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Mulazzani, Luca; Malorgio, Giulio

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Is there coherence in the European Union's strategy to guarantee the supply of fish products from abroad?

Abstract

The European Union (EU) fisheries in internal waters and aquaculture are not sufficient to satisfy the EU's fish demand. For this reason, the EU's consumption depends on catches of distant water fisheries through fisheries agreements with third countries and on the import of fish products. This paper analyzes the coherence of the EU policy by focusing on four case studies. In particular, this paper attempts to identify the main synergies and conflicts amongst the varying objectives of the EU and different actors affected by the external dimension of the Common Fisheries Policy (CFP). Results appear to show that fisheries agreements, particularly those concerning demersal resources, are more difficult to renew due to competition with local fleets, pressure from environmentalist lobbies, and budgetary issues. Thus, the EU market will increasingly be dependent on imports due to a liberalization climate encouraged by the EU processors that require raw material and fishing companies established in third countries (joint ventures). The role of the Council of the European Union, the European Parliament, and the European Commission, along with their positions of contradictory objectives, is highlighted.

Keywords: Common Fisheries Policy, trade policy, distant water fisheries, fisheries partnership agreements, non-tariff barriers.

1 Introduction

The European Union's (EU) self-sufficiency rate for fishery products is around 45-47% (FAO Food Balance Sheets), suggesting that large amounts of fish eaten by EU consumers is imported from countries outside the EU. Self-sufficiency was higher in the later 1970s (62-67%¹), with the decreasing trend ascribed to both internal and external causes including unsustainable management of fisheries resulting in the collapse of several fish stocks in EU waters, and the establishment of the 200-mile exclusive economic zones (EEZs) by many coastal countries which prevented EU's distant water fisheries (DWFs) from reaching stocks previously under exploitation [1]. Presently, catches outside EU waters² represent about 17% of total EU fish production (including aquaculture), well below the 30% share of 1989 when foreign fleets were excluded from the Namibia EEZ. Since the mid-1990s, the amount of fish caught outside EU waters has been relatively stable, but its weight on total EU production is increasing due to the downward trends in EU waters. The weight of tuna and similar species (bonito and billfish) caught by DWFs has largely increased, with these species representing almost 40% of catches in outside EU waters (Figure 1 and 2).

The primary policy tool used by the EU to guarantee the availability of fishery products from abroad is the Common Fisheries Policy (CFP). The CFP regulates the two physical means of harvesting fish from external waters: fishing directly with DWFs, and importing from third countries. In addition to

¹ All twenty-eight States that now form the European Union are considered.

² For simplicity, catching in outside of EU waters is the sum of catches in all marine areas excluding the Northeast Atlantic and the Mediterranean Sea (FAO statistics). Therefore, they do not include, for example, catches in Norwegian waters.

the CFP, other policy areas have direct and indirect effects on the availability of fishery products from abroad.

Several EU documents (most listed in [2]) attest that the external dimension of the CFP, in particular fisheries agreements with third countries, is based on several equally important and often contradictory objectives. These include defending the international presence and interests of its fishing industry, guaranteeing fish supply to the European market, contributing to sustainable fishing governance, and fostering the development of third countries, with a focus on the African, Caribbean and Pacific Group of States (ACP countries).

This paper focuses on the external dimension of the CFP with the scope of analyzing coherence in the EU strategy to supply fishery products from abroad in the recent past. The paper will attempt to identify the main synergies and conflicts between varying objectives of the EU and the actors affected by the external dimension of the CFP. Often, these arguments are debated in two distinct branches of literature, including from one side studies on DWFs and fisheries agreements (see [3-5] for examples), and literature on trade agreements [6-7], including tariff and non-tariff barriers [8], safety regulation [43], rules of origin [9] and trade measures against Illegal, Unreported, and Unregulated (IUU) fishing [10] from the other side. The two areas are considered here in a joint perspective with the EU as countries that are experiencing a deficit of fish products.

In the following section, the main aspects of the external CFP and other policy areas affecting supply of fish are introduced. Next, is an analysis of a series of case studies taken from recent debates and international disputes. In fact, only by going beyond the façade and through the examination of the processes leading to the final version of policies and regulations, is it possible to recognize internal conflicts inside the EU. The case studies considered are the public debate launched by the European Commission in 2009 regarding the way EU fisheries are managed, the conflicts for renewing fisheries agreements between the EU and some Northwest African countries, the ratification of an Economic Partnership Agreement between EU and Pacific ACPs, and the use of anti-dumping and anti-subsidy measures against the import of salmon from Norway. All cases are taken from available public information, and all opinions collected are publicly available in the literature and on the Internet. Finally, findings are discussed in the final section of the paper.

