

# *Innovative Sustainability Clauses in Recent RTAs*

*International Webinar on  
Regional Trade Agreements and Fisheries  
and Aquaculture Products: Today and  
Tomorrow  
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# *Regional Trade Agreements as laboratory and incubator of new cooperative approaches*

- 21st century RTAs offer a menu of cutting-edge approaches and innovations.
- When negotiated among large producers, traders or consumers, potential to significantly influence global production, management and trade in fish resources.
- Regarding traditional liberalization.
  - Removal of tariff barriers and tariff escalation.
  - Complexity remains with respect to rules of origin compared to multilateral rules.
- A range of innovative sustainability provisions.
  - Fisheries subsidies.
  - Cooperation on fisheries management, conservation and IUU fishing.
  - Non-tariff measures and regulatory cooperation.
  - Capacity building and technical assistance.

# Provisions on fisheries subsidies

- Binding prohibition of certain forms of fisheries subsidies first introduced in the CPTPP (Art. 20.16 (5) – (12) ) and subsequently in USMCA (Art. 24.20)
  - Subsidies to fishing vessel **while listed** by the flag State or a relevant RFMO/A for IUU fishing and subsidies **negatively affecting** overfished stocks, standstill clause and transparency requirements.
- Arguably narrower than what provided under the WTO FSA.
  - Does not include IUU determination by coastal state or subsidies to fishing in unregulated high sea.
- Innovative approach under the UK - New Zealand FTA (Art. 22.9).
  - Similar provisions on overfished stocks and IUU (+IUU listing by subsidizing state and FAO).
  - Transfer of fishing vessels from the UK or NZ to other States.
  - Operations that increase the fishing capacity, or for equipment that increases the ability of a fishing vessel to find fish, except where they meet legitimate public policy goals (safety or sustainability).
  - Stocks managed by RFMO/A when subsidizer of flag state is not a member or cooperating non-member.
  - Fishing without the permission of the flag or in third country EEZ, without permission of the coastal State.
  - Vessel or operator having committed serious violation of conservation or management in preceding year.

# Cooperation on fisheries management, conservation and IUU the case of the USMCA

- Builds heavily on CPTPP chapter 20 but add new commitments and turns several best endeavour provisions into enforceable obligations.
- Sustainable Fisheries Management (Art. 24.18)
  - Each Party shall adopt or maintain measures: (a) to prevent the use of poisons and explosives for the purpose of commercial fish harvesting; and (b) to prohibit the practice of shark finning.
  - Each Party shall base its fisheries management system on the best scientific evidence available and on internationally recognized best practices (e.g. UN Fish Stocks Agreement, IUU IPOA, FAO code of conduct for Responsible Fisheries).
- Conservation of Marine Species (Art. 24.19)
  - Each Party shall promote the long-term conservation of sharks, sea turtles, seabirds, and marine mammals through the implementation and effective enforcement of conservation and management measures.
  - Each Party shall prohibit the killing of great whales for commercial purposes unless authorized in a multilateral treaty to which the Party is a party.
- Illegal, Unreported, and Unregulated (IUU) Fishing (Art. 24.21)
  - Each Party shall implement port state measures; maintain a vessel documentation scheme; develop and maintain publicly available registry data of fishing vessels flying its flag; cooperate through the exchange of information and best practices to combat trade in products derived from IUU fishing.

# Cooperation in the context of regional integration processes

## COMESA:

- Establishment and adoption of common regulations on the management and development of marine parks.
- Establishment and adoption common policies for the conservation, management and development of fisheries resources.
- Co-operation on the exploitation and surveillance of EEZ.
- Coordinate policies and activities relating to the export fish and fish products.

## CARICOM:

- Community shall collaborate with the Member States in:
  - The management of straddling and highly migratory fish stocks.
  - Ongoing surveillance of their exclusive economic zones.
  - The delimitation of maritime boundaries.
  - Safeguarding their marine environment from pollutants and hazardous wastes..

# Non-tariff measures and regulatory cooperation

- *Mutual recognition and equivalences of non-tariff measures.*
  - *EU-Canada CETA Annex 5. E to the SPS chapter establishes a framework for Canada and the EU to recognize each other's SPS measures as equivalent including for fish and seafood products.*
  - *The Parties shall afford appropriate recognition of the sustainability and fisheries compliance performance of each other's vessels and operators in the consideration of their applications for foreign fishing licenses. (UK – NZ Article 22.9.18).*
- *Good regulatory practices and regulatory cooperation.*
  - *To promote compatibility, parties “shall consider” common principles, guidelines, codes of conduct, mutual recognition of equivalence as well as bilateral cooperation and cooperation on the adoption and implementation of international regulatory standards, guidelines or other approaches (EU-Japan EPA Art. 18.3).*
  - *Objective of regulatory cooperation contribute to the protection of human life, health or safety, animal or plant life or health and the environment (EU- Canada CETA Article 21.3).*
  - *Structure for Regulatory Cooperation (CETA Art. 21.6, EU- Japan EPA, Art. 18.14) to institutionalize such cooperation, consult with interested parties, identify and endorse priority areas of regulatory cooperation, provide guidelines and establish, as necessary, ad hoc working groups to pursue specific regulatory cooperation activities.*



# Technical assistance and capacity building, the case of the EAC – EU Economic Partnership Agreement

- One of the most comprehensive set of provisions aimed at promoting the development and sustainable management of the fisheries sector. This largely reflects the development dimension embedded in the EU EPA.
- Part III of the EAC-EU EPA and Title IV of Part V on economic and development cooperation entirely dedicated to cooperation on fisheries trade and development with a focus on marine, inland fisheries, and aquaculture.
- Cooperation both in the form of financial and nonfinancial support based on a development matrix including baselines benchmarks, indicators and targets attached to the Agreement and to be reviewed every five 5 years:
  - Main areas of cooperation include:
    - Infrastructure for storage, marketing and distribution.
    - Capacity building to meet SPS/TBT.
    - Development of monitoring control and surveillance systems.
    - Investment and technology transfer in fishing operations and processing, port services, and diversification.
    - Value addition.
    - R&D on stock assessment and sustainability levels.

*Thank you!*

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