as particularly relevant in view of the potential negative impact of climate change on fisheries through the introduction and spread of new diseases to fish, and changes in their traditional operating environment.

This study seeks to examine those challenges and to contemplate possible policy responses. It argues that the Economic Partnership Agreements (EPAs) between the European Union and ACP countries represent an opportunity to achieve solutions to several problem areas associated with EU SPS requirements. The importance of addressing SPS concerns in the fisheries sector cannot be overemphasized given that the EU accounts for 75 percent of ACP fisheries exports.

Moreover, fisheries are a key source of employment, export revenue and food security for many ACP countries. Internationally, fisheries are one of the few areas where their share of world trade is increasing. Consequently, if the impact of some of the SPS 'barriers' were reduced, it could facilitate a further potential expansion of this sector. This paper suggests that in this light, SPS can quite properly be viewed as a tool of development for the purposes of the EPAs, and therefore merits funding on this count alone.

In considering what might usefully be achieved within the framework of rule-making under the Economic Partnership Agreements, consideration is also given to the World Trade Organization SPS Agreement and some of the ambiguities that the SPS Agreement poses in this respect.

Finally, this paper sets out a number of recommendations for consideration by the EPA negotiators. These cover both specific textual wordings dealing with the SPS Agreement ambiguities, capacity building, and the need for regional institutions and regional approaches to the problem, as pests and diseases do not respect political boundaries. Some other recommendations are also made, which whilst relating to SPS issues, have a broader development objective.

This paper is part of ICTSD's project on fisheries, trade and sustainable development, which aims to foster an inclusive and informed process for crafting multilateral, regional and domestic trade rules and policies in the fisheries sector that are supportive of sustainable development.

We hope that you will find this publication a stimulating and useful read.



Ricardo Meléndez-Ortiz
Chief Executive, ICTSD

EXECUTIVE SUMMARY

This Paper is based on a background note prepared for the International Centre for Trade and Sustainable Development (ICTSD) Fisheries Workshop held in Namibia in August 2008. It has subsequently been revised to place Sanitary and Phytosanitary (SPS) issues in the wider context of the economic and development aims of the African, Caribbean and Pacific (ACP) countries as provided for under the European Union (EU) -ACP Partnership Agreements currently being negotiated.

Sanitary and Phytosanitary (SPS) issues have increasingly become a topic of debate in international trade, replacing tariff barriers as a major cause of concern. This is due to the number and nature of food safety requirements that ACP countries have to meet in order to access the EU and other global markets.

The increased requirements in food safety standards are driven by increasing concern among EU consumers about food contamination. This is coupled with fear of legal liability by importers and retailers, as well as technological advancements in the identification (and introduction of related precautionary measures) of hitherto undetected risks. Overall, this is a trend for the European Commission to place the onus for food safety surveillance and control onto the authorities of exporting countries, rather than at the EU borders.

Many African Caribbean and Pacific countries have inadequate human, financial or technical resources to enable them to meet the required food safety standards. The Global Financial Crisis has placed further restrictions on the ability of developing countries to raise funds to upgrade their food safety capabilities. This aspect is particularly relevant in the context of climate change and the potential negative impact on fisheries, through the introduction and spread of new diseases due to changes in their natural habitat.

A principal message of this Issue Paper is that Economic Partnership Agreements (EPAs) represent an opportunity to achieve solutions to several problem areas associated with EU SPS requirements. These have been the subject of considerable discussion over the years between standard setters like the EU and standard takers like the ACP, but with little satisfactory resolution achieved. The EPAs are seen as a way of overcoming this deadlock and obtaining valuable clarifications and commitments from the EU.

This Paper points out that fisheries is the most internationally traded food commodity and an important source of employment, export revenue and food security. The fishery sector is one of the few in which the ACP countries' share of world trade is increasing, with the EU accounting for 75 percent of ACP exports. Consequently, it is not only important to protect the existing level of ACP trade, but also facilitate the potential expansion that could occur if the impact of some of the SPS 'barriers' were reduced. This Paper also suggests that in this light, SPS can be viewed as a tool of development and therefore merits funding on this count alone.

The Paper outlines the specific SPS requirements to be met by both public and private sector participants in the supply chain. Of these, the most important is the existence of a Competent Authority (CA) which must be approved by the EU Food and Veterinary Inspectorate. The CA must be able to ensure that fishery products are of an equivalent level of safety for European consumers, as that of products produced and approved by the EU's internal food safety system. Under this public sector umbrella, there are requirements placed on the private sector for supporting measures such as Hazard Analysis Critical Control Points (HACCP), traceability from primary source to consumer and personnel hygiene.

Also identified are a number of problem areas faced by the public and private sectors in meeting EU food safety measures. Some of these include the rigid interpretation of procedures rather than accepting different local procedures and practices that achieve equivalent levels of safety, as well as domestic politics that delay the introduction of legislation that would enable CAs to operate effectively.

In considering what might usefully be achieved within the framework of an EPA, consideration is also given to certain ambiguities that exist in the wording of the World Trade Organization's SPS Agreement. The EPAs fully accept the overarching authority of the WTO Agreement but this does not preclude signatories including agreed clarification of the interpretation of ambiguous areas within the text of the SPS Chapters.

Two of these ambiguities have been long discussed with the European Commission and the WTO SPS Committee without progress. One allows standard setters such as the EU to set higher standards than the international norm, as long as this is accompanied by supporting scientific evidence. The second allows the imposition of precautionary import bans without specific scientific evidence, and for an unspecified time period. It is considered arguable that higher than global standards should require the support of higher than normal scientific evidence as to why the EU is at a higher risk than other countries. In addition, precautionary bans should be formally time limited, with a commitment to assistance to be provided by the EU to countries that are unable, through resource constraints, to obtain evidence to contest the ban and/or introduce remedial action.

This Paper elaborates a number of recommendations for consideration by the EPA negotiators. These include specific textual wording addressing the SPS Agreement ambiguities, as well as capacity building and the need for regional institutions. Other recommendations, although related to SPS, also address broader development objectives.

The principal recommendations cover both general and specific suggestions and include:

1. New text to cover the imposition of precautionary import bans.
2. New text to cover standards that are higher than international norms.
3. The introduction of flanking measures to help entrepreneurs meet SPS requirements in new business ventures.
4. New regional Competent Authorities to undertake delegated inspection of national CAs on behalf of the EU.
5. Regional 'Hubs of Expertise' to supply a service where demand does not support a number of nationally based institutions.
6. More comprehensive early warning and preventative surveillance systems within the same geographic/eco-climatic region.
7. Identification of specific public and private sector products and institutions that could rapidly and in a cost effective manner be brought to a standard where the EU would agree to an equivalency agreement.

1. INTRODUCTION

The scope and requirements of food safety measures are increasingly replacing tariff barriers as the main concern of African, Caribbean and Pacific (ACP) countries seeking to export to the EU. The ACP countries are beneficiaries of preferential access to the EU market under the Cotonou Partnership Agreement (CPA). However, the increasing coverage and sophistication of many SPS measures are preventing ACP countries from benefiting from the full potential advantage of the Agreement.

The primary reasons for this are the inadequate levels of human, financial and technical resources that ACP countries can provide to ensure that all food exported meet the increasing level and complexity of food safety

required by the SPS measures. The 2009 Global Financial Crisis has further reduced the ability of many ACP countries to raise the funds necessary to upgrade their domestic food safety arrangements to meet EU and other importers' requirements.

Fish is the most internationally traded food commodity, and tropical shrimp one of the most valuable traded fish commodities. In addition to its value in trade, fisheries are an important source of employment, export revenue and food security in many ACP countries. Internationally, fisheries is one of the few sectors in which ACP countries' participation in world trade is increasing, with the EU accounting for nearly 75 percent of ACP fishery exports.

Figure 1: The Importance of Fish Production and Trade in a Global Context

- Aquatic products are among the most widely traded foods. About forty percent of global production enters international trade.
- Fishery trade is particularly important as a source of foreign currency for developing countries. At present, their net earnings from aquatic products are greater than the combined earnings from the major agricultural commodities of rice, coffee, bananas, rubber, sugar and tea.
- Capture fisheries production in 2006 was ninety-two million metric tonnes, which represented a small decline from 2005. Though the net quantity for human consumption may rise, production is not expected to increase much further, as most stocks are reaching or sometimes exceeding capacity limits.
- Aquaculture production was 51.7 million metric tonnes in 2006. It continues to grow more rapidly than all other animal food producing sectors, with an average global growth rate of eight point eight percent per year since 1970, compared to two point eight percent for terrestrial farmed meat production systems.
- If growth in aquaculture can be sustained, it is likely to fulfill the increasing demand for aquatic food supplies by supplying more than 50 percent of the total aquatic food consumption by 2015.

Source: Climate Change for Fisheries and Aquaculture .FAO Doc HLC/08/BAK/6 June 2008.

Negotiations of Economic Partnership Agreements (EPAs), which will replace the unilateral trade preferences currently offered by the EU with reciprocal preferences, are ongoing.¹ The ACP countries are concerned, however, that the new EPAs might negatively affect their fisheries sectors, and are looking for solutions in this area.