(Figure 1)

(Figure 2)

2 Common Fisheries Policy and trade policy

The general objective of the new Common Fisheries Policy (in effect since January 2014), is to ensure that fishing activities “are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies” [11]. The explicit reference to the availability of food supply was not present in the previous regulation of 2002, indicating an increased relevance. Although a clear hierarchy of objectives among the ecological, economic, and social conditions is missing, the new CFP indicates the maintenance of populations of harvested species above levels which can produce the maximum sustainable yield (MSY) as the most advantageous balance amongst

these three objectives in the long-term. Coherence between the internal and external dimensions of the CFP dictates that the same approach should be used not only in community waters, but also in all oceans worldwide.

In a strict sense, the term “external dimension” is used in official documents of the Commission and the Council only to indicate fisheries relations in the CFP framework; in other words, it concerns the fish caught by EU vessels operating outside EU waters. Specific CFP norms on the trade of fisheries products with third countries have generally been considered in other chapters of the CFP, namely in the common organization of the markets. Furthermore, many regulations affecting the trade of fish products are not directly covered by the CFP but included in other areas, particularly with trade and consumer policies.

Actually, as stated in a document of the Fisheries Committee of the European Parliament [12], the external dimension of the CFP is quite complex and convoluted and should consider all classes of fish imported and exported by the EU, as well as all classes of fish caught by EU interests outside EU waters. Still, it remains a “grey zone” of EU competence that is not clearly regulated, including EU vessels that operate in the waters of third countries through private agreements, mixed companies (joint ventures) with European capital based outside the EU, and reflagged EU vessels.

2.1 The *true* external dimension

The external dimension of the CFP is developed at three levels, including international institutions (UN, FAO), Regional Fisheries Management Organizations (RFMOs), and bilateral agreements.

The EU is a contracting party to the United Nations agreement on straddling stocks and highly migratory fish stocks. Among other agreements, the EU also supports the implementation of the FAO Code of Conduct for Responsible Fisheries and the FAO conservation and management compliance agreement. The EU, represented by the Commission, plays an active role in five tuna organizations and 11 non-tuna organizations around the world. Finally, the EU has two types of fishing agreements with non-EU countries: 1) the "northern agreements," dealing with the joint management of shared stocks with Norway, Iceland, and the Faeroe Islands; and 2) the fisheries partnership agreements (FPAs, including tuna agreements and mixed agreements), where the EU provides financial and technical support in exchange for fishing rights, generally with southern partner countries.³

Since the beginning of the century, fisheries bilateral agreements have gradually moved from simple access agreements to partnership agreements, with a goal of contributing to responsible fishing in the mutual interest of the parties concerned. This change has shifted FPA’s objectives into the development policy area that normally pursues issues such as good governance, eradication of poverty, increase of local value added, and integration of less developed countries into the world economy. Thus, the financial assistance of the EU to third countries through the new agreements has a dual structure and includes the value of the fishing rights negotiated and an additional amount granted to support the implementation of the national fisheries policy. The additional amount, as decided in a 2004 Council meeting, should be proportional (around 20%) to the value of fishing rights [13]. In parallel, the EU establishes the level of payments due by the private sector for access to the resources.

Beside governance strengthening for follow-up, control, and supervision of fishing, FPAs may also include other development objectives such as building ports, fleet modernization, and capacity

³ Greenland and dozen ACP countries from Africa, the Indian Ocean, and the Pacific Ocean are involved.

strengthening to meet sanitary requirements—a necessary step to export into European territory. Furthermore, the agreements seek to encourage European investment. On the other hand, aid for European operators regarding the formation of mixed companies and the transfer of vessels to third countries provided since 1993 by the European structural policy was discontinued definitively at the end of 2004, with no further direct public support for these companies.

An exclusivity clause prevents European ship-owners from creating private agreements with third countries if a FPA was enacted with the EU. Private agreements are common when FPAs do not exist, as is the case in the Falklands and Angola. In other cases where FPAs do not exist, including Argentina and Namibia, mixed companies have been created to permit the access to EU vessels.

