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- POLICY DEPARTMENT -**

Note

on

Tuna Fisheries in Seychelles

Abstract:

This note is complementary to the Brief prepared by the Seychelles Embassy and focus on the European Parliament's and Joint Parliamentary Assembly's work regarding tuna in Seychelles.

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The EU and Seychelles are linked by two different agreements: the Fisheries Partnership Agreement which grants access to Seychelles waters for European fishermen (in exchange of a European contribution) and the newly signed interim Economic Partnership Agreement which aims at market access.

THE FISHERIES PARTNERSHIP AGREEMENT

Revenues from tuna are fundamental to Seychelles as the sector is the second pillar of its economy after tourism¹. In 2006 Seychelles increased its total canned tuna exports to the EU and has become the dominant force in the European canned tuna market, at a time when tuna captures decrease by lack of resources. The EC-Seychelles agreement is the EC's biggest tuna agreement with a third country in terms of both reference tonnage and financial contribution.

The Fisheries Agreements

The first fisheries agreement concluded between the EC and Seychelles dates back from 1987². The current agreement is a Fisheries Partnership Agreement (2005-2011), the new generation of agreements, which foresees the possibility for EU vessels to fish in the Seychelles waters against a financial contribution. The "new" aspect of the last agreements is the part dedicated to development of local fishery industry. In the Seychelles agreement, 36% of the current € 4 125 000 financial contribution has been earmarked for the support of the Seychelles sectoral fisheries policy in order to promote sustainability in its waters. The idea behind the partnership agreements was to mitigate the effects of the trade agreement (which fisheries agreements are) by some development concerns.

On the "trade" part, basically the EU is paying compensation to Seychelles to allow some of its Member States' vessels to fish in the Seychelles Exclusive Economic Zone (EEZ). In total there are 52 licences for EU vessels: 40 for tuna seiners (22 for Spain, 17 for France and 1 for Italy) and 12 for surface longliners (2 for Spain, 5 for France and 5 for Portugal).

The FPA is to be amended to increase the reference tonnage from 55,000 tonnes to 63,000 tonnes to take account of the average level of catches over the past three years; to increase the financial contribution up to € 5 355 000; to increase the fee paid by ship-owners from € 25 to € 35 per tonne, thus decreasing the EC contribution from € 75 to € 65 per tonne. A specific amount of € 1 260 000 per year (from the contribution) is aimed for the support and the implementation of Seychelles' sectoral fisheries policy.

The EP position

The European Parliament is currently examining the amendment to the FPA. The Fisheries Committee's draftsman³ welcome the amendment as he estimates that both parties benefit from the agreement and that the economic rewards for Seychelles are considerable. The EP Development Committee has adopted its opinion to the Fisheries Committee⁴ where it recommended adding that "*the Community's financial contribution should be used for the development of coastal populations living on fisheries and the creation of small local fish freezing and processing industry.*" The EP is only consulted and has no assent power for fisheries agreements.

¹ Fisheries sector represents 15% of Seychelles GDP when tourism represents 20%.

² The first one signed in 1984 was denounced by Seychelles.

³ 2007/0232(CNS), Report Ortuondo Larrea.

⁴ Report Borrell adopted on 27 February 2008.

ACP produced canned tuna is protected from harsh competition from Thailand and the Philippines' products due to different tariffs. The preferential tariff was attacked in 2000 after the signature of the Cotonou Partnership Agreement which consolidated the preferential 0% tariff granted by the EC to its ACP partners while exporters from Thailand faced a 24% tariff. Thailand complained to the WTO where mediation was undertaken under the Dispute Settlement Understanding (DSU)⁶. The whole dispute happened at a time when the EU was requesting a waiver of its "most favoured nation clause" (MFN) obligations with regard to the Cotonou Agreement. The Commission accepted to enter into discussions with Thailand and the Philippines in order to facilitate the consensus on the waiver among the WTO members. The consultations started once the waiver was adopted.