The fisheries-specific components of EU SPS measures have not been altered in the transition from the CPA to Interim Economic Partnership Agreements (IEPA) or EPAs. This is because they are governed by the overarching SPS framework of the European Commission (EC) and individual EU Member states. The European Commission's SPS relations with

third countries (including the ACP) continue to be registered and monitored by the Directorate General for Health and Consumer

Protection (DG SANCO) and its executive arm, the Food and Veterinary Office (FVO).

Figure 2: ACP-EC Partnership Agreements (The Cotonou Agreement)

The “Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part and the European Community and its Member States of the other part” was signed on 23 June 2000 in Cotonou, Bénin - hence the name “ACP-EC Partnership Agreement” or “Cotonou Agreement”. It was concluded for a twenty year period from March 2000 to February 2020, and entered into force in April 2003. It was revised for the first time in June 2005, with the revision entering into force on 1 July 2008.

The Cotonou Agreement is a global agreement, introducing important changes and ambitious objectives while preserving the ‘acquets’ of twenty years of ACP-EC cooperation.

Compared to preceding agreements and conventions shaping the EC’s development cooperation, the Cotonou Agreement represents further progress in a number of aspects. It is designed to establish a comprehensive partnership, based on three complementary pillars:

- Development cooperation;
- Economic and trade cooperation;
- The political dimension.

Source: European Commission, 2008.

The greater presence of SPS issues on the international trade scene has been driven by the increasing awareness and concern for food safety among European consumers, particularly relating to the presence of chemical residues and various carcinogenic additives in food. This has been exacerbated by repeated ‘food alarms’ and, to a certain extent, by the resultant EC action to tighten and harmonise an EU food safety regime that had been developed in a piecemeal fashion over forty years. This has resulted in attention being focused on the entire food chain, from primary source to final consumer. With this streamlining, a greater emphasis has been placed on assessing the effectiveness of the legislation, enforcement agencies and technical support services of third countries seeking to export to the EU.

New non-legislative pressures are also emerging which will have to be addressed within the context of the EPAs. Of these, the impact of climate change on the fisheries sector has the potential to be very significant in terms of the re-

medial resources that may be required to meet a variety of technical and financial problems.

A report of the Food and Agriculture Organisation (FAO) focusing on the impact of climate change on development in less developed countries with a high dependency on fish consumption and/or exports was issued in July 2008.² The report highlighted the fact that wild capture fisheries are fundamentally different from other food production systems in their linkages and responses to climate change and in food security outcomes.

Unlike most terrestrial animals, aquatic animal species used for human consumption are poikilothermic, meaning their body temperatures vary according to ambient temperatures. Any changes in habitat temperatures significantly influence their metabolism, growth rate, productivity, seasonal reproduction, and susceptibility to diseases and toxins. Once the body temperature rises above a certain level the immune system of the fish may be unable to deal with disease and

welfare issues. The development potential of inland fisheries and of aquaculture is also likely to be impaired, particularly with regard to the production of shrimps and prawns, which are potentially high on the impact list of climate change^{3 4}.

Sanitary and Phytosanitary is consequently not a passing issue but one that needs to be recognised as presenting new twenty-first century challenges to the twentieth century regulatory mechanism of the World Trade Organization (WTO) and its related SPS Agreement. Consideration of how SPS issues can be addressed within the framework of the EU/EPAs is part of this reassessment process, with direct implications for the realisation or forfeiture of the potential benefits that are associated with the EPAs currently being negotiated.

The potential benefits relate not only to economic issues but also to the wider development objectives set out in the Cotonou Agreement, and which many argue, are in danger of being overlooked. Due to its cross cutting nature affecting both economic and social issues, improved SPS capability can be viewed as a development tool as well as a trade facilitator.

This Paper looks at the practical SPS related problems that ACP countries have in availing

themselves of the undoubted increase in EU market access that has become available over the years to developing countries. These food safety issues represent a fundamental barrier to a commensurate level of market entry.

In doing so, this Paper recognises that a fundamental difference exists between tariff negotiations and discussions on SPS issues. The difference is that tariff negotiations aim at achieving a level of protection that is mutually acceptable to the negotiating parties and which enables trade to flow between countries to the economic benefit of both. SPS negotiations, however, start from the premise that the level of safety being required is non-negotiable. As a result, the only issues for debate in SPS negotiations relate to the mechanics of the introduction of measures and the size and format of any assistance that may be available to help those impacted in actually complying.

Although this Paper was originally prepared for the Regional Dialogue on Fisheries, it is necessary to say that the subject of SPS is not product-related and for this purpose, fisheries cannot be treated any differently from other sectors. This is based on the SPS Agreement being designed as a safeguard against specific risks (not products) arising and which are outlined on Figure 3.

Figure 3: The Provisions of the WTO/SPS Agreement

The provisions of the WTO SPS Agreement relate to the following risks and circumstances:

- The protection of animal or plant life or health within a territory from risks arising from the entry, establishment, or spread of pest, disease, disease-carrying organisms, or disease-causing organisms.
- The protection of human or animal life or health within a territory from risks arising from additives, contaminants, toxins, or disease-causing organisms in foods, beverages, or feedstuffs.
- The protection of human life or health within a territory from risks arising from diseases carried by animals, plants, or products thereof, or from entry, establishment, or spread of pests.
- The prevention or reduction of the risks of other damages within a territory from the entry, establishment, or spread of pests.

2. EUROPEAN UNION SANITARY AND PHYTOSANITARY REQUIREMENTS FOR FISHERIES

2.1 Public Sector

Most attention is paid to marine fisheries, while inland fisheries tend to take second place as this sector is thought to be different. For the purposes of SPS however, there is in practice little substantial difference in the EU requirements.⁵ Of these, the overriding prerequisite is to be placed on a list of countries which are deemed eligible to export to the EU and in the case of marine factory and freezer vessels, a unique EU SPS number is allotted to each vessel. For inland fisheries no such SPS number is allotted, although the Competent Authority is expected to maintain a register of these domestic vessels so as to demonstrate that they are in fact inspected for hygiene compliance.

The principle eligibility criteria for countries wishing to export fish and fish products to the EU are:

- A Competent Authority which is responsible for official controls throughout the food production chain must exist. This authority must be empowered, structured and resourced to implement effective inspection and guarantee credible certification of the relevant hygiene conditions. As background to its operations, the country must have a food safety legislation that requires an equivalent level of safety as that delivered by the EU's own hygiene legislation.
- The national authorities must guarantee that the relevant hygiene and public health requirements are met. The hygiene legislation contains specific requirements on landing sites, processing establishments and on operational processes, freezing and storage. These are aimed at preventing contamination of a product during processing.
- Imports are authorised only from approved establishments (e.g., processing plants, cold stores) which have been inspected by the Competent Authority and are found

to meet EU requirements. The authority provides the necessary guarantees and is obliged to carry out regular inspections and to take corrective action as necessary.

- Additionally, in the case of aquaculture products, a control plan on heavy metals, contaminants, residues of pesticides and veterinary drugs must be in place to verify compliance with EU requirements.

2.2 Private Sector

In order to assure the competent authority that it is meeting EU hygiene requirements, an establishment must be able to produce evidence of safe handling of the product. This evidence is looked at not only from a food safety viewpoint but also as to its acceptability to EU inspection officials.

This evidence must cover the entire supply chain, from where the fish first entered the chain to the point of export of the finished product. The risk minimisation and monitoring tools that this involves also relate to aspects of quality control that might normally be expected in any commercial enterprise that valued its commercial credibility.

In addition to the public sector governance, food safety issues are increasingly emerging as a “core competency” of major players in the private sector. This enables companies to acquire skills and technologies for producers, enabling the final marketers to provide a special non-product specific profile to be marketed to their customers. Most retailers have long been producing protocols for fruit and vegetables, and more recently private protocols for fish and fish products have been developed.⁶ All these protocols tend to exceed the public sector requirements for food safety.⁷

Debate around the issue of private standards has taken place in the WTO SPS Committee.

Some members suggest that governments should take responsibility for the WTO compatibility of voluntary standards set by companies within their borders. This was felt to be particularly relevant since “the remit of private sector standards was expanding, now touching on issues such as production methods, environmental concerns and labour and fair-trade issues”. The issue of harmonisation between public sector and private sector standards, so as to reduce costs of administration, is becoming a critical issue in ACP trade with the EU. However, while broadly sympathetic to developing country concerns, the EC seems reluctant to take any formal role in this area.

It is sometimes difficult to distinguish where legislative requirements end and additional market driven requests (e.g., premium quality, environmental and social) come in. As they are often tied closely to supplier contracts, these are difficult to avoid and have to be met along with the more pertinent hygiene requirements. The following section sets out the requirements for the two areas into which businesses will fall: primary production and food business operators.

2.2.1 Primary Production

The ‘source-to-consumer’ approach of EU legislation includes primary production, and therefore the general principles of food hygiene legislation now extend to all operators engaged in the primary production of food.

