

TUNA ANYONE? CANNED TUNA FROM THAILAND AND THE PHILIPPINES IN THE EUROPEAN UNION

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It is well-known that the EU is one of the major partners of developing countries.

In addition to providing ODA (Official Development Assistance), the EU constitutes the largest trading bloc in the world, and the EU is the single most important trading partner of many developing countries, particularly the least developed ones.

For over forty years, the EC's trade relations with developing countries have appeared to form a pyramid of privilege.

At the top were the ACP (African, Caribbean and Pacific) countries, comprising mostly former European colonies in these regions, and enjoying duty-free access for over 99% of their exports to the EU, without the obligation of reciprocity.

At the bottom of the pyramid were the developing countries that benefited only from the GSP (Generalized System of Preferences), mainly the countries of South and Southeast Asia and the Latin American countries.

Although the Southeast Asian countries have been more successful than the ACP countries in diversifying the composition of their exports to the EU away from agricultural and fisheries products towards manufactured goods, several Southeast Asian countries, notably Thailand, the Philippines and Indonesia, continue to export substantial quantities of agricultural and fisheries products to the EU.

The differential (many in Southeast Asia would say discriminatory) treatment of imports of canned tuna from the ACP countries, on the one hand, and imports of the same product from Thailand and the Philippines, is instructive in at least two respects.

First it provides a graphic illustration of the way in which the EU's rules appeared to have the potential of pitting developing countries against each other (Southeast Asia vs. ACP).

Second, despite the more favorable tariff treatment accorded to the ACP, the EU implements SPS (sanitary and phyto-sanitary, referring to food safety and animal and plant health) measures and rules of origin that generate dissatisfaction among the ACP countries and diminish the benefits of preferential treatment for the ACP (the ACP vs. the EU).

The rules of origin create the suspicion that they were formulated for the benefit of the EU fishing and canning industry.

Why discuss EU imports of canned tuna? There are several reasons.

A. The nature of the product itself

1. Tuna is widely considered to be a healthy product.

a. It is an inexpensive source of protein.

b. It is said to be rich in omega-3 (polyunsaturated) fatty acids that build up good cholesterol (Tacio, 2009, p. 3).

2. Tuna is traded primarily in the form of canned tuna, even if it is also marketed in other forms, such as flakes, or fresh/chilled/frozen tuna (Tacio, 2009, p. 2).

B. The structure of the industry

1. The world's largest fishing grounds are in the Western and Central Pacific, but the main tuna fishing states are in Asia, with the Japanese and Taiwanese fleets being the most important (Tacio, 2009, p. 2).
2. While some of the major exporters of canned tuna are also fishing nations, many tuna canneries in these countries depend on imported tuna for their raw materials.

C. The changing structure of the canning industry.

1. In the 1970's, the five major tuna processing states were the United States, Japan, Spain, France and Italy.
2. Since the 1980's the participation of Asian states, notably Japan, Korea, Taiwan, Thailand, the Philippines and Indonesia, has increased significantly (Tacio, 2009, p. 2)

At present, Thailand and the Philippines are respectively, the world's first and second exporters of canned tuna. Thailand exports over 21 million cases worth \$608 million; the comparable figures for the Philippines are 6 million cases and \$100 million (Tuna Tech Services, Tuna Consultant, n.d., p. 1).

D. The differential (discriminatory) tariff treatment in the EU

1. Based on the degree of processing – imports of raw tuna for further processing in the EU enter Europe duty-free, while all other products are subject to duty of between 22 and 24%.
2. Based on the origin - Imports of canned tuna from the ACP countries, on which no tariff is imposed, and imports from other sources, including Thailand and the Philippines, which pay a tariff of 24%.

I. Southeast Asia vs. the ACP?

The differential tariff treatment led to a WTO mediation to which Thailand and the Philippines, on the one hand, and the EU, on the other, were the parties, but it can be argued that the EU was acting in defense of the ACP countries.

