

Policy Research – Implications of Liberalization of Fish Trade for Developing Countries

Trade Issues Background Paper: Sanitary and Phyto-Sanitary (SPS) Measures and Technical Barriers to Trade (TBT)

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This report forms part of a wider study on “Policy Research – Implications of Liberalization of Fish Trade for Developing Countries”, comprising five trade issues background papers and five country case studies.

The trade issues background papers are dealing with the following topics:

- Sanitary and Phyto-Sanitary (SPS) Measures and Technical Barriers to Trade (TBT)
- Ethical/Social/Eco Certification, Labelling and Guidelines
- The Impact of Subsidies on Trade in Fisheries Products
- The Impact of Dumping on Trade in Fisheries Products
- Fiscal Reforms and Trade in Fisheries Products

The case studies cover the following countries:

- Bangladesh
- Guinea
- India
- Uganda
- Vietnam

For a synthesis of the entire study including policy recommendations, see: Bostock, T., Greenhalgh, P. and Kleih, U. (2004), Policy Research – Implications of Liberalization of Fish Trade for Developing Countries – Synthesis Report. Chatham, UK: Natural Resources Institute. ISBN 0 85954 560-1.

Copies of the various reports are available on the following websites:

- www.onefish.org/id/225570
- www.nri.org/projects/projects/htm

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2. SANITARY AND PHYTOSANITARY (SPS) MEASURES AND TECHNICAL BARRIERS TO TRADE (TBT)¹

2.1 Introduction

International trade in fish and fishery products has grown rapidly over the last twenty years. Export values have risen from US\$15 billion in 1980 to US\$56 billion in 2001. In the same period the developing countries' share of total exports has risen from 40% to 50%, with net receipts from fish trade by developing countries increasing from less than US\$4 billion to almost US\$18 billion. Imports are concentrated strongly in the USA, Europe and Japan, with developed countries absorbing 80% of total world imports (Lem, 2003). However, the increasingly complex requirements for food safety assurance and traceability set by major markets, particularly in Europe and North America represents a threat to existing exporters and a "barrier" to new entrants. Increasingly stringent quality standards can create a bias in favour of countries with a highly developed infrastructure and larger suppliers with greater resources. It is in the economic and national interests of fish exporters from developing countries to ensure they supply acceptable products to maintain their export earnings as well as their commercial reputation.

Increasing outbreaks of food borne illness alongside consumer concerns over inter-regional disease transmission have driven the development of more stringent laws and regulatory frameworks. For example, in 2005 within the EU the General Food Law (Regulation 178/2002) will introduce a harmonised framework for food safety assurance from farm to the consumer across member states. The European food industry is responding with initiatives aimed at creating a due diligence defence on grounds of food safety assurance, environmental management and social welfare issues. Major importing countries are tightening their food safety legislation and demanding the adoption by exporting countries of agreed inspection, examination and certification procedures. New regulations with regard to quality control, such as the Hazard Analysis Critical Control Point (HACCP), have been adopted by all major importing countries (except Japan), and have been made compulsory for their fish processing industries. In terms of impacts on developing countries, the regulations based on HACCP shift the burden of responsibility to exporting processor or trader, by making them fully responsible for the quality of the product in terms of food safety. These various measures can be viewed as non-tariff barriers (NTB) to trade and are becoming more restrictive.

Much of the remainder of this brief provides an overview of the various legislation in the major markets of the European Community (EU), the United States of America (USA) and Japan. Prior to this there is a discussion of the SPS and TBT Agreements.

¹ This paper was drafted by Peter Greenhalgh based on work mainly undertaken by NRI.

2.2 The Sanitary and Phytosanitary Agreement (SPS) and the Technical Barriers to Trade Agreement (TBT)

With the reduction of tariff barriers, there is a possible danger that alternative forms of protection will be utilized, including arbitrary technical barriers as well as sanitary and phytosanitary measures. The Uruguay Round Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT) adopted by WTO Members in 1995 have given a new direction to the international food trade.