‘Primary production’ is defined as the production, rearing or growing of primary products up to and including harvesting, hunting, fishing, milking and all stages of animal production prior to slaughter. Fish and shellfish farmers as primary producers, and certain associated operations, need to follow good practice and manage their operations as set out in Annex 1 of Regulation (EC) 852/2004. Primary producers are not, however, required to implement a Hazard Analysis Critical Control Points (HACCP) system.

In practical terms, the requirements for primary producers amount to fairly basic hygiene procedures. Primary producers must ensure that hazards are acceptably controlled and that they comply with existing legislation. Under the current rules, primary producers need to take steps, for example, to:

- Prevent contamination arising from water, soil, feed, veterinary products, waste and so forth;
- Take account of results from tests relevant to animal and human health;
- Use medicines appropriately.

The requirements for food business operators also apply to certain associated activities that include the transport, handling and storage of primary products at the place of production, where their nature has not been substantially altered.

2.2.2 Food business operators

Food business operators making or handling products of animal origin must comply with the provisions of Regulation (EC) 853/2004, and where appropriate, specific rules concerning microbiological criteria for foodstuffs, temperature control and compliance with the cold chain, and sampling and analysis requirements. Foods of animal origin include live bi-valve molluscs and fishery products.

Regulation (EC) No 854/2004 lays down specific rules for the organisation of official controls on products of animal origin intended for human consumption. The Regulation supplements Regulation (EC) 852/2004 on hygiene of foodstuffs and Regulation (EC) 853/2004 on specific hygiene rules for foodstuffs of animal origin. This official control regulation gives details of the controls to be carried out on live bi-valve molluscs and fishery products.

The official controls include audits of good hygiene practices and HACCP principles, as well as specific controls that have requirements determined by sector. This includes live bi-valve molluscs and fishery products.

Specific requirements in the legislation for fishery products (of which only some may be relevant to the inland fisheries sector) cover the following elements:

- Equipment and facilities on fishing vessels, factory vessels and freezer vessels: areas for receiving products taken on board, work and storage areas, refrigeration and freezing installations, pumping of waste and disinfection;
- Hygiene on board fishing vessels, factory vessels and freezer vessels: cleanliness, protection from any form of contamination, washing with water and cold treatment;
- Conditions of hygiene during and after the landing of fishery products: protection against any form of contamination, equipment used, auction and wholesale markets;
- Fresh and frozen products, mechanically separated fish flesh, endo-parasites harmful to human health (visual examination), and cooked crustaceans and molluscs;
- Processed fishery products;
- Health standards applicable to fishery products: evaluation of the presence of substances and toxins harmful to human health;
- Wrapping, packaging, storage and transport of fishery products.

Regulation (EC) 853/2004 requires the use of potable water in relation to fish processing, but transitional arrangements in Regulation

(EC) 2076/2005 allow clean water to be used up to 31 December 2009 in certain situations. This includes the production of SPS measures preventing ACP countries from benefiting from the full potential advantage of the Agreement. ice for chilling fresh fishery products, during gutting and filleting operations and for cooling after cooking crustaceans and molluscs.

2.2.3 Hazard Analysis Critical Control Point (HACCP)

The EU legislation requires food business operators (except primary producers) to put in place, implement and maintain a permanent procedure, or procedures, based on the principles of Hazard Analysis Critical Control Point. The requirements take a risk-based approach and can be applied flexibly in all food businesses regardless of size.

2.2.4 Traceability and withdrawal of food products

In accordance with Regulation (EC) 178/2002, traceability systems must be established for the fish and all constituent elements associated with production. Traceability is an inherent part of a HACCP system and is regarded as internal traceability. External traceability extends the chain from the handling /supply process to the source/capture. The basic concept is that a system that allows the identification of the source of a suspect product must exist, and it should support the prevention of additional supplies from the same source reaching the market.

3. PROBLEMS FACED BY THE PUBLIC SECTOR

3.1 Role of a Competent Authority (CA)

As noted above, the existence of an approved Competent Authority (CA) is necessary for fish to be exported to the EU. Across the ACP, all countries have bodies which may be referred to as a CA, but not all of these satisfy EU requirements. There is no formal definition of a CA in terms of location or size, as its structure must reflect its responsibilities. It must, however, be in the public sector and it is here that problems can arise, particularly if the role of the CA is assigned to an institution that does not carry out control work for example, a 'Bureau of Standards'.

In considering the effectiveness of a CA, the EU is more likely to approve the role of an entity situated within a body having a real regulatory authority for fish with direct linkages to fish inspectors. Where a problem exists within the overall mechanism relating to division of labour, there is likely to be a consequent problem of an unreliable fish inspection framework. Common deficiencies are:

- Lack of training in Good Hygiene Practice (GHP) and Hazard Analysis Critical Control Points (HACCP);
- The absence of comprehensive operational manuals and guidance related to inspection procedures at landing sites, sampling, recording and documentation for traceability and auditing of GHPs and HACCP in fish establishments;
- Out of date regulations that fail to meet the current fish industry and international markets requirements, such as no HACCP requirements or undefined legislation related to water quality;
- Ineffective enforcement of regulations both at the source of the problem and, in the case of non compliance, in courts;
- Inconsistent interpretation of the requirements;

- No monitoring programme for pesticides, bio toxins and heavy metals or other residues defined or implemented for fishery and aquaculture products;
- Confusion between monitoring for aquaculture products and other sources of potential hazards.

3.2 The National Food Control System Infrastructure

In addition to Competent Authority (CA) specific issues, inadequacies in the supporting infrastructure on which the operation of a CA system depends, also lead to risks in ensuring food safety throughout the chain from 'source to consumer'. Some of these inadequacies include:

- Laboratories with outdated equipment and staff not fully trained in Good Laboratory Practice (GLP);
- Landing sites without proper hygiene facilities;
- Inadequate cold storage, both at establishments/capture vessels and at the point of export;
- The absence of a fully integrated disease reporting and monitoring system to enable preventative or remedial action to be taken quickly.

In many instances the supporting infrastructure has been developed to relate to domestic demand and supply, where food safety expectations may fall short of those required by the EU. An analysis of the Food and Veterinary (FVO) Inspection Reports for 2006 - 2008 indicates that the three main areas of FVO inspection failure for ACP countries, with Competent Authorities laboratories and establishments; accounting for nearly 75 percent of all non-compliances.⁸

Internal politics within some countries and regions also contribute to the failure to comply with standards. In this regard, the author has come across instances in ACP countries where the introduction of new SPS related legislation has been considerably delayed at the Parliamentary level because of opposition from Ministries which would lose

their traditional influence and responsibilities under the new regime. The absence from the general body of law of appropriate up to date legislation under which a CA may operate is a reason for FVO inspectors to withhold approval from new applicants. This failure has also been the cause of some countries actually losing their existing approved status.

4. PROBLEMS FACED BY THE PRIVATE SECTOR

The above illustrates the size and nature of the requirements that the public sector must meet. However, this is merely establishing a framework where individual businesses must themselves be able to demonstrate that their product is in conformity with the legal requirements that the CA has undertaken to enforce. This demonstration is also considerable both in terms of finance and the supply of trained human resources.

The nature of the impact reflects the position in the supply chain. Whilst suppliers at the bottom, for example artisans, may not have to pay the high bills of larger processors, the impact may be greater in relation to the resources available to this sector. Looking at the overall picture the principal areas of impact in terms of CA (EU) requirements are:

- Hazard Analysis Critical Control Point Systems (HACCP)
- Traceability
- Landing sites

4.1 Hazard Analysis Critical Control Point Systems (HACCP)

HACCP has become a central requirement of EU hygiene policy.⁹ For many fish exporters, however, the system has already been in place for many years reflecting the needs of the market place for consistency in quality and output. What has changed, however, is the nature of the requirements which a CA may look for within a HACCP system.

This relates to increased testing/sampling and much higher standards of hygiene relating to workers than previously might have been considered necessary under purely commercial considerations. The cost of upgrading a plant and its equipment to the EU hygiene specifications can be significant. The costs are relative to individual operations, for example in Bangladesh, expenditure on upgrading shrimp processing plants for export

was estimated to be in the region of EUR 240,000 per establishment.

However, it is also worth noting that throughout the developing world, a major cost in HACCP relates to the employment of foreign consultants for the basic design and implementation stages of HACCP systems. Consequently, for similar work undertaken in Africa, Europe or the United States, that which is carried out in Africa is often more expensive. When relative spending power is considered, the cost to businesses in Africa becomes even more expensive.

4.2 Traceability

Tracing techniques (traceability) from the primary producer (including animal feed and therapeutants used in aquaculture) through post-harvest treatment, processing and distribution are now a requirement in the fisheries sector.¹⁰ The cost of this reflects the nature of the system (i.e. paper records or sophisticated technology) but impact most heavily on small independent fish suppliers.

These small stakeholders often have little concept of neither traceability nor the capacity for such recording requirements. In addition, obtaining funds to implement such systems can be prohibitive in terms of accessibility and interest rates. The absence of skilled personnel to operate such systems, also due to the high costs, can also be an obstacle.