The argument used by Thailand and the Philippines was that the EU market was the largest single market for canned tuna worldwide, and was still growing. Nevertheless the growth only benefited to ACP exporters while market share of Thailand's and the Philippines' producers decreased. For Thailand, ACP producers were no longer least developed countries (LDCs) which should benefit from free access. For the complainants, the dispute was about granting the same favourable treatment to all developing countries.

On 20 December 2002 the mediator delivered its advisory opinion: the EC should open up a new quota of 25,000 tonnes at a tariff rate of 12% to be allocated to Thailand (13,000 tonnes, 52% of the total), Philippines (9,000 tonnes, 36%), Indonesia (2,750 tonnes, 11%) and other third countries (250 tonnes, 1%). From 1 July 2004 the quota was of 25,750 tonnes. To conclude the case, the EU Council adopted a new regulation on 5 June 2003 with the tariff-rate quota suggested by the WTO mediator⁷. Spain sued the EU Council to have the regulation annulled but the Court of Justice dismissed the action⁸.

The JPA adopted several resolutions on that issue. In Brazzaville⁹, the JPA "*called the EU to recognise the major difference between the ACP countries, most of which are LDCs, and Thailand and the Philippines*" and to "*ensure that offers made by the EU within the Doha agenda do not hamper the development efforts in the ACP countries*". Another JPA resolution came back the protection of preferences for fish at WTO. Adopted in 2006¹⁰, the text reiterates that the "*ACP-EU development cooperation on fisheries must promote the ACP countries' capacity to develop their fishery resources sustainably and to enhance local added-value*". Once again the JPA "*urges that discriminatory measures are not taken within the WTO to reduce customs duties for canned tuna from some Asian developing countries, measures that may be harmful to the ACP countries, and calls on the Commission to consider the use of a 'carve-out' clause in the WTO tariff reduction formula in the DDA in order to maintain an effective level of preference for ACP canned tuna exports to the EU; otherwise their entire canning industry may be devastated with serious socioeconomic consequences*".

⁵ For details on this case, see WTO website – Case study on *Thailand: Conciliating a dispute on tuna exports to the EC*, Nilaratna Xuto, International Institute for Trade and Development, Bangkok.

⁶ This is the first stage of the WTO dispute settlement mechanism. The following are the Panel and possibly the Appellate Body.

⁷ Council Regulation (EC) N° 975/2003, OJ L 141/1, 7.6.2003.

⁸ Judgment of the Court of 10 March 2005, OJ C 115/5, 14.5.2005.

⁹ Adopted by the ACP-EU Joint Parliamentary Assembly on 3 April 2003 in Brazzaville (Republic of the Congo), ACP-EU 3547/03/fin.

¹⁰ Adopted by the ACP-EU Joint Parliamentary Assembly on 22 June 2006 in Vienna (Austria), ACP-EU 3847/06/fin.

The issue should now be resolved under the Doha Round. There, it cannot be excluded that multilateral negotiations will eventually erode the current preferential access, temporarily secured by the interim EPA. Indeed the interim EPA signed by Seychelles should allow the EU-ACP trade regime to be in line with WTO standards but the country could later suffer from lower tariffs granted to its competitors.

THE INTERIM EPA

Seychelles insisted in having at least an interim agreement to guarantee that its canned tuna production would have access to the EU market under the same previous conditions. In case an interim agreement could not be concluded in time Seychelles had also applied to the GSP+ regime. The interim agreement was signed on 28 November 2007 though.

Therefore, since 1 January 2008, trade between the EU and Seychelles is regulated by an interim EPA agreement. This WTO-compatible market access agreement safeguards trade flows from disruption after the expiration of the Cotonou waiver, while the EC and developing countries pursue negotiations towards complete EPA.

Under the interim arrangements, the EU committed to grant duty free, quota free (DFQF) market access for all exports from the ACP, with exception to rice and sugar that will be liberalised after a transition period. The access to the EU market for textiles is subject to the single transformation rule of origin.