The SPS Agreement attempts to address the application of measures associated with the protection of human, animal and plant health in such a way that they are not a disguised restriction on international trade, so to prevent such measures from being used as unjustified trade barriers. There are several key principles including the sovereign right of a country to put protective measures in place, but these measures should not be more restrictive than necessary to achieve the appropriate level of protection. The Agreement stresses that not only should SPS measures be scientifically based but also stresses the importance of risk assessment in determining the appropriate levels of SPS measures. Of crucial importance are transparency in the development and implementation of measures and the adoption of international standards. The Codex Alimentarius Standards, Guidelines and Recommendations is the preferred standard for activities relating to food quality requirements. The SPS Agreement gives status and legal force to the standards set by the Codex Alimentarius Commission. The Codex Alimentarius – or food code - was created in 1963 by FAO and WHO to develop food standards and guidelines and has become a global reference point for consumers, food producers and processors, national food control agencies and the international food trade.

The SPS Agreement applies only to measures covering food safety, animal and plant life and human health. Other technical measures outside this area come within the scope of the Agreement on Technical Barriers to Trade (TBT Agreement). The SPS and TBT Agreements are thus complementary and mutually reinforcing.

Technical regulations and standards are used extensively for fish trade and could constitute obstacles to trade. The TBT Agreement tries to balance the trade-facilitating aspects of standards against their trade-distorting potential by obligating countries to ensure that technical regulations and standards, including packaging, marking and labelling requirements and procedures for assessment of conformity with technical regulations and standards, do not create unnecessary obstacles to international trade discriminate in favour of domestic producers or goods of different origin.. It does this by:

- Encouraging “standard equivalence” between countries
- Promoting the use of international standards
- Mandating that countries notify each other of changes in their standards via enquiry points.

The provisions of the TBT Agreement cover all types of standards including quality requirements, but do not apply to sanitary and phytosanitary measures subject to the SPS Agreement. The SPS Agreement also acknowledges the importance of harmonising standards internationally.

2.3. European Regulations

Individual countries within the European Union (EU) are relatively small in terms of global market shares but taken as a trading block the EU is third in importance in terms of value behind Japan and the USA.²

The EU has been at the forefront in developing food safety standards and as such it has had a profound influence on the development of the seafood export industry in developing economies. EU standards are enforced and regulated at the country level and thus a restriction of exports to the EU under the regulations affects all members of the export community. For exports to other countries, such as the USA and Japan, the food safety import regulations are generally enforced at a company basis and so a restriction on imports will only affect one particular exporter.

The EU has followed a dual approach in harmonizing food laws: “horizontal” legislation that covers aspects which are common to all foodstuffs (such as additives, labelling and hygiene, etc.) and “vertical” legislation on specific products (e.g., fish, cocoa and chocolate products, sugars, honey, etc.). The vast majority of food and trade laws of the EU member countries have already been fully harmonized into EU law. Where EU regulatory harmonization is not yet complete, imported product must meet existing national requirements. Extensive amounts of national legislation can pertain to the EU regulatory framework.

EU legislation is made up of Directives and Regulations. Directives define the result that must be achieved but leave to each Member State the choice of form and methods to transpose the directive into national laws (usually within 2-3 years after adoption). Regulations are binding in their entirety and automatically enter into force on a set date in all Member States.

In order to be allowed to export to any EU members the system requires that the country from which the exports are made has to be licensed to do so by the EU. The country must have public health legislation and controls for the fisheries sector which are equivalent to those existing in EU legislation. The list of third countries and territories from which fishery products can be imported into the EU is established by an Annex to Commission Decision 97/296/EC. The list has been updated many times. Once the licence has been agreed the individual export company has to apply to the country from which it is exporting for permission to do so. This two tier system in effect means that the EU delegates authority for implementation and enforcement of its food safety legislation to the authorities of the exporting country through the appointment of a “competent authority”.

The main directive under which the competent authority operates is Council Directive of 22 July 1991 – 91/493/EEC – “Laying down the health conditions for the production and the placing on the market of fishery products”. This directive applies to all products destined for the European market and applies equally to domestic and third country products. Article 10 of this directive states that “Provisions applied to

² The largest importer in quantity terms is China but a large volume of imports are low value products and thus China is fourth in terms of value.

imports of fishery products from third countries shall be at least equivalent to those governing the production and placing on the market of Community products". In addition, the directive states that "...products from third countries intended to be placed on the market of the Community must not qualify for more favourable arrangements than those applied in the Community....provision should therefore be made for a Community procedure for inspection in third countries of the conditions for production and placing on the market in order to permit the application of common import system based on conditions of equivalence."