4.3 Landing Sites

The EU hygiene regulations extend to landing sites, however small. Landing sites must be inspected and samples taken for testing by the CA. Hygiene conditions are however a problem both in relation to the facilities provided for people handling the fish and the temperature of storage arrangements. Ice is not always available or used adequately and knowledge about the hygiene requirements is often limited among the people involved in the capture, handling and transport of the fish. Some indication of the costs involved in

making this artisan sector compliant with SPS is given in Figure 4.

Aspects of traceability also impact upstream processors, as they need to have a reliable system that enables the identification of the

source of individual consignments, in the event of a problem arising. In the case of marine vessels, the ship's log indicates the source and the type of catch. However, for inland capture doubts can arise concerning the origin and handling of some captures.

Figure 4: Costs for Small Inland Fisheries

Kenya

The cost of upgrading a small landing area for fish, including better road access is estimated at EUR 88,600 for each of the ten designated beaches, with a total cost of EUR 886,000.

One study estimated that the cost of upgrading a single large landing site on Lake Victoria to provide potable running water, cooling facilities at around USD 1.2 million (Lake Victoria Management Project). Given that there are five main beaches that supply fish for export, the total cost is estimated to be USD 5.8 million. The cost of upgrading laboratory facilities for chemical and microbiological analysis is estimated to be USD 1.1 million (Lake Victoria Management Project).

Source: World Bank .Africa and Standards Project (ATSP) 2003.

Food Safety Requirements and Food Exports for Developing Countries. Spencer Henson et al 2001.

4.4 Cold Storage

Refrigeration and cold stores are an essential element in the supply chain for exporting fish. Typically, EU regulations relating to frozen fish require that

fishery products be held below minus eighteen degrees Celsius, but this is not cold enough for maintenance of good quality fish for more than two to three months. More usual commercial considerations require that fish products be stored at below minus thirty degrees Celsius, if good quality is to be maintained. Product storage life, assuming good packaging to prevent oxidation and dehydration, is extended to more than twelve months. This is relevant to smaller seasonal fisheries when products might want to be held and sold throughout the year, but caught over a short period of time.

Whilst larger fish processors will have cold storage as an integral part of their operation, the potential development of the smaller inland fisheries sub sector may require the establishment of additional cold storage facilities. Post harvest losses are a prominent feature of African fisheries and such facilities

can tackle this problem, providing the twin advantages of additional animal protein becoming available to the population, and the potential for additional exports. The costs of such establishments are variable, except when looked at as a package to assist the development of small fishing enterprises. These include cold rooms, freezers, ice machines, as well as boats with suitable cold storage and handling facilities.

There is a scarcity of comprehensive and reliable information generally, but figures extracted from a study in Senegal indicate that seven ice plants and two refrigerated warehouses cost EUR 70,000.¹¹

Whilst the economic circumstances may not be exactly comparable to Africa, some additional idea of the costs of upgrading hygiene related capacity can be obtained by examining the experience of other developing countries. The example of India provides some useful parameters. The World Bank conducted a survey in 2005 of the cost of bringing the fish processors of an Indian sub region (Kerala) up to the required EU standard (see Figure 5). The costs reflect the various activities and

facilities the firms had to introduce. These are all hygiene focused and would be highly relevant to any programme of assistance to develop the inland fisheries sector.

Figure 5: Cost Examples of Upgrading Fish Processing in Kerala, India 2000-2003

Activity	Number of Units	Cost (USD)	Average Cost/Unit (USD)
Ice making facilities	129	523,350	4,056
Insulated fish boxes	269	207,740	772
Chill rooms	62	250,907	4,033
Water purification facilities	85	202,391	2,381
Effluent treatment plants	65	821,740	12,642
Refrigerated trucks/containers	27	184,900	6,848
Standby generator sets	73	306,175	4,194
TOTAL		2,497,203	34,926

Source: World Bank Survey, 2005.

5. AQUACULTURE

Drug residues in fish are covered by the EC legislation. In addition to the legislation on the production of safe food in general terms, several directives deal specifically with drugs. This results in there being two types of processing plants which can receive approved status:

- a) Plants which can process only wild catches;
- b) Plants which can process both wild catches and/or aquaculture products.

The reason for this differentiation is that to export aquaculture products to the EU, third countries must have a specific “residue monitoring plan” approved by the Commission, in accordance with Council Directive 96/23. The components specified in this Directive include legally applied drugs, drugs that are not permitted as hormones and other growth promoters, organic and inorganic pollutants, mycotoxins and certain dyes.

Aquaculture in sub-Saharan Africa has been orientated to domestic markets and practised mainly by small-scale farmers. According to the Food and Agriculture Organization (FAO)

Fisheries Department, the physical potential for expansion of production based on this form of aquaculture is much larger than the present levels of production (see Figure 6). Given the physical potential, a horizontal expansion of small-scale aquaculture seems to be the most likely scenario, as a core of producers with sufficient experience emerges in the various countries.

The greatest barrier to any such expansion is, however, not SPS requirements, but the absence of a sufficiently enabling environment which provides information, finance and technical input for the support of entrepreneurs. This is not to downplay the difficulties in meeting SPS requirements, but rather to emphasise that these have to be viewed in the wider context of the economies in which they might develop. Tackling SPS alone will not realise the potential benefits that undoubtedly exist.

It is useful to note that the Namibian government has made aquaculture a development priority in its second National Development Plan and has established support arrangements both in terms of credit and SPS requirements.¹²

Figure 6: FAO Report on Aquaculture

According to a FAO Report in 2006, Southern Africa has an estimated 20,000 small bodies of water, mostly reservoirs built to provide water for domestic use, watering cattle and irrigating crops. Some of these were stocked with fish, but lacking adequate management, production remained low. The report says that countries along the east coast of Africa, like Mozambique and South Africa, have the potential to develop shrimp farming, and “there is good potential to develop oyster and mussel farming which is already happening in South Africa.”

Aquaculture development appears to be strongest in Namibia, South Africa, Zambia, Mozambique, Zimbabwe and Malawi, but “all with some degree of success, but falling short of the real potential”. Most efforts to kick-start fish farming for subsistence, farmers have been thwarted by lack of resources, skills and funding. The Report notes: “Even aquaculture of tilapia, which is native to the continent, has not developed significantly.” This situation exists even though there is a growing global demand for fish like tilapia and catfish, bass and carp which are cost-effective species and suitable for subsistence aquaculture.

Figure 6. Continued

The State of World Fish and Aquaculture (SOFIA) report noted that there “are some encouraging signs in the continent: black tiger shrimp (*Penaeus monodon*) in Madagascar, and *Eucheuma* seaweed in the United Republic of Tanzania, are thriving and production of niche species such as abalone (*Haliotis* spp.) in South Africa is increasing.

Source: *State of World fisheries and Aquaculture 2006 (SOFIA)*.

6. THE APPLICATION OF EU FOOD SAFETY REGULATIONS

The European Commission's Directorate General for Health and Consumer Protection (DG SANCO) is responsible for food safety in the EU. This responsibility is largely carried out through SANCO's executive arm, the Food and Veterinary Office (FVO). The main legislation affecting fish dates from 1991, but since then there have been a series of complementary Directives that introduce stricter requirements. Alongside the tightening of its food safety legislation, the EU now requires the adoption by exporting countries of agreed inspection, examination and certification procedures. Seafood production in such countries has to match EU standards in terms of hygiene and food safety.

EU requirements are enforced and regulated at the country level. This involves a two-tier approach:

- A country has to be licensed to export fish to the EU;
- Each individual exporting company has to apply to a Competent Authority (CA) within the particular country for permission to export.

This two-tier system effectively delegates authority for the implementation and enforcement of its food safety legislation to the CA in the exporting country. Thus it is the CA that is responsible for official controls throughout the production chain ranging from fishing vessels to final exporters of the product.

This transfer of responsibility has also meant that the CAs are under extreme pressure to ensure that the operational elements of the fish supply chain in each country conform fully to all relevant EU requirements. It is in this area that problems may arise where the broad objectives of the EU legislation have to be interpreted by individual inspectors at the point of application, for example in fishing vessels or production sites. The CAs and inspectors are concerned that any laxity on

their part may result in punitive action being taken by the EU FVO.

It is clear that some difference does in fact exist in the interpretation of what is actually required to meet the legislation. Such differences can relate to a number of issues including the number of samples required, the period between inspections, and the circumstances in which structural repairs are deemed to be required.

These differences in interpretation have given rise to a feeling in some ACP countries that in seeking to ensure correct application of the regulations, some FVO inspectors may be seeking systems that reflect practices in the EU model rather than recognising the concept of equivalence in output.

It is relevant that two recent studies found that the EU appeared to be unevenly applying its SPS measures for fish and fish products.¹³ The FVO inspectors charged with ensuring that Competent Authorities in Mauritius and the Seychelles were effectively enforcing EU SPS requirements were in practice - albeit probably not intentionally - adopting discriminatory working practices when compared to their application to processors based in Thailand. Such practices run contrary to the principles of the WTO SPS Agreement.¹⁴ The method of analysis included the analysis of ACP countries separately to look at any differences between them and the worldwide inspection system.