A. The WTO Mediation

B. In Defense of the ACP Countries

A. The WTO Mediation

1. The origins of the mediation
2. The arguments of the parties
3. The outcome of the mediation
4. The implementation of the compromise

1. The origin of the mediation
 - a. In March 2000, the EU filed a request for a waiver from the WTO for the Cotonou Partnership Agreement that it had signed with the ACP countries.
 - b. For nearly two years, the EU failed to respond to concerns expressed by Thailand over the disparity in treatment of canned tuna.
 - c. In November 2001, at a WTO Ministerial Conference in Doha, Thailand and the Philippines were able to obtain EU agreement to consultations in exchange for the two countries withdrawing their objection to the adoption of the meeting's final declaration (Schifferes, 2002).

2. The arguments of the parties

a. Thailand

1) The EU market continued to grow and this growth was matched by the growth in ACP exports.

2) Yet imports from Thailand fell by 46% between 1994 and 2000, at a time when Thai exports to other markets were stable or had grown. Even the depreciation of the baht following the Asian financial crisis was not sufficient to stimulate Thai exports to Europe (Xuto, n.d.).

Thailand was said to have asked for a zero duty or a high import quota (70,000 tons) (“EU Denies Import Prejudice,” 2002; Ponvutitham, 2002).

Later, it was said that the two countries wanted the EU to lower tariffs to 5% (“Philippines, Thailand Seeking WTO Help in Tuna Dispute”, 2002).

b. The EU rejected all arguments and demands presented by the two countries.

1) The 24% duty had been bound and applied since the 1970s, when there was no canning production in either Thailand or the Philippines.

2) The zero duty for the ACP had been applied since 1975.

3) The EU denied that the tariff differential had had any impact on the two countries' exports, and went so far as to argue that this was proven by the increase in their exports to the EU (Fajardo, 2002, p. 4).

In the event of the failure of negotiations, Thailand and the Philippines would have preferred recourse to a WTO dispute settlement panel.

The EU wished to avoid WTO dispute settlement, perhaps because it realized that its case was weak.

As a compromise the parties agreed to a mediation, the first of its kind under WTO auspices.

3. The outcome of the mediation

The WTO-appointed mediator proposed a quota of 25,000 tons from July 2003 to June 2004, to be augmented to 25,750 for the following 12 months and extended regularly for one year.

52% was allocated to Thailand, 36% to the Philippines; 11% to Indonesia, and 1% to other countries. Exports to the EU within the quota would be subject to a rate of 12% (Council Regulation (EC) No 975/2003).

4. Implementation of the compromise

- a. The three countries were reportedly able to expand their exports to the EU (Brus, 2003a, 2003b; "Tuna Market Report-EU April 2007").
- b. Thailand was normally able to fill its quota for the year within days (Campling and Doherty, 2007, p. 10).
- c. The Philippines was able to fill its quota for the year in a few weeks ("Tuna Market Report-EU February 2007").

d. Exporters in both countries continued to clamor for a higher quota or a lower tariff.

In the Philippines, the major tuna canneries, which employ mostly Muslim women, are located in Mindanao, which has been plagued by the problem of Muslim secession and terrorism (Brus, n.d.)

In the major tuna canning city, tuna canning generates employment for 120,000 people (Espejo, 2008).

The Philippine quota was only 9000 tons, whereas annual production was at least 100,000 tons (Adlaw, 2009).

e. The quota ended in June 2008.

B. In Defense of the ACP countries

1. The ACP response to the mediation
2. The level of development of the ACP canned tuna exporting countries

1. The ACP response to the mediation

- a. The Commission's position

The proposal was reasonable, as the quota was equivalent to 4.6% of EU consumption in 2002, 9.6% of total imports in 2001 and 37% of total MFN imports. The quota would not prejudice either ACP exports or EU production of canned tuna (European Commission 52003 PCO141, 2003).

b. The ACP countries' negative attitude

At a meeting of the ACP-EU Joint Parliamentary Assembly in Brazzaville in March-April 2003, the Assembly called on the EU not to adopt the mediator's proposal, for the following reasons (ACP-EU Joint Parliamentary Assembly ACP-EU 3547/03/fin.):

- 1) Export companies in Thailand and the Philippines are highly competitive;
- 2) The two countries are in one of the regions of the world that attract the most investment;
- 3) The two countries have an extremely large fishing capacity, enabling them to comply with rules of origin more easily;
- 4) Increased market access for the two countries' exports would lead to no less than the disruption and disappearance of the ACP tuna canning industries.