In addition, to the main text published in 1991 there are a number of complementary texts that expand upon and clarify the main directive. Details of EU product and hygiene legislation are outlined in more detail in the separate paper on International Regulatory Framework and Trade Barriers and include:

- Directive 92/48/EEC concerning minimum hygiene rules applicable to fishery products caught on board certain fishing vessels in accordance with Article 3 (1) (a) (i) of Directive 91/43/EEC;
- Decision 94/356 to implement check systems (HACCP) Decision 93/140 concerning parasites;
- Decision 93/351 concerning maximum levels of mercury;
- Decision 95/149 concerned with levels of Total Volatile Bases for certain species;
- Decision 93/51 concerned with microbiological criteria for cooked crustacea and molluscs;
- Directive 95/71/EC amending the Annex to Directive 91/491/EEC laying down the health conditions for the production and placing on the market of fishery products;
- Regulation 104/2000 and 2065/2001 regarding labelling information for consumers concerning fishery and aquaculture products. To provide clearer labelling information for consumers and to promote the free movement of fishery and aquaculture products;
- Directive 91/492/EEC laying down the health conditions for the production and placing on the market of live bivalve molluscs;
- Directive 97/492/EEC amending the Annex to Directive 91/492/EEC laying down the health conditions for the production and placing on the market of live bivalve molluscs.

Moves are now being made within the EU to bring the legislation for the production of all food products under one directive and to extend the scope of the legislation to cover not just the main processing functions but all the steps from the primary production to the consumer. This is known as the "farm to fork" principles. This legislation will supersede the individual commodity based directives. The result for exporting countries will be that all the steps in the chain from primary producers (fishermen and aquaculture units) will need to take on board, in a more structured manner, the principles of Hazard Analysis Critical Control Point (HACCP) systems and other quality assurance needs thus broadening the scope of the competent authority in regulating the industry. The need to ensure that quality assurance measures are instituted prior to arrival at the processing factory gate will pose a major challenge to export industries, particularly for the small-scale and non-industrialised sectors of the industry. Of even greater concern might be the fact that in order for the 'farm to fork' principle to be seen to be working a system of traceability of products

throughout the chain will need to be instituted. This will require that each person in the chain will be able to demonstrate that they know where the product has come from and where it has gone. A paper trail will thus be required tracking the movement of product. Where small quantities of product are consolidated into larger batches from, say, traditional fishermen to purchasers at landing points this could present particular problems as mixing of batches will mean that particular raw material supplies cannot be traced back to source. The knock-on effects that this might have on poor producers are yet to be ascertained.

In addition, the EU is the only one of the three principal importers to use safeguard measures on fishery products. There are two types of these measures within the EU; a safeguard clause (i.e. quota tariffs, always for material for processing to support the fish processing sector) and a reference price system (actually a domestic price support measure rather than a trade measure to maintain import prices of the same species to stop imports undermining the domestic price support mechanism). The safeguard clause protects the volume of imports, and is allowed if the imports of a product into the customs territory exceed a trigger level, which relates to the existing market access opportunity. The reference price system regulates the price of imports if the c.i.f. (cost, insurance and freight) import price falls below a trigger price fixed on the average production prices in the EU during the last three years.

Some Examples

These strict food-safety regulations, as the case studies on Bangladesh, India, Uganda and Vietnam illustrate, have caused serious difficulties for exporters of fishery products from developing countries. In 2001, EU decided to examine 100 percent of shrimp products imported from China, Thailand, Vietnam, Indonesia and other countries because they discovered residual antibiotics chloramphenicol (CAP) and nitrofurans (NF) in some products. EU authorities have initiated a food-safety policy called “zero tolerance” towards chloramphenicol, nitrofurans and other antibiotics. However, there is no scientific evidence to show that a very low content of residue - as low as one billionth - of antibiotics can be harmful to the health of the consumers. EU has stipulated that the residue in food should be 0.3ppb or even 0.7ppb. It is difficult for exporters, including those from EU, to achieve such accurate results in the products they export.