Considerable guidance material has been produced by the EC, but a feeling exists that it is neither detailed enough nor reflective of the differences that the local operating environment can make to specific measures. For example, whilst visiting a purse seiner vessel catching tuna in the Indian Ocean, the author learned that the owner had been told by local inspectors at his home port that his netted catch should not touch the deck.¹⁵ This requirement is, however, based on the existence of a risk of contamination element

represented by wooden decking. The purse seiner in question has stainless steel decking and would find it impractical to avoid letting a 60 tonne net of fish touch the deck in the process of transfer below decks.

The above example of a lack of flexibility at the operational end, indicates that in some instances it is not the presence of an actual risk that is being assessed but rather the achievement of uniform compliance with measures set out as a check list.

The increasing amount and strictness of EU requirements is clearly adding to costs within the production chain. Where organisations are operating on decreasing margins of profitability, any unnecessary demanded expenditure by inspectors could have a disproportionate impact on the firms' operational viability.

This is not the fault of individual inspectors, but rather a reflection of their ability to make use of the available tools. Their apparent inflexibility is driven by concerns about their ultimate accountability to the FVO.

The EU has provided a range of guidance material, but this still does not seem to meet inspectors' needs to make decisions in non-standard situations.¹⁶ It also fails to give them confidence to interpret the guidance in a way that ensures that the limited resources available are applied in the most cost-effective manner, consistent with the minimisation of any risk to human health.

6.1 Differing Systems: Same Results

Since the formation of the World Trade Organization (WTO) in 1995, there has been increased interest in developing and applying three important trade promotion devices: harmonization, equivalence and mutual recognition (MR) (See Figure 7). The goal has been to reduce what industry considers being technical barriers to trade posed by national regulatory requirements. The WTO Agreements governing trade in food and other products (SPS and Technical Barriers to

Trade (TBT) Agreements) specifically instruct nations to engage in these efforts. Due to their potential to reduce industry costs, these trade facilitation tools have been heavily promoted by the industry. The three trade promotion mechanisms are closely related but are not interchangeable.

Harmonisation and equivalence are both methods for bringing about regulatory convergence or uniformity. Harmonization takes two differing standards or procedures and converts them into one. Equivalence allows two differing standards or procedures to remain intact but treats them as if they were the same, because in theory they produce the same or similar results. It is in this area that ACP countries have the possibility for manoeuvre in negotiations.

Mutual recognition, however, is different. Mutual recognition is a vehicle for regulatory cooperation, and it may be based on harmonization, equivalence, or external criteria such as the importing party's standards or international standards. In a Mutual Recognition Agreement (MRA), two or more parties agree to recognize and accept each other's conformity assessment results, test reports, certificates, product standards, regulations, markings and quality assurance system standards. This is because they are harmonized or judged to be equivalent, or because they satisfy other agreed-upon external criteria.

6.1.2 Equivalence

The WTO promotes the concept of equivalence and this is reflected in both the SPS and TBT Agreements. Article 4 of the SPS Agreement in particular, makes it clear that if a WTO member can objectively demonstrate the appropriate level of SPS protection, an importing member must accept the exporting member's SPS measures as equivalent. In the light of the underlying objective of the SPS Agreement, any such objective test of equivalence would have to be based on science and demonstrable along the lines of Annex C to the Agreement.

The EU is entirely within its rights to require exporting countries to comply with its own level of food safety, as reflected in the legislation with which it requires compliance. However, the SPS Agreement quite clearly does not intend that any such compliance must be delivered through the application of a common format across all exporting countries. The concept of equivalence presumes difference, not sameness. Obviously there must be a certain degree of agreed “best practice” and much of this is reflected in the guidance material for inspections issued by the EU.

There are examples where these guidelines are being strictly interpreted by both local and FVO inspectors. This should not be the case, and more effort needs to be directed towards ensuring that local inspectors are allowed (and understand that they are allowed) to exercise their judgement on the level of risk actually present in the light of the prevailing circumstances, and to deviate from the standard EU guidance check list where this can be justified.

This is particularly important since many firms are operating in highly competitive sectors. For example, the tuna industry is facing ever increasing competition and ‘erosion of preferences’ and any additional costs further cuts profit margins.

The costs of meeting SPS requirements are high not only in terms of initial outlay but also for day to day monitoring and administration. Unnecessarily high costs to carry out remedial action can make the difference between

viability and going out of business. Should alternate suggestions for compliance which include less costly ways of meeting the requirement be offered by firms, then they should be positively considered.

In some ACP countries there are entrepreneurs seeking to establish new value added businesses, and a heavy-handed approach to SPS can prevent them from developing. This would not only be a loss for the firms, but a bigger loss in terms of future national economic development. Unfortunately, unless the concept of equivalency is understood by ACP officials in EPA negotiations, then all stakeholders in ACP countries are likely to have to achieve a mirror image or sameness in respect to EU regulatory mechanisms and practices.

It is interesting to note that equivalency can also be used by more powerful parties to gain entry to developing countries’ markets. Although the EU would argue that the risk represented by its own products is negligible, nevertheless it does occur.

When the US and Central America started the Free Trade Agreement (FTA) negotiations, they formed a working group to make changes to the Central American SPS regimes. Through this group, Honduras was committed to recognise the equivalence of US food safety and inspection systems despite having a history of Honduran safety officials denying imports on the grounds that US border inspections were neither thorough nor effective in some instances.

Figure 7: Principles of the WTO/SPS Agreement

The WTO-SPS Agreement creates a framework for border protection and eradication measures while facilitating freer trade. The Agreement is based on the following five general principles:

1. *Harmonisation*: encourages the adoption of measures that conform to international standards, guidelines, and/or recommendations of international agencies.
2. *Equivalence*: mutual recognition of different but equivalent measures to achieve international standards.
3. *Non-discriminatory*: treating imports no differently than domestic produce.

Figure 7: *Continued*

4. *Transparency*: notifying trading partners of changes in their SPS measures, especially when the measures differ from international standards.
5. *Regionalisation*: allows continued exports from clean (disease-free) areas of affected countries. The Agreement reaffirms the freedom of countries to choose their *appropriate level of protection* against imported pests and pathogens. However, when the measures do not conform to international standards, the importing country must provide scientific evidence of why the measures are needed and how they contribute to risk control.

Source: WTO/SPS Agreement.

7. SANITARY AND PHYTOSANITARY ISSUES IN EU FREE TRADE AGREEMENTS

As the definition of norms and standards is predetermined by superior WTO rules, bilateral arrangements mainly focus on procedural issues (see European Centre for Development Policy Management (ECDPM) In Brief 6B). In this respect, a common characteristic of all EU FTAs is their emphasis on facilitating the application of the WTO SPS provisions. This is done in two main ways:

- Fostering consistent application of WTO SPS measures by pursuing a common understanding of the existing WTO provisions;
- Harmonisation, through consistency with WTO standards and mutual recognition provisions.

The FTAs differ in four main respects

- The extent to which they reaffirm WTO rules;
- The emphasis on cooperation on SPS measures;

- The adoption of a general exception clause similar to General Agreement in Tariffs and Trade (GATT) Article. XX;
- The specification of technical assistance in SPS issues.

Rarely do the Agreements contain individual provisions that go beyond WTO SPS commitments. These provisions concern a limited number of product-specific supplements, procedural provisions on fixed time schedules or decision procedures, equivalence provisions, and some specifically emphasised objectives.

The explicit confirmation of the WTO commitments regarding SPS measures is not only a formal element; it also increases the flexibility of the parties in case of disagreements. The parties have the opportunity to settle disputes either according to the dispute procedures of the specific FTA or according to the WTO dispute settlement procedures.

Figure 8: Sources of Information on SPS in EU Trade Agreements

Mediterranean Region (MED) Agreements:

Tunisia (1995) - Article 40; Israel (1995) - Article 46 and Protocol 3; Morocco (1996) - Article 40; Jordan (1997) - Article 71; the Palestinian Authority (1997) - Article 44; Algeria (2001) - Article 58; Lebanon (2002) - Article 51. http://europa.eu.int/comm/external_relations/euromed/med_ass_agreemnts.htm

TDCA (South Africa): Article 61

http://europa.eu.int/eur-lex/en/archive/1999/1_31119991204en.html

Global Agreement (Mexico): Article 5 of the main agreement and Article 20 of Joint Council Decision 2/2000. http://www.europa.eu.int/comm/trade/issues/bilateral/countries/mexico/docs/en2__annex_16.pdf

Association Agreement (Chile): Article IV

http://europa.eu.int/comm/trade/issues/bilateral/countries/chile/docs/euchlagr_xxiii.pdf

For other agreements, see the Trade Agreements Database and Archive maintained by Dartmouth Tuck Business School: http://mba.tuck.dartmouth.edu/cib/research/trade_agreements.html

Source: ECDPM In Brief 6B.