2.2 Figures on the external dimension

It is not easy to find recent data of EU DWFs from official sources. In recent years, Spain did not provide information regarding the capacity of its external fleet for the annual report by the Scientific, Technical, and Economic Committee for Fisheries [14]. A 2008 study [15] estimated there were 718 vessels fishing exclusively or mainly outside of EU waters and of these, 424 were Spanish, 100 French, and 73 Portuguese. These vessels represented a fraction of the 88,600 units of the EU fishing fleet (0.82%), but they were 24% of the capacity in terms of gross tonnage [15]. As far as catches, the estimates for this external fleet were a total catch (1.2 million tons) of approximately 21% of the Community's total catch for human consumption (5.6 million tons).

An average of 312 community vessels took advantage of the negotiated FPA fishing opportunities in the 2004-2008 period [16], with the majority flying the flag of Spain (67%) and France (14%). In tonnage, the European fleet with agreements accounted 14% of the EU fleet. The catches of the fleets under agreement were estimated at slightly more than 400,000 tons a year, on average. Finally, there were approximately 400 fishing vessels operated by mixed vessel owning companies established in third countries [16].

The financial allocation by the EU to FPAs accounted for approximately 83% of the total, while the ship-owners allocated 17%. This share can vary considerably and ranged between 62%-38% in the case of the agreement with Cape Verde, and 91%-9% in the case of Morocco (until 2011) [16].

2.3 Trade policy

Trade regulations affecting the import of fish products include tariff and non-tariff measures, many of which fall under the scope of trade, and not fishery policy.

The EU's common commercial policy is based on an external tariff uniformly applied to all member states. Full EU tariffs (*ergo omnes* rates) on imported seafood range between 7% and 25%, with the higher rates generally applying to the more highly processed items [15]. A large proportion of fish and fish products imported occurs at lower tariff rates due to the application of preferential rates for customs duty to the products imported from many countries, whether unilaterally or under bilateral or multilateral preferential trade agreements. ACP countries received duty-free access to the European market for their goods under the Lomé Convention (1975), subsequently renewed as the Cotonou Agreement in 2000. This agreement permitted ACP countries to become important suppliers of canned tuna to the EU because they are not subject to the stiff 24% duty imposed on their competitors (e.g. Thailand). On January 1, 2008, the trade regime applicable to ACP countries under the Cotonou Agreement was either replaced by Economic Partnership Agreements (EPAs), WTO-compatible

market access schemes (such as the *Everything but Arms*), or the Generalized System of Preferences (GSP).

The negotiations of the new EPAs cover issues such as customs duties, export taxes, rules of origin,⁴ and investment regulation, which affect the local prospects of fisheries resources. Indirectly, these rules affect the access and behavior of EU vessels, including the choice between landing products in coastal nations and bringing them directly to the EU.

In the framework of the CFP, the EU has frequently used unilateral trade measures to guarantee the supply of certain fishery products to Union processors. Since 2013 [17], previous regimes have been merged into one quota system with volumes large enough to guarantee supply of raw materials for EU processors, but not directly for retailers. Under this new regime, several fish products including whitefish, shrimps, tuna, and salmon, among others, are now available for a 0% quota duty.

In spite of these trade facilities, when the EU considers that its industry is harmed, it can apply trade defence measures such as anti-dumping, anti-subsidy measures, or safeguard measures that are based on rules by the World Trade Organization (WTO) in 1994. Anti-dumping and safeguards measures have been frequently applied to the importing of farmed salmon, but never to fisheries products.

Goods imported into the EU must meet EU sanitary requirements, an area under the responsibility of the Directorate General for Health and Consumer Protection. These include traceability, microbiological criteria, and rules on residues, contaminants, and genetically modified food. The list of third countries from which fish products can be imported into the EU is established by the European Commission with one list of countries approved for fishery products and a separate and smaller list for bivalve mollusks [16].

Goods imported into the EU must also meet the EU technical requirements to protect consumers, including marketing standards (e.g. freshness classes and size scale) and labeling. Disputes with third countries can arise regarding these issues. After a sentence of the WTO's Dispute Settlement Body in 2002, the European Commission had to amend a previous regulation and permit a trade description consisting of the word "sardines" for preserved products of the species *Sardinops sagax* from Peru.