In 2001, EU banned the import of shrimp from China and, on account of residual chloramphenicol in shrimp from Indonesia, shrimp export from this country into EU has decreased by 64 percent. The existence of nitrofurans in shrimp from Thailand caused severe restrictions to be placed on shrimp export from this country into EU. The export turnover from Vietnam into EU in the first 6 months of 2002 registered an 87 percent decrease in comparison to the year 2001. The issue of residual antibiotics in shrimp continues to be a cause for concern for exporting countries. Dey et al (2003) report that the EU ban on imports of shrimp from Bangladesh in 1997 and Tanzania and Uganda in 1999 had huge effects on export revenues and on employment. The ban remained effective for five months in Bangladesh and caused serious injury to the fishery sector as a whole. An estimated one million people related to shrimp culture in different stages of the production process were affected and the ban cost Bangladesh an estimated US\$ 14 million.

2.4 USA Regulations

Imports into the USA are regulated under the Federal Regulations, often referred to as 21 CFR 123. Guidance for the interpretation of these regulations can be found on the US FDA Centre for Food Safety and Applied Nutrition web site - www.cfsan.fda.gov (USFDA 2001)

These regulations apply to domestically produced products and imports. They require that processors of fish and fishery products operate preventive control systems that incorporate the seven principles of HACCP. This involves processors producing HACCP plans and making them available for "official review and copying at reasonable times". The essence of the regulations is that the purchaser/importer of the products should be able to demonstrate to the authorities that the products have been produced in a safe and acceptable manner. This implies that the producers are using a quality assurance system that incorporates HACCP, standard sanitary operating procedures and good manufacturing practices. The sanitary procedures, which are needed to ensure that the products meet the requirements for production, are often referred to as Standard Sanitation Operating Procedures (SSOP).

Following the events of September 11 2001 the enhanced security in the US has led to the passing in June 2002 of the Public Health Security and Bio terrorism Preparedness and Response Act of 2002 (the Bio Terrorism Act). The law includes specific provisions that protect US citizens from food imports that are dangerous to human health.

The Food and Drugs Administration (FDA) is the main regulating agency in the United States and provides guidance and assistance to the industry to comply with the regulations. There are essentially two ways in which importers may verify their obligations under the regulations.

- First, they may obtain products from a country which has an active equivalence or compliance agreement with the FDA covering fish and fishery products. The FDA is actively pursuing Memoranda of Understanding with seafood trading partners. Under such an agreement the FDA has determined that the government of the foreign country is operating a food safety regulatory system for seafood that ensures that the product exported to the United States satisfy US safety concerns. Thus, these MOU will put the burden of foreign processors HACCP verification and other quality assurance means with the foreign government.
- The second means of verification where no agreement exists with the country of origin is that importers take their own "affirmative steps" to ensure that their suppliers are processing in accordance with the regulations. The regulations do not mandate what the affirmative steps might be but give examples which might include certification on a lot by lot or continuing basis from a competent and independent private party or from the appropriate foreign government inspection service. The verification that imports are compliant rests with the importer. The importer specifications must declare the limits for criteria, which compromise the safety of the product and have written verification that the foreign exporter takes affirmative steps. In essence, this requires that the exporter has a HACCP programme, which is adequate to address the hazards

that are likely to affect the product, and that the HACCP plan and sanitary procedures are being implemented consistently. The FDA enforces the HACCP requirements by examining products at point of entry and they have the power to inspect the importer's place of business to review the product specifications and records are in order. If a foreign processor is discovered by the FDA to not be implementing HACCP an "import alert" can be issued and shipments of product from the processor concerned can be blocked until HACCP has been effectively implemented.

Some inspection authorities are producing lists of processors that are in good standing with those authorities and producing in accordance with US requirements. These lists if kept up to date may be used as a means of verification for importers that products are being produced in accordance with the regulations.

2.5 Japanese Regulations

While some firms in Japan have HACCP systems implemented, there is no mandatory requirement either for domestic processors, nor external suppliers.