The FTAs recently concluded by the EU do not grant SPS concessions analogous to quantitative tariff reductions. All SPS standard-related provisions in the agreements are bound to the WTO framework. Their main aim is to mitigate the costs of complying with SPS regulations and provide more security for exporters. In some agreements, exceptional rules go beyond WTO provisions, such as the limited product-specific provisions in the agreement with Israel and the inclusion of animal welfare as an objective in the agreement with Chile.

Of all the FTAs, only those with Mexico and Chile contain individual procedural or institutional specifics that have the potential to strengthen mutual cooperation. However, in current and future renegotiations of other FTAs, the relevance of institutional provisions in comparable agreements could be enhanced as well.

7.1 The European Union – Chile Association Agreement

The EU has signed very few FTAs with developing countries. However, the FTA signed with Chile in November 2002 has interesting SPS-related provisions which may provide a template for similar negotiations by other countries, particularly in the context of the EPA negotiations. Though this Association Agreement goes beyond trade to cover political dialogue and cooperation, its trade provisions stand out as the most advanced in EU bilateral agreements to date.

The Agreement contains comprehensive annexes, and Annex IV covers SPS measures applicable to trade in animals and animal products, plants, plant products and other goods, along with animal welfare. This annex also reaffirms an overall commitment to WTO rules (Annex IV, Article 42k and Annex V, Article 26).

The substantive provisions on norms and standards follow those of the WTO. However, several procedural rules make this agreement different and more detailed than other FTAs. Technical assistance is specified for SPS-related matters and is included within the

provisions on support for the agricultural and rural sectors (Article 24.2g).

Another aspect that makes the agreement unique compared with others is the comprehensive provisions on equivalence integrated into Annex IV. These provisions require strong cooperation between the responsible institutions of both partners. A joint committee, called the Joint Management Committee, is responsible for monitoring and control of the implementation of the Agreement. Flexibility is provided by additional ad hoc groups that deliberate on SPS-related issues. These groups are made up of expert representatives of the parties or external experts.

As for information exchange, the Agreement details specific information requirements for verification procedures, import checks and relevant scientific opinions. Further, detailed provisions ensure transparency by defining strict time schedules and deadlines for the submission of required information. The Agreement also foresees concrete steps for consultation when a party fails to comply with notification requirements. A safeguard clause reiterates WTO rules on implementing transitional SPS measures when scientific evidence is insufficient.

A comprehensive article in Annex IV covers the determination and suspension of equivalence and includes a time schedule for the consultation process between the parties. The provisions are supplemented by appendices with procedural details on the consultation process, the priority sectors concerned, and conditions for provisional approval of establishments (e.g. processing establishments) without prior inspection by the importing party.

Other appendices of procedural relevance provide guidelines for conducting verifications, for import checks and inspection fees, and for certification (appendices VII-IX). The Competent Authorities are also defined with regard to the implementation of the agreement.

A comprehensive and detailed institutional design characterises the SPS-related provisions in the Chile Association Agreement. The

Agreement targets strong cooperation between the respective authorities. The SPS provisions are more directly operational than those in the other agreements. Being an integral part of the FTA, they provide more legal security for exporters.

7.2 Regional Integration and Development

Economic Partnership Agreements (EPAs) are different from traditional Free Trade Agreement negotiations since they try to integrate the trade liberalization, regional integration (South-South) and development dimension from the onset to form a mutually reinforcing entity of activities. The EU contends that EPAs are about much more than just market access, which, as historical experience has shown through unilateral preferences, has not been enough to significantly improve Africa's trade performance and development. EPAs are also about unblocking supply capacity and response through a comprehensive approach, comprising market access and all areas relevant to trade and regional integration. These are all closely linked to development co-operation to support the implementation of EPA provisions and help reap the benefits.

The regional dimension of the EPAs seems to be fragmenting. As of November 2009, the only EPA to have been signed was with the countries of the Forum of Caribbean States (CARIFORUM), while interim agreements have been signed in other regions and countries. Depending on the region, these agreements have different names: "interim agreement", "stepping stones" or "framework".

In the Pacific region, an interim agreement was signed only with Papua New Guinea and Fiji, with individual access schemes. The Least Developed Countries (LDCs) stayed outside the agreement, benefiting from the 'Everything but Arms' (EBA) agreements. Other non-LDC Pacific countries are now benefiting from the EU's regular Generalized System of Preferences.

In Central Africa a regional agreement was signed only with Cameroon, with other countries finally opting not to join the agreement. In Southern

Africa, a regional agreement was signed with Botswana, Lesotho, Swaziland, Mozambique and Namibia. Criticism was expressed that this did not parallel the SADC regional structure. In West Africa, individual agreements were concluded with Ghana and Ivory Coast. In East Africa, a regional agreement was signed with Kenya, Uganda, Tanzania, Rwanda and Burundi. In Eastern and Southern Africa a regional agreement with individual access schedules was signed with Comoros, Madagascar, Mauritius, Seychelles, Zambia and Zimbabwe.

7.2.2 Regional Approaches

Pests and diseases which SPS measures are intended to counter do not respect national boundaries and consequently for SPS, a regional dimension to preventive and remedial infrastructure is necessary. For areas like Africa it becomes an essential part of any attempt to achieve the trade and socio-economic development aims of the EPAs.

Although there have been various capacity building and technical assistance activities implemented in individual countries which have resulted in strengthening of specific elements of food safety and quality control, these have not always been coordinated or placed in the context of an overall food safety and quality strategy or development plan. As a result, many of these have been ineffective or inadequate in achieving optimal or sustainable results. It is therefore necessary to improve the collaboration and coordination among various agencies involved in food safety capacity building, whether within a specific country, regionally or internationally.

Many capacity building activities do not adequately address the regional needs or address areas of common concern. Areas for regional cooperation should be identified so that appropriate assistance can be developed, thus leading to strengthening of the capacities of an entire region. Furthermore, the strengths of each country need to be identified and a system developed for providing technical assistance to other countries in the region. Some of the areas identified could include testing and inspection certification, which also includes export certification.

8. SANITARY AND PHYTOSANITARY MEASURES IN ECONOMIC PARTNERSHIP AGREEMENT NEGOTIATIONS

The European Union cannot be challenged on its right to protect its citizens from potentially harmful food. This is irrespective of whether countries which supply the food lack the capacity to meet the standard being established.

Attention must therefore be placed on the mechanics of the measure being required, rather than on the basic principle. This involves looking at what the EU is doing and identifying whether it is in accordance with the WTO SPS Agreement. The SPS Agreement contains areas of ambiguity that allow the EU to introduce measures that, while not at variance with the wording of the Agreement, can nevertheless arguably be viewed as being contrary to the underlying intention, i.e. not to interfere unnecessarily with international trade.

Two areas where scope exists for clarification and assistance to be included within EPA discussions relate to:

Ambiguity 1: Precautionary Import Bans

According to the SPS Agreement Article 5:7, members may adopt temporary precautionary bans to prevent the introduction of risks when sufficient scientific evidence is absent. The problem here does not lie with this provision, but rather with how to remove the provision once it is triggered. The SPS Agreement is silent on the steps that need to be taken by a member country that has lost international market access because trading partners have invoked this provision.

Greater clarification is required in the SPS Agreement on how long is ‘temporary’ and on the quantity and type of scientific evidence that is deemed sufficient. The damage caused by temporary bans in the fish sector is well recorded, and in many instances such harm could have been alleviated had mechanisms existed that either helped remedy the fault or allowed scientific evidence to be produced that disproved the basis for the ban itself.

The EPAs represent an opportunity for the introduction of greater certainty about how long is ‘temporary’ and on the quantity and type of scientific evidence that is deemed sufficient.

Ambiguity 2: Setting a Regulatory Ceiling

The SPS Agreement sets a regulatory floor but not a ceiling. Members are committed to both the international harmonisation of SPS measures, and the mutual recognition of measures employed by other members. With respect to mutual recognition, a member is committed, in principle, to granting equivalence to the SPS measures adopted by an exporting country “if the exporting Member objectively demonstrates to the importing Member that its measure achieve the importing Member’s appropriate level of sanitary or phytosanitary protection” (Article 4.1).

The problem is that, provided that the national treatment provision is met, the Agreement is silent on the limits for countries to have their regulations substantially above those of other member countries. Therefore, while there is a minimum level of SPS measures that must be met, is there a maximum defining the point that importing member countries cannot legitimately expect potential exporting members to achieve?

It is arguable that in exercising their right to require higher than international norms, importing countries also incur an associated obligation to provide a higher than normal level of scientific evidence as to the resulting level of extra safety and associated benefits actually being achieved. There have been past instances, such as aflatoxins in nuts, where higher safety levels being required by the EU were demonstrated by independent experts in practice to result in the saving of one in one billion people. While all human life needs to be protected, the SPS Agreement does not lay that down as a requirement in the ultimate degree.