The fact that Thailand and the Philippines are able to fill their quotas in a short period demonstrates that even with a 12% tariff, their exports of canned tuna to the EU are still attractive to European importers (Campling and Doherty, 2007, p. 10).

2. The level of development of the ACP countries

a. The major exporters to the EU (Block and Grynberg, 2005, p. 5) are

1) small island countries – the Seychelles (16.5% of EU imports), Mauritius (6.3%); OR

2) countries geographically far from the EU – Fiji (0.9%), the Solomon Islands (1.0%), Papua New Guinea (0.9%)(these three are also small island countries), OR

3) least developed countries – Madagascar (3.9%), Senegal (2.7%).

Only Côte d'Ivoire (17.6%) and Ghana (9.5%) do not belong to any of the three categories.

b. An example – the Seychelles

1) area of only 444 km²

2) population of only 80,000

3) Exclusive Economic Zone (EEZ, 200 nautical miles from the coastline) of 1.4 million km²

4) Fishing has replaced tourism as the most important source of revenue (Michaud, 2003, pp. 1, 7).

- 5) The tuna cannery (Michaud, 2007) is
- the single largest employer (7.6% of the working population);
 - the single biggest buyer of electricity and water;
 - the single biggest exporter;
 - the single biggest earner of foreign exchange.

Hourly wages in the Seychelles (\$1.90) are higher than in Thailand (\$0.65).

35% of the workforce is composed of foreign workers, but because of the small population it is difficult to employ more locals.

Absenteeism and low productivity of workers are problems in the Seychelles (Campling and Doherty, 2007, pp. 18-19).

II. The ACP vs. the EU?

The differential (discriminatory) treatment of EU imports of canned tuna has created the ACP tuna canning industry. Yet the ACP countries are dissatisfied with the development outcomes of EU treatment, which in their view are limited by the application of SPS measures and complex rules of origin.

It appears that while tariff barriers on imports of canned tuna from the ACP are negligible, non-tariff barriers prevent the ACP countries from maximizing the benefits of the preferences in ways that will contribute to their development.

- A. The application of SPS measures
- B. The application of complex rules of origin.

A. The application of SPS

This is essential in order to protect the health of consumers.

Seafood production in developing countries has to match EU hygiene and food safety standards (Campling and Dougherty, 2007, p. 23).

ACP complaints refer to the operation of the EU system.

1. Delegation of implementation and enforcement to national competent authorities
2. Inspection by the EU Food and Veterinary Office (FVO)

1. Delegation of implementation and enforcement to national competent authorities through a two-tier-system
 - a. A country has to be licensed to export fish to the EU.
 - b. Each exporting company has to apply to the competent authority (CA) within the country for permission to export to the EU (Campling and Dougherty, 2007, p. 23).

At first glance, the system is advantageous to the developing countries, which presumably enjoy a degree of autonomy (if not flexibility) in implementation and enforcement of EU food safety legislation.

In the ACP countries, the CA's interpret EU legislation as constituting a check list that allows no subjective judgment, without taking into account the local environment (Campling and Doherty, 2007, p. 36).

The EU “Field Guide for Sanitary Inspection of Fish and Fish Products as Food for Human Consumption” does not enable local inspectors to make decisions in non-standard situations (Campling and Doherty, 2007, pp. 26, 36).

For example, according to one rule, the netted catch should not touch the deck of the vessel.

This rule assumes a risk of contamination by wooden decking.

However, the rule might make less sense if the vessel had stainless steel decking (Campling and Dougherty, 2007, p. 24).

“The amount and strictness of EU requirements ...[are] adding to production costs (Campling and Dougherty, 2007, p. 26).”

One solution would be to prepare implementation manuals for inspectors on a regional basis that reflect different areas of risk associated with the local environment (Campling and Dougherty, 2007, p. 36).

2. Inspection by the EU Food and Veterinary Office (FVO)
 - a. Frequency of inspections
 - b. Outcomes of inspections

a. Frequency of inspections

The EU FVO inspected the competent authority (CA) of the Seychelles in 1998, 2000, 2004 and 2006, and that of Mauritius in 1998 and 2006.

Thailand's CA was inspected in 1998, 2000 and 2005.

The two ACP countries are under the impression that they are inspected more frequently than Thailand (Campling and Dougherty, 2007, pp. 26-28).

b. Outcomes of inspections

1) In the ACP:

In the Seychelles, the FVO found instances in 2004 of non compliance and recommended that the CA suspend exports to the EU from a cannery.

