

EPA fisheries talks: An opportunity to tackle SPS measures

Martin Doherty

Although the scope of food safety measures affecting fish products has emerged as an area of great concern to the European Union's former colonies now negotiating economic partnership agreements with their biggest export market, the negotiations hold promise for improvement.



Fish is the most internationally traded food commodity, with tropical shrimp among the most valuable products. In addition to their value in trade, fisheries-related activities provide an important source of employment, export revenue and food security to many African, Caribbean and Pacific (ACP) countries. Internationally, fisheries represent one of the few sectors in which their participation in world trade is increasing, with the EU accounting for nearly 75 percent of the bloc's fishery exports.

The greater presence of sanitary and phytosanitary (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 European Commission's efforts to tighten and harmonise the EU's food safety regime, developed in a piecemeal fashion over forty years.

Although the six ACP regional groupings still involved in economic partnership agreement (EPA) negotiations with the EU are worried that the new trading arrangements – slated to replace the unilateral preferences granted by their erstwhile colonial masters – might negatively affect their fisheries sectors, the negotiations present an opportunity, as well as a threat.

A number of SPS issues have been the cause of recurring problems in EU-ACP trade, but despite considerable discussion over the years between standard setters like the EU and standard takers like the ACP, little satisfactory resolution has been achieved. The fact that the EPAs are a negotiating rather than discussion forum provides a means to overcome this impasse and obtain valuable clarifications and commitments from the EU. This would not only be of service to the

fisheries sector in ACP countries – given that the SPS Agreement addresses specific risks rather than specific products, all ACP products covered by the SPS Agreement would benefit.

What Can Be Done?

Since the European Union's right to protect its citizens from potentially harmful food cannot be challenged, attention should be placed on the implementation of the measure rather than on the basic principle. This involves looking at what the EU is doing and identifying whether it complies with the WTO Agreement on Sanitary and Phytosanitary Measures. The agreement contains areas of ambiguity that allow the EU to introduce measures that, while not at variance with the wording of the treaty, can nevertheless arguably be viewed as being contrary to the underlying intention, i.e. not to interfere unnecessarily with international trade.

Precautionary Import Bans

According to SPS Article 5.7, WTO 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 the provision, but rather the agreement's silence on the steps that need to be taken by a country that has lost international market access because trading partners have invoked this provision.

Greater clarification is required 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, for example by including the following text:

"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."

Setting a Regulatory Ceiling

The SPS agreement sets a regulatory floor but not a ceiling. WTO Members are committed to both the international harmonisation of SPS measures, and the mutual recognition of measures employed by other countries. 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, while the agreement sets minimum requirements for WTO-consistent SPS measures, nothing prevents countries from adopting regulations that are considerably more stringent. Therefore, the question arises whether there is a level of sanitary standards that importing countries cannot legitimately expect potential exporting members to achieve.

It could be argued 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 with regard to the level of extra safety and associated benefits

actually being achieved. In this respect, EPA negotiators could consider the following text:

“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.”

Socio-economic Factors 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/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 (Art. 5.3).

Although trade agreements traditionally avoid these types of assessments due to the subjectivity associated with measuring them, the SPS Agreement recognises that imported risks to human, animal and plant safety and health are likely to have a significant socio-economic impact. However, the question remains about how socio-economic

assessments can be incorporated into the legitimate justifications based on sufficient scientific evidence. None of the international scientific organisations referred to by the WTO (Codex, etc.) provide much scope for socio-economic assessments.

For the EPAs to be effective, clarification must be 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-tariff barriers will continue to hinder both regional integration and any increased inter- and intra-regional trade.

As a general observation, the SPS provisions in the EPA chapters fall short of making provision for the post-EPA negotiations era. There appears to be an insufficient attempt to allow the recipients to prioritise capacity-building assistance from the EU, and for the establishment of mechanisms to ensure that

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any such commitments are in fact fulfilled in specified terms of finance, technical assistance and time.

Targeted Capacity-building

Spurred by its own need for fish from third countries when stocks are dwindling at home, the EU has a comprehensive framework of assistance designed to promote eligible imports from the fisheries sector. Less well addressed is the need for assisting the private sector 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 EPAs.

It would be useful, for example, 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’, which would offer small-scale fisheries cold storage and commercial marketing services. This could also be useful in tackling problems relating to the traceability and origin of fish coming from scattered sources. Under its fisheries agreements, the EU has contributed to making various fish processing establishments in ACP countries SPS-compliant. This has served the twin aims of helping these countries export to the EU, as well as the development of local economies.

Nevertheless, these establishments can suffer from a shortage of product to process when EU fleets carry their entire locally caught catch back to Europe for processing. As such, 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 was caught.

While the development aims of the succession of Lomé conventions that preceded the EPA negotiations were never fully achieved, the economic partnership agreements represent an opportunity for reassessing what was done in the past and identifying what can be done to avoid a similar failure in the future.

Author

Martin Doherty is Head of Research with the international trade consultancy Cerrex Limited in London. The author based this article on his study on “The Importance of Sanitary and Phytosanitary Measures to Fisheries Negotiations in Economic Partnership Agreements”, commissioned by ICTSD.