Ambiguity 3: Socio-Economic Assessments

This is associated with the role of socio-economic considerations in risk assessment. The SPS Agreement permits members to establish SPS measures based on scientific evidence as well as on broader assessments of risk such as relevant economic factors, including:

- The potential damage in terms of loss of production or sales in the event of entry, establishment or spread of the disease or pest;
- The costs of control or eradication in the territory of the importing Member;
- The relative cost-effectiveness of alternative approaches to limiting risks (Article 5:3)

Trade agreements traditionally avoid such socio-economic assessments because of the subjectivity associated with measuring them. However, the SPS Agreement recognises that imported risks to human, animal and plant safety and health are likely to have a significant socio-economic impact. The inclusion of this article raises ambiguity about how socio-economic assessments may be incorporated into the legitimate justifications based on sufficient scientific evidence. None of the international scientific organisations deferred to by the WTO (Codex etc) provide much scope for socio-economic assessments. Therefore, it is unclear how and when they may be included in a legitimate manner.

The above indicates that the playing field on which negotiations are taking place includes some obstacles whose exact nature and role require clarification. Some fundamental aspects of these problem areas relate to the actual structure and freedom of interpretation of its rules that the SPS Agreement allows, and

which basically operate to the advantage of the standard setters (EU etc) rather than the standard takers (ACP).

In order for EPAs to be effective, it is necessary that clarification is obtained on precisely what the SPS Agreement allows the EU to do, and the limitations and obligations that may be cited by ACP countries, where specific measures are considered to exceed what is necessary for the adequate protection of health. Without such clarification, these Non-Trade Barriers (NTBs) will represent a continued barrier to both regional integration and to any increased inter and intra regional trade.

8.1 How Economic Partnership Agreements are Tackling Sanitary and Phytosanitary Issues

As a general observation, the SPS / Technical Barriers to Trade (TBT) provisions in the EPA chapters fall short of making provision for the post-EPA era. There appears to be an insufficient attempt to allow the recipients to prioritise capacity building assistance being committed by the EU, and for the establishment of mechanisms to ensure that any such commitments are in fact fulfilled in specified terms of finance, technical assistance and time. The EU-Chile FTA is often represented as a good example of how to deal with SPS issues within a FTA, but few regions have really understood its significance.

A good example of an exception to this general failing which deserves highlighting is the East and Southern Africa (ESA) interim EPA proposals. This Agreement incorporates much of the EU-Chile format, and includes a request for clarification of the ‘problem issues’ arising from the ambiguities within the SPS Agreement, as indicated in Section 8.

9. CONCLUSIONS AND RECOMMENDATIONS

In order for the EPAs to be effective in increasing trade opportunities for ACP countries, the efforts to liberalise trade under these agreements must also encompass rules that address non-traditional barriers to market access such as SPS. The EPAs represent an opportunity of doing this in a way that goes further than the existing disciplines of the WTO/SPS Agreement and builds on the historically close relationship between the EU and ACP countries.

The EPAs therefore represent an opportunity to resolve some issues where discussion has taken place over the years in the WTO/SPS Committee, with little positive progress. The SPS Chapter of the EPAs represents an opportunity to tackle these problems in a more focused manner and with a higher possibility of a successful outcome for ACP countries.

Within the EPAs, the EU contends that simple reference to compliance with the SPS Agreement covers all angles. However, in circumstances where the Agreement itself contains areas of uncertainty, it is preferable to have particular issues spelled out clearly within the EPA text. Failure to do this may mean a continuation of the current situation where ACP countries are unable to challenge the EU as a standard setter in some key areas which cause considerable problems.

9.1 Proposed Additional Text for SPS Chapters

In areas where the SPS Agreement is ambiguous, particular issues can be used as examples where clarification and associated assistance could be elaborated within the text of the EPA. These relate to:

Ambiguity 1: Precautionary Import Bans

Suggested additional text for inclusion:

“Where a temporary or precautionary ban is implemented under the provisions of article 5.7 of the WTO SPS Agreement, it must be

accompanied by a specific duration clause. In addition, in the case of countries affected by any such measure having inadequate technical resources to provide the necessary information to dispute and/or remedy the alleged problem, the issuer of the ban will offer assistance sufficient to resolve the issues within an agreed timeframe.”

Ambiguity 2: Requirements Higher than International Norms

Suggested additional text for inclusion:

“Where a country seeks to establish a safety measure which requires meeting higher than international norms, it must submit in advance the following data for consideration

- A level of scientific and other evidence that is higher than would normally be put forward to justify a SPS measure. This would include reference and explanation as to why international norms are inadequate in the particular circumstances under review.
- A cost benefit analysis which clearly sets out the savings (benefits) resulting from the measure; as well as the estimated costs (financial and economic) of implementation likely to be imposed on the recipients required to comply.

In the event that the measure is introduced and the recipient countries have financial and/or technical difficulties in complying, then the issuer will supply sufficient assistance to improve the recipient country’s capacity to a correspondingly acceptable level.”

It is for negotiators to decide how the above might be used and where such text might be included. However, given that the EU may not be in favour of the limitations that would undoubtedly be placed on its activities, then it may be useful to consider putting such proposals under the ‘Special and Differential Head’.¹⁷

It is arguable that the ACP countries, particularly LDCs are prime candidates for any extra attention and protection that is possible under the EPAs. It is entirely possible in these circumstances because the suggestions are procedural and in no way limit the right of the EU (as set out under the WTO SPS Agreement) to bring forward any SPS measures it considers to be justified. They can also be argued as being supportive of the Cotonou EPA development objectives, as bans and higher norms impact particularly heavily on those least able to comply at the primary production level.

9.2 Targeted Capacity Building

The terms ‘capacity building’, ‘technical assistance’ and ‘funding’ are all used freely in the EPA negotiations. However, the EU is reluctant to agree to support measures that may not have a transparent purpose or application. The EU is more likely to consider favourably specific requests. Sanitary and Phytosanitary Standards is an eligible area for support and also represents a prime vehicle for both the EU and ACP to make an impact on the development aims enshrined in the Cotonou Agreement. To assist in such consideration a few areas are outlined below:

a) Identifying and costing what ACP countries need to comply with the EU SPS legislation requires a move from the broad generalisations that obscure the real requirements. It is clear that not all countries need the same degree of assistance, particularly in product areas such as fish exports, where considerable compliance has already been achieved though the establishment and recognition (by the EU) of Competent Authorities. There are however, some countries where export potential exists but its existing size has been insufficient for the government to establish CAs. The input of relatively small but targeted assistance in such countries may prove highly cost effective, making them acceptable candidates for EU import purposes and thereby encouraging future development of the sector and related socio economic inputs.

b) Technical assistance should not be focused purely on replicating the capacities in the developed countries of the EU, but should also aim to solve problems that are specific to an individual developing country by developing customised solutions. This may require lateral thinking that identifies changes in other areas of an economy that could, if introduced, result in a leveraging impact on SPS activities in hitherto moribund sectors of production and processing. For example, in many countries it is not a shortage of finance that is a barrier, but rather its availability at commercially viable rates.

This was a problem for the Eastern European accession states of the EU in developing an energy efficiency sub sector. The EU tackled this by providing specific sums of money (EUR 3,000,000 to 5,000,000) to each country’s financial sector to be used in providing soft loans and other support specifically for energy projects. The principle is the same for ACP sub sectors in fisheries, and is worth considering.

c) Moving beyond the goal of meeting the current requirements and considering how SPS related assistance can be used to develop new products and assist the fisheries sector to move further up the value chain by exporting more processed products and fewer raw materials

The EU has a comprehensive framework of assistance designed to promote eligible imports from the fisheries sector. This is given impetus by the EU’s own need for fish from third countries against a background of declining domestic resources. What is not so well addressed is the need for the private sector to be assisted in moving up the value chain through the development of processed multi products.

This not only requires assistance in meeting SPS regulations, but also the creation of a more enabling business environment within which entrepreneurs in the fisheries industry can develop as they have done in other product sectors. Targeted funding

under the umbrella of an EPA and focusing on the potential for establishing regional product identity should be considered by negotiators looking to both assist fisheries stakeholders and achieve some progress towards the development aims of the Cotonou Agreement.

As indicated above, the aquaculture sector is a prime area for selective support and could be included as a specific area for funding and technical assistance within an EPA. It would be useful to assist the small and disconnected inland fisheries to produce commercially viable volumes for export and intra regional trade. This could be achieved through the development of 'Community Fishery Centres', where the input from small scale fisheries could be: a) held in a cold store and b) marketed in commercial volumes. This could also be useful in tackling problems relating to the traceability and origin of fish coming from scattered sources, as well as avoiding "feast or famine" conditions in sub regions.

- d) Under its fisheries Agreements, the EU has contributed to making various fish processing establishments in ACP countries SPS compliant. This is with the twin aims of helping these countries export to the EU as well as for the development of local economies.¹⁸ Nevertheless, these establishments can sometimes suffer from a shortage of product to process opportunities when EU fleets carry their entire locally caught products back to the EU for processing.

Developing countries should consider requesting the EU to contribute a percentage of the catch of any EU registered vessel to establish or enhance the processing capacity in the country where the fish have been caught. The development aims of Lomé were never fully achieved; however, the EPAs represent an opportunity of reassessing what has been done in the past and identifying what can be done in the fisheries sector to avoid a similar failure under the Cotonou Agreement.