In 2006, the FVO while noting full compliance, noted additional deficiencies that had to be remedied through an Action Plan.

In Mauritius, the 1998 and 2006 inspections found deficiencies in compliance and recommended new legislation. In 2006, the CA's authority to approve additional companies that could export to Europe was suspended (Campling and Doherty, 2007, pp. 27-28).

In Thailand, the 2000 inspection identified deficiencies that Thailand promised to rectify. The 2005 inspection found a much better situation in the export-oriented operations but legislation on fishing vessels was not fully enforced.

Facilities for cleaning/disinfecting in the processing areas were inadequate.

Doors were not pest-proof.

Maintenance of walls and floors was inadequate.

Stagnant water was used for cleaning hands and equipment (Campling and Doherty, 2007, p. 27)

Unlike the Seychelles and Mauritius, Thailand is able to guarantee only internal traceability of the fish (i.e. inside the cannery) and not external traceability (outside the cannery).

Thailand obtains large quantities of tuna from cold stores based in Singapore, which contain fish from both EU approved vessels and non-EU approved vessels (Campling and Doherty, 2007, p. 30).

Thailand is accused of failing to rectify the deficiencies identified by the inspections, yet the EU FVO has never suspended the Thai CA's authority to approve any company's export operations (Campling and Doherty, 2007, p. 27).

B. The implementation of rules of origin

Rules of origin are intended to prevent third states (i.e., neither from the EU or from the ACP group) that export to Europe from circumventing the regular (MFN) tariffs to which their exports would be subject by diverting them through the ACP countries.

1. The content of the rules of origin
2. The negative consequences of the rules of origin

1. The content of the rules of origin
 - a. For the raw fish
 - 1) if the tuna is caught in the territorial sea of the ACP country, it is considered as originating from the ACP country.

2) if the tuna is caught outside the territorial sea but within or outside the Exclusive Economic Zone (EEZ) of the ACP country, it is considered as originating from the ACP country only if the vessel that caught the fish complies with strict requirements Block and Grynberg, 2005, p. 7) :

- Registration in an ACP country, or in the EU
- Sailing under the flag of an ACP or EU country
- Ownership of at least 50% by nationals of ACP or EU countries or by a company with its head office in an ACP or EU country whose chair and board members are nationals of ACP or EU countries
- At least 50% of crew must be nationals of ACP or EU countries

b. for the processed fish (including canned tuna) – the processed fish will only be considered as originating from an ACP country if the raw material (the tuna) itself originates from the ACP country (i.e., it fulfills the above conditions).

2. The negative consequences of the rules of origin

a. Protection of EU tuna canneries

European canneries can purchase their raw materials from the cheapest sources.

Like Thailand and the Philippines, tuna canneries in the ACP countries have to purchase their raw material (tuna).

The ACP countries lack the resources to acquire and support their own industrial tuna fleets. One vessel (industrial purse seiner) costs at least \$20 million ("Case: Fishy Business," 2007, p. 3).

In order to comply with the rules of origin and thus benefit from the EU zero tariff on imports of canned tuna, canneries in the ACP countries are forced to purchase the tuna from high-priced EU fishing fleets ("Case: Fishy Business," 2007, p. 3).

If they purchased less expensive tuna caught by non-EU vessels fishing in their EEZ or in the Western and Central Pacific Ocean, the canned tuna that they produce would not enjoy the zero tariff in the EU.

The higher cost of the raw material will inevitably raise the price of the canned tuna, because the fish accounts for 39-48% of the final price of the canned tuna (Campling and Doherty, 2007, p. 6).

ACP canneries are willing to absorb the cost of higher raw material because the zero tariff still gives them an advantage over canned tuna from Thailand and the Philippines.

b. Subsidy to the European tuna fishing industry

Since the ACP countries exporting canned tuna do not have their own fishing fleets, they are compelled to license EU vessels to fish in their EEZ's. These vessels could then sell their catch to the ACP canneries, whose raw material (and therefore the final product, canned tuna) would be considered originating.

The Spanish fishing industry is the largest, followed by the French, Portuguese and British.

In 2000, Spanish vessels caught 400,000 tons of tuna, mostly from ACP EEZ's (Block and Grynberg, 2005, p. 3).