Standards for imports of fish and fishery products into Japan are governed by the legislation set out in the Food Sanitation Law and the Quarantine Law. The laws prohibit *inter alia* the imports for sale of unsanitary foods, foods not conforming to prescribed specifications of composition, standards of manufacture and storage. The consignments may be checked for signs of decomposition such as rotten smells and the level of total basic nitrogen as well as for the presence of foreign matter, and that they conform to particular microbiological standards. They are also checked for the presence of contaminants such as antibiotic residues, mercury, pesticides, etc.

Under the quarantine law, notification of import must be made prior to import to the director of the quarantine station at the port of import. The sanitation inspectors of these quarantine stations examine food destined for import. This inspection may involve on the spot checks of the goods themselves and laboratory tests if deemed necessary. Ideally import notification should be made 7 days prior to the arrival of the cargo or else immediately on arrival into the bonded area. If repeated imports by the same manufacturer are to be made importers may submit an import plan to the authorities on the occasion of their first import and if no problems are found subsequent imports may be exempted from import notifications.

In this way it is possible for manufacturers to obtain a waiver from repeated inspection where the same product is imported repeatedly and also to register their company and products so that all that is usually required at import is examination of documentation. In the case of most frozen food stuffs these arrangements are made on a yearly basis from the day of first notification. The general principles of this pre-certification system for imported products are outlined in the "Seafood Export Journal" of December 2000 (Anon 2000b).

If a cargo has been inspected by an official laboratory in the exporting country for certain conditions and the inspection results are attached to the import notification the cargo may be exempt from further inspection at the import quarantine station (this

does not include conditions such as microbiological changes that might occur during transport and storage).

Further information and details of regulations governing the import of seafood into Japan can be found in the following publications available for down loading from the Japanese External Trade Organisation (JETRO) website <<http://www.jetro.go.jp/>>

1. Food Sanitation Law - March 1999
2. Procedures for Importing Foods and other related products into Japan - Under the Foods sanitation Law - March 1999
3. Handbook for Agricultural and Fishery Products Import Regulations - October 2000
4. Natural Resources Institute (2003) Working Paper on Agricultural Product Grades and Standards NRI Report No 2763

2.6. Some Initial Conclusions

Many developing countries face various problems associated with meeting SPS/TBT compliance. This not only applies to the fishery sector but also to a number of other export sectors. Are there any specific solutions that can be suggested to assist developing countries overcome the various problems associated with SPS/TBT compliance?

At the *international level*, it is highly unlikely that developed importing countries can be persuaded to reduce their increasingly stringent quality requirements. Nevertheless, there are a number of initiatives that could be taken. One definite need is for a greater understanding of the impact of SPS/TBT requirements on developing countries. There needs to be a greater recognition of the problems they face, alongside efforts to change institutional structures relating to SPS and TBT standard setting. There may be some potential to reform the international institutions responsible for SPS/TBT matters. Other possible solutions include improved transparency of SPS/TBT agreements; greater harmonisation of SPS/TBT standards; improved mechanisms for the provision of greater legal and technical assistance, including legal assistance to participate in dispute settlement; and longer periods in which to achieve compliance would be beneficial.

At the individual *country level*, many developing fish exporting countries appear to have inadequate phytosanitary systems to meet the requirements of trading partners. There are a number of possible solutions to enhance their capability of complying with SPS/TBT requirements. Capacity building efforts are vital. These include the revision of own country administrative and technical arrangements for meeting SPS requirements including training in SPS/TBT issues. One particular area would be the use and application of risk analysis as part of the regulatory decision making process; alongside the development of domestic control systems. Countries require adequate access to both scientific and technical information in order to ensure that their own measures are technically sound, as well as in meeting requirements of trading partners. In the broad sense, building capacities in-country will lead to a wider understanding and application of the principles contained in the SPS and TBT Agreements that are essential to a rules-based trading system. Finally, greater regional co-operation between developing countries on SPS issues would be beneficial.

Finally, it is important to recognise that the impact of SBS/TBT measures is not always negative. These measures have had some positive impacts on developing fish exporting countries including improvements in fish quality management; improvements in the quality of products on the domestic market and enhanced export potential.