9.3 Regional Issues

Many capacity building activities are still nationally focused and do not adequately address regional needs or areas of common concern. This outlook needs to change to reflect the future as envisaged under EPAs. Issues for regional cooperation should be identified so that appropriate assistance can be developed, thus leading to strengthening the capacities of an entire region. Furthermore, the strengths of each country need to be identified and a system developed for providing technical assistance to other countries in the region.

In this regard, it is useful to note the Resolution by the European Parliament which urged Member states to increase their overseas development assistance and to establish measures for regional activities so as to contribute to the positive impact of EPAs on development.¹⁹

The following indicates a few areas where EPA negotiators might consider specific and targeted assistance from the EU, preferably within an implementation timescale.

- a) EPAs have regional integration at their core, and a logical extension of this is the development of regional CAs. Whilst the national entities would still carry out local inspections these regional entities could introduce more uniform management practices and also form a transparent vehicle for the deposit of EU sourced funding to be used to promote regionally agreed objectives.

The CA could also be trained by the FVO to undertake delegated inspections of national CAs control systems. This would both relieve the work load of the FVO, and facilitate a more regionally consistent and locally responsive inspection system. Whilst the EU might express reservations about this suggestion, it can be argued that the principle of a regional body undertaking and implementing delegated powers from the EU is reflective of the existing relationship between the FVO and national CAs, but on a different scale.

- b) The development of ‘hubs of expertise’ would make the most cost effective use of available funding. These would reduce the pressure on national institutions to supply a service where the demand is insufficient to produce revenue to maintain credibility and effectiveness. Some of the potential candidate areas would include laboratory testing, inspection and certification.
- c) The increase in global trade and the impact of climate change on fishery related diseases requires the adoption of a more substantive early warning and prevention strategy. Investments in control and detection mechanisms will be critical in avoiding the higher costs of eradication. Prevention and early warning requires a reduction of the possibilities of entry and can be accomplished through improved border control and rapid diagnostic tools for surveillance of invasive alien aquatic species. To be successful, surveillance systems require monitoring and input from primary suppliers as well as government services.

It is essential that any prevention and early warning activities also involve cooperation of countries within the same geographic or eco-climatic region. African, Caribbean and Pacific (ACP) countries will require additional funding and technical assistance to establish such regional systems. It is clearly in the wider global interest to limit the spread of diseases, and therefore, assistance should also be sought to develop such surveillance systems and incorporate

them into existing monitoring arrangements (including outside the ACP bloc).

Some funding for climate change adaptation strategies has been allotted by international bodies. These include the Special Climate Change Fund and the Least Developed Countries Fund.²⁰ As of mid 2009 both funds amounted to only USD 114 million and the Adaptation Fund around USD 200 million^{21 22}. Given that the UN Framework Convention on Climate Change estimates that USD 28-67 billion is required to help developing countries until 2030, ACP countries need to seek additional assistance through the EPAs.

- d) Working Groups should be tasked with identifying specific areas (private or public sector) that could be relatively easily be brought up to a standard where the EU would sign an Equivalence Agreement.²³ The EU should be asked, within the EPA framework, to commit the technical and financial support necessary to achieve this goal for a specific target (it could be regional or sector oriented) which would be identified by the working group within the first nine to twelve months after signature. This would support both regional integration and development objectives, in accordance with Article 4 of the SPS Agreement.²⁴
- e) While the achievement of all this may well be intended by the broad general commitments given by the EU in the EPA negotiations, it is more likely to happen within a shorter time-scale if specific requests are tabled for discussion about related specific commitments.

ENDNOTES

* Author's biography

Martin Doherty has been involved in various aspects of trade facilitation for 30 years in both the public and private sector. Until 1989 he was a Deputy Director in the UK Department of Trade and Industry, specialising in trade issues. Although now an independent consultant, he currently also occupies the position of Head of Research with the international trade consultancy Cerrex Ltd based in London UK.

His activities over the past 20 years have involved a continuing relationship with both public and private sector bodies on trade, financial, economic and energy issues and the completion of a wide range of sectoral studies for UK and foreign governments and private clients. These include issues relating to the market access aspects of the EU Single Market and the range and nature of Non-Tariff Barriers faced by developing countries. He was team leader of the major Diagnostic Impact Study for the EC on the Feed and Food Control Regulation 882/2004 and of a study providing support for the implementation of Commitments undertaken under the SPS Chapter of the CARIFORUM EPA. In 2008/09.

He has specialised in food safety matters as they relate to international trade since 1999 and is the author of a range of studies and papers covering the impact on developing countries of Sanitary and Phytosanitary Standards; EU Preference Schemes and Non-tariff Barriers; and SPS in the context of EPAs. He is the author of Negotiating Economic Partnership Agreement SPS Measures. ECDPM InBrief 13A and is well known as a lecturer on SPS issues at seminars and workshops held in the context of the EU/ACP (Cotonou) negotiations in all three geographical regions of the ACP.

- 1 See The Secretariat of the ACP <http://www.acpsec.org> for text of The Cotonou Agreement which provides background to the Economic Partnership Agreements.
- 2 UN Food Agency Scientific Symposium on Climate Change and Marine Fisheries in Rome 8-11 July 2008.
- 3 In the last 20 years the shrimp aquaculture industry has grown rapidly in the coastal regions of many tropical countries and shrimp now accounts for around twenty percent of traded fish products.
- 4 The Effects of Climate Change in world Aquaculture: A Global Perspective, Department for International Development, UK, 2008.
- 5 Important condition for fish and other seafood ec.europa.eu/food/international/trade/im_cond_fish_en.
- 6 GLOBALGAP is a private sector body with large retailer membership that sets voluntary standards for the certification of agricultural products around the globe. GLOBALGAP have produced a Protocol for aquaculture. Aquaculture has recently overtaken fisheries in the supply of fish products to retailers and global markets, reflecting not only the leveling off of global fish catches but also the industrialisation of aquaculture.
- 7 This also reflects the fact that a legal obligation is placed on importers to ensure the safety of food imported into the EU. If importers are not able to prove that they took all possible precautions to prevent unsafe food entering the EU market they can be fined around EUR 40,000 per consignment and could face imprisonment for up to two years.

- 8 UNIDO FVO Inspection Analysis (Fish) 2009 by Humber Seafood Institute UK.
- 9 HACCP is a management system in which food safety is addressed through the analysis and control of biological, chemical and physical hazards from raw material production, procurement and handling to manufacturing, distribution and consumption of the finished product. The system establishes control limits and remedial measures at critical points during the production process. The introduction of International Standards Organisation (ISO) 22000 for HACCP in 2005 introduced conformity across a number of varying systems.
- 10 The introduction of International Standards Organisation (ISO) 22005 for traceability in 2005 introduced more conformity in industry practice but also raised the entry threshold for small entrepreneurs.
- 11 Study of the Cost of Compliance with Export standards in the Senegalese Fisheries Industry 2005.
- 12 A Review of Aquaculture Policy and Institutional Capacity in BCLME Region. Enviro-Fish 2006.
- 13 Campling and Doherty 2007; Doherty and Campling 2007.
- 14 Article 4 of the SPS Agreement states that Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection.
- 15 A purse seine is made of a long wall of netting framed with float line and lead line and having purse rings hanging from the lower edge of the gear, through which runs a purse line which allow the pursing of the net. For most of the situation, it is the most efficient gear for catching large and small pelagic species that is shoaling.
- 16 In particular 'The Field Guide for Sanitary Inspection of Fish and Fish Products as Food for Human Consumption'. This detailed guideline is available at www.sbp-acp.eu.
- 17 Article 10 of the SPS Agreement states: "In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members".
- 18 The Lomé Conventions are agreements which since 1975 laid down the framework for cooperation on development policy, economic policy, trade and industry between the EU and the ACP countries. On 23 June 2000, the Lomé Conventions were replaced by the Cotonou Agreement, which entered into force on 1 April 2003.
- 19 European Parliament resolution of 5 February 2009 on the development impact of Economic Partnership Agreements.
- 20 Established under the UN framework Convention on Climate Change.
- 21 Established under the Kyoto Protocol on Climate Change.
- 22 Fitriani Ardiansyah Programme Director of Climate and Energy at the World Wildlife Federation-Indonesia.
- 23 As an element of this: The continent should encourage the development of regional quality assurance standards for testing laboratories (Chimatiro 1998; Chimatiro & Heck 2006).
- 24 Article 4 states that Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

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- Fisheries Aspects of ACP-EU Interim Economic Partnership Agreements: Trade and Sustainable Development Implications. Issue Paper No. 6, by Liam Campling, 2008.
- Aquaculture: Issues and Opportunities for Sustainable Production and Trade. By Frank ASCHEAND, Fahmida Khatun. Issue Paper No. 5, 2006.
- Market Access and Trade Liberalization in Fisheries. By Mahfuz Ahmed. Issue Paper No. 4, 2006.
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