The European fishing industry is exerting pressure on the EU to sign access agreements that would allow them to fish in the waters of the ACP and other developing countries because of declining fish stocks in EU waters and overcapacity of fishing fleets and/or processing plants (Block and Grynberg, 2005, p. 3).

Without the access agreements, unemployment in the industry would rise (Block and Grynberg, 2005, p. 3).

The Pacific countries, which are very distant from Europe, might not even be able to attract European fishing fleets.

If so, they would not be able to enjoy the zero tariff on canned tuna to which they are entitled.

For example, Fiji tried and failed to attract Spanish fishing fleets.

Fiji's one national cannery then formed a partnership with a US quota, but the canned tuna that is produced (apart from a quota set by the EU) does not enjoy the zero tariff in the EU (Block and Grynberg, 2005, p. 16).

European fishing vessels fishing in an ACP countries' EEZ are not obliged to sell their catch to the ACP country concerned, which means that the supply of raw material to the cannery in the latter may not even be guaranteed.

It has been noted that in the Seychelles, the landings of EU vessels have not increased, in spite of the increased canning capacity in the country (Block and Grynberg, 2005, p. 17).

“The preferential access offered to the ACP for the processed and canned tuna that they export to the EU is a form of upstream subsidy to EU vessels, not a trade concession to the ACP (“Case: Fishy Business,” 2007).”

If the EU wished to promote the development of the ACP countries, it could:

- allow them to purchase tuna from the cheapest source;
- assist them in developing their own tuna fishing fleets;
- assist them in diversification of economic activities.

Conclusion

The case of canned tuna from Thailand and the Philippines is not an isolated one in the EU's trade relations with developing countries.

The recently concluded banana dispute with the Latin American countries over the EU's preferential treatment of bananas from the ACP countries provides another example.

The differential (discriminatory) treatment might disappear under the following circumstances:

1. the introduction of reciprocity in trade relations between the EU and regional subgroups of the ACP countries;
2. the conclusion of a new WTO round; and/or
3. the conclusion of an ASEAN-EU FTA.

The case study highlights the importance of comparing (and contrasting!) the rhetoric of EU policy and the reality of EU actions as well as the extreme difficulty of any attempt to do so.

References

ACP-EU Joint Parliamentary Assembly ACP-EU 3547/03/fin., 2003. Resolution on Tuna." Brazzaville, 31 March-3 April. Available online at www.acpsec.org/en/jpa/brazzaville/resolution_11_en.pdf (accessed 11 November 2009)

Adlaw, Jerry, 2009. "No RP Request Yet for Rise in Tuna Export – EU." *Agri-Commodities*, 23 September. Available online at <http://www.businessmirror.com/component/content/article/53-agri-commodities/16...>(accessed 11 November 2009)

Block, Lindsey and Roman Grynberg, 2005. *EU Rules of Origin for ACP Tuna Products*. London: Commonwealth Secretariat. Available online at <http://www.globelaw.info/igifi/archive/ops/olp/papers/30.pdf> (accessed 12 December 2009)

Brus, Henk, n.d. "Tuna Aid against Terrorism." Available online at http://www.atuna.com/Opinions/My%20Opinion/Archive/Tuna_aid.htm (accessed 11 November 2009)

_____, 2003a. "EU 'Single Duty' Tuna and the Roulette Factor." 31 March. Available online at <http://www.atuna.com/Opinions/My%20Opinion/Archive/EU%20SINGLE%20DUTY.htm> (accessed 30 October 2007).

_____, 2003b. "Who Gets the Profit?" 30 June. Available online at <http://www.atuna.com/Opinions/My%20Opinion/Archive/EU%20SINGLE%20DUTY.htm> (accessed 30 October 2007).