A final set of trade measures, distinctive of fisheries products, concerns IUU fishing [18] and non-sustainable fishing [19]. The EU identifies third countries it considers as non-cooperative in fighting IUU fishing. Once these countries have been officially included on a black list, several actions are taken, particularly, the prohibition of importation of fishery products caught by vessels flying the flag of these countries. Furthermore, exportation of EU fishing vessels to these countries and private agreements are prohibited. Procedures against countries allowing non-sustainable fishing are similar. In 2013, the European Commission officially included Belize, Cambodia, and Guinea on a blacklist for lack of cooperation against IUU fishing. At the same time, in May 2013, the European Commission notified the Faroe Islands that it was identified as a country allowing non-sustainable fishing⁵ and, in August 2013, adopted a regulation introducing an import ban on Atlanto-Scandian herring and Northeast Atlantic mackerel. The Government of the Faroe Islands has then initiated a dispute settlement proceeding against the EU under the WTO due to "the use of coercive economic measures."

⁴ Rules of origin govern the eligibility of products for preferential access to the EU market. The Cotonou Agreement stated several complex rules, including that fish caught beyond the 12 mile limit must be caught by an ACP or EU vessel. Consequently, EU vessels can charge a premium on factory-gate prices in ACP countries compared to the international market price of "non-originating" fish supplied by, for example, East Asian vessels [8].

⁵ Conflict arose from the incapacity to come to an agreement on TAC shares in the North East Atlantic Fisheries Commission.

3 Case studies

3.1 Debate on the reform of the CFP

A wide-ranging public debate was launched in 2009 after the EU published the Green Paper on reform of the Common Fisheries Policy. It was complemented by the submission of 382 written contributions from citizens, organizations, and governments, all of which can be found on the Commission website [20]. In this section, some of the governmental opinions will be summarized, followed by the opinions of fishermen organizations, third countries, and NGOs.

3.1.1 Governmental opinions

Among the countries that offered written contributions to the debate, most, including Bulgaria, Belgium, Denmark, and Ireland, did not appear to be interested in the external aspects of the CFP, especially in FPAs. A few countries explicitly promoted policies that were more coherent with development objectives. In this group, Germany advocated that the external dimension of the CFP should aim to achieve the UN Millennium Development Goal of eradicating extreme poverty and hunger as a core objective. Similar opinions were provided by the United Kingdom and Sweden.

Ireland explicitly disapproved of the EU trade policy under which autonomous tariff quotas had been progressively introduced and new bilateral agreements allowing preferential access to the EU market with third countries had been agreed upon, because this ultimately discriminated against European fishermen.

Spain, which is more economically interested in the external aspects of the CFP, advocated the use of safeguard measures to guarantee the competitiveness of both EU fisheries and processing industries. In another section, the Spanish Government recognized the importance of development and cooperation aspects of fisheries agreements and successively stressed that the increasing importance of these goals should justify the use of public funds in FPAs. France and Portugal similarly defended and justified the FPAs.

Actually, the most explicit and revealing opinions were not provided by countries, but by regional authorities. In particular, the Spanish autonomous communities provided contrasting opinions that reflected the interests of the local economies. Some communities, such as Catalonia and the Basque Country appeared to be disinterested in the external aspects of the CFP.

Andalusia endorsed several measures to facilitate the private access to third country waters, such as the elimination of the exclusivity clauses and the promotion of direct investments in third countries. Andalusia's opinion was very similar to the interests of joint ventures implemented in West African countries who complained about issues in exporting their products to the EU because of health regulations.

On the opposite side, Galicia hoped for a more difficult entrance of fish products from abroad to ensure that they came from sustainable and responsible fisheries, and to guarantee quality and health. Galicia also highlighted that "the only objectives the foreign action of the CFP should seek are those that favor European fishing interests," and that "the obsession to turn the sustainable exploitation of fishing resources [...] into the main aim of fishing partnership agreements is an ingenuous idea and, [...] for many, it looks like a sort of neo-colonialism." [21]

It is interesting to note that the Galician Cooperative of the ship-owners of Vigo, in a different contribution, stressed different aspects compared with the government of Galicia. In particular, the cooperative recognized that the main objective of the external CFP should be the sustainability in the economic, social, and environmental dimensions, and that poverty reduction is a key objective in relationships with less developed countries. They also stressed that mixed companies could be the more favorable solution to foster development processes. Therefore, public fisheries agreements should be implemented even if there are no fishing opportunities for EU vessels, with the scope of improving work conditions for local and mixed companies.