Conversely, Seychelles agreed to a gradual liberalisation of imports from the EU (capital, raw material, intermediate products). The liberalisation is scheduled for a period of 15 years, with the first commitments entering into force in 2013. 62 % of Seychelles' imports will be liberalised by 2013, 77% by 2017 and 97.5 % by 2022. The Seychelles also signed up for the COMESA customs union, which means that during 2008-2012 they will have to reduce tariffs in order to meet the common external tariff (CET) level¹¹.

The first *tranche* of liberalisation as stated under the interim EPA accounts for 99 % of the hypothetical revenue loss for all items to be liberalised¹². However, the islands can easily compensate for the lost tariff venue with a sales tax, as most goods must enter the islands via sea or airport, and a large portion of imports are designated for consumption, which would weaken the effects of liberalisation¹³.

Further, while the interim EPA forbids any import or export restriction other than custom duties and taxes, exceptions can be made in "exceptional circumstances". Seychelles' exclusion basket includes several products from different sectors, such as meat, fisheries, beverages, tobacco, leather articles, glass and ceramics and vehicles. The reason for continued protection seems to be revenue generation rather than infant industry protection, with the exception of fisheries¹⁴.

The interim EPA maintains duty-free access for tuna exports from Seychelles into the EU. Therefore the country will not have to face direct competition with Thailand and the Philippines. Seychelles (and other ESA signatories) has also obtained an automatic derogation on tuna and tuna loins exports of 10,000 tones. This means they can supply up to 10,000 tonnes of canned

¹¹ ECDPM, "The new EPAs: comparative analysis of their content and the challenges for 2008", p. 36

¹² *ibid*, p. 29

¹³ *ibid*, p. 37

¹⁴ *ibid*, p. 37, p. 42

tuna and tuna loins to the EU, irrespective of the origin of the fish¹⁵. This seems to be an improvement on rule of origin.

The agreement comprises a standstill provision and a MFN clause, as well as foresees sanctions in case of deficient administrative co-operation¹⁶. It further states that development co-operation shall be based on the ESA Development Strategy and calls for an ESA Development Matrix to be jointly formulated and attached to the agreement. Under the Aid for Trade initiative, trade relationships should support development and vice versa: aid provisions should serve to remove barriers to trade, such as poor infrastructure.

EPA also aims to promote regional integration as a part of the development support. However, there is little coherence between EPA and the East and South Africa (ESA) integration process. Only a few of the countries in this region have signed the interim EPA (of which 5 are islands). In addition, they have opted for different liberalisation time frames and exclusion baskets and they use different definitions and classifications of goods. For that reason it is right now difficult to speak of the ESA signatories as a region¹⁷; however, the agreements contain a provision that allows for amendments that would support ESA regional integration¹⁸.

Finally, the interim EPA contain a *rendez vous* clause that foresees continued negotiations on the following subjects: customs and trade facilitation; outstanding trade and market access issues; TBT/SPS/services; competitions, investment/PSD; environment, public procurement; agriculture; current payments; good governance in tax areas; DSB; institutions; development cooperation¹⁹.

Another ACP canned tuna producer, Papua New Guinea got other preferential access under its own interim EPA. PNG maintained duty-free access for € 40 million annual exports to the EU, which corresponds to 10% of their total EU exports and avoids putting their industry in direct competition with Thailand's and the Philippines' producers. In the EPA, the EU also offered simplified rule of origin for processed tuna to replace the previous complex and burdensome sourcing regulations under Cotonou rules²⁰.

Both Seychelles and PNG seemed to have rightly chosen to sign an interim agreement to secure access of their tuna products to the European market. Yet to protect their interests they were obliged to break from their regional groups which may prove wrong in the long-run. Regional coherence could be weakened and, as mentioned earlier, they could, sooner or later, have to face non ACP countries competition. The most important is now to reinforce domestic processing capacities.

¹⁵ Source DG TRADE, European Commission.

¹⁶ *ibid*, p. 139pp

¹⁷ *ibid*, p. 5

¹⁸ *ibid*, p. 139

¹⁹ *ibid*, p. 139

²⁰ Trade Negotiations Insight, Vol.6. Number 8, December and January 2008.