Campling, Liam and Martin Doherty, 2007. *Final Report on Comparative Analysis of Cost Structure and SPS Issues in Canned Tuna Production in Mauritius/The Seychelles and Thailand: Is There a Level Playing Field?* Submitted to the Project Management Unit, Regional Trade Facilitation Programme, 15 July. Available online at http://www.rtfp.org/.../esa_fisheries_level_playing_field_in_tuna_processing_english.pdf (accessed 14 December 2009)

"EU Denies Import Prejudice," *The Nation*(Bangkok), 13 February 2002. Available online at <http://www.nationmultimedia.com/search/page.arcview.php?clid-68&id=55644> (accessed 30 October 2007)

European Commission, 52003 PCO141. "Proposal for a Council Regulation opening and providing for the administration of a tariff quota for imports of canned tuna covered by CN Codes 1604 14 11, 1614 14 19 and 1604 20 70/*COM/2003/0141 final-ACC2003/0313*. Available online at <http://eur-lex.europa.eu/LexuriServ/LexuriServdo?uri=CELEX;52003PCO141:EN:HTML> (accessed 30 October 2007)

European Council Regulation (EC) No 975/2003 of 5 June 2003 opening and providing for the administration of a tariff quota for imports of canned tuna covered by CN Codes 1604 14 11, 1614 14 19 and 1604 20 70, *Official Journal of the European Union*, L 141/1 (7 June 2003).

Espejo, Edwin, 2008. "Rough Times for the Tuna Industry." *Chronicles from Mindanao by a Mindanao Journalist*, 30 August. Available online at http://us.asiancorrespondent.com/edwin_espejo/archives/67 (accessed 11 November 2009)

Fajardo, Sarah J., 2002. "A Tuna Trade Controversy: The Issue of High Tariff (24%/35%) Being Imposed by the EU Members and US on Philippine Canned Tuna Products." Rio de Janeiro: International Gender and Trade Network. Available online at http://www.igtn.org/pdfs/126_AsiaTuna.pdf (accessed 30 October 2007)

Michaud, Philippe, 2003. "Experience from the Bilateral Fisheries Access Agreement. Impact on the Economy and Implications for Seychelles of the Outcome of the WTO Mediation on the Case of Tuna between Thailand and the Philippines." Seminar on ACP-EU Fisheries Relations: Towards a Greater Sustainability, ACP Secretariat, Brussels, 7-9 April

2003. Available online at
[http://www.iodeweb1.vliz.be/.../Experience%20fisheries
%access%20agreement.pdf](http://www.iodeweb1.vliz.be/.../Experience%20fisheries%20access%20agreement.pdf) (accessed 11 November 2009)

"Philippines, Thailand Seeking WTO Help in Tuna Dispute," *Asian Economic News*, 29 April 2002. Available online at
[http://findarticles.com/P/articles/mi?mOWDP/is_2002_April_29/ai_8509
6418 /print](http://findarticles.com/P/articles/mi?mOWDP/is_2002_April_29/ai_85096418/print) (accessed 30 October 2007)

Pongvutitham, Achira, 2002. "Adisai Seeks WTO Help Over Tuna Dispute," *The Nation* (Bangkok), 24 September. Available online at
[http://www.nationmultimedia.com/search/page.arcview.php?clid-
6&id=66280](http://www.nationmultimedia.com/search/page.arcview.php?clid-6&id=66280) (accessed 30 October 2007)

Schifferes, Steve, 2001. "Tuna Trade Row Resolved," *BBC News*, 13 November. Available online at <http://news.bbc.co.uk/1/hi/business/1654657.stm>
(accessed 30 October 2007)

Tacio, Henrylito D., 2009. "Tuna Exports Break Slowing Trend." Sun Star Network Online, 25 May. Available online at <http://www3.sunstar.com.ph/general-santos/tuna-exports-break-slowing-trend> (accessed 11 November 2009)

"Tuna Market Report – EU – February 2007," Available online at <http://www.globefish.org/index.php?id-3556&easysitestatid=1685880477> (Accessed 30 October 2007)

"Tuna Market Report – EU –April 2007," Kuala Lumpur: Infofish. Available online at <http://www.infofish.org/marketreports/tuna0407.html> (Accessed 30 October 2007)

Tuna Tech Services. Tuna Consultant, n.d. "Start Your Own Tuna Cannery." Available online at <http://www.tunaconsultant.com/start.html> (accessed 11 November 2009)

Xuto, Nilaratna, n.d. "Thailand: Conciliating a Dispute on Exports to the EU." Managing the Challenges of WTO Participation: Case Study 40. Geneva: World Trade Organization. Available online at http://www.wto.org/English/res_e/booksp_e/casestudies-3/case40_3.htm (Accessed 30 October 2007)