3.1.2 Fishery organizations

Several national and Community fishery organizations participated in the debate. Most of them (e.g. European Association of Fish Producers Organizations, Danish Organizations, and Federation of Irish Fishermen) were explicit when describing what they considered the unfair competition between EU products and imported products. They highlighted that foreign products often have different standards concerning labor and food safety, and the sustainability of fisheries is not guaranteed. In several communications, they advocated for more severe measures such as sanitary inspections and anti-dumping regulations.

Eurothon, the European tropical tuna fishing, processing, and trade committee with members from Spain, France, the UK, Italy, and Portugal, defended the fisheries agreements, highlighting the positive effects for third country economies including eradication of poverty, job creation, and food security. Furthermore, the presence of European fleets in international waters is necessary if the EU wants a leading role in the sustainable management of tuna stocks. On the trade side, the privileged relationships with ACP countries must be maintained, as well as advantageous rules of origin for fishes caught by EU vessel, because they compensate for the constraints EU vessels face in terms of sanitary, environmental, security, and social regulations.

Similar communication was provided by *Europêche* (Association of National Organizations of Fishery Enterprises in the EU, including the Spanish CEPESCA) and COGECA (European Agri-Cooperatives), which strongly defended the use of fisheries agreements, acknowledging their multiple purposes.

The European Association of Fish Producers Organizations (EAPO), which is more representative of northern countries but has a Spanish member linked to the Galician cooperative of the ship-owners of Vigo, provided a slightly different opinion. They stated that the overall objective of fisheries agreements should be the fight against poverty, where joint ventures under the umbrella of fisheries agreements (necessary for legal guarantee) are seen as an efficient option to create development and employment. The Cluster of Fishing Companies in Third Countries⁶ (CEPPT) and the Long Distance Fleet Regional Advisory Council provided opinions similar to the EAPO and endorsed the implementation of “Good Governance Fisheries Agreements” to help the competitiveness of joint ventures, the development of which should strengthen the position of the EU in the governance of external waters.

Two communications from national institutions will be highlighted due to their controversial positions. First, the Dutch Fish Product Board (which includes fishermen, processors, wholesalers, and retailers) lamented that the European tuna and demersal fleets monopolize the FPAs, including the use of the EU budget, while not guaranteeing this possibility for the EU pelagic fleet where Dutch

⁶ All six associations of the CEPPT are located in Spain.

interests are concentrated. Second, several Danish fisheries organizations⁷ produced a common communication arguing that “it is not essential in order to supply the EU market that the EU has large fleets fishing around the globe, and it is thus not necessary to buy fishing rights with EU funds.” [22] Finally, the most important European association defending the interests of the processing industry, the AIPCE-CEP⁸, stressed that restrictions to the access of raw material must be abolished to compete with emerging countries. In a separate communication, the Spanish National Association for Producers of Canned Fish and Shellfish (ANFACO)⁹, argued that the import of processed products produced without respecting international and communitarian regulations on human rights, work conditions, sanitary conditions, pollution, sustainability, and IUU fisheries should be impeded. They argued that derogation to rules of origin with reference to tuna products in the Pacific Area should be avoided to protect the European industry.

3.1.3 Third Countries and Non-Governmental Organizations

Several governmental and non-governmental organizations from less developed countries criticized aspects of the EU’s external dimension of the CFP. ACP countries were concerned about the possible erosion of their margin of preference when trading with the EU, and complained that regulations on hygiene and IUU, as well as expected new regulations for eco-labeling, may act as non-tariff barriers to their export. They highlighted several issues regarding fisheries agreements including that EU operators do not report catches and are not sanctioned by their Flag States, that EU fleets are too subsidized compared with local fleets, and that compensation paid by the EU is generally considered inadequate. However, ACP countries did not want to halt the agreements but instead wanted to improve them with the desire of developing local processing industries, obtaining support for compliance with hygiene and food-safety standards, and promoting joint ventures.

The same criticisms raised by ACP countries were voiced by several international and European NGOs. Most highlighted that EU vessels and EU private investments (including joint ventures) have had negative, rather than positive, impacts on the economy and environment of developing countries. All NGOs argued that ship owners, and not European taxpayers, should bear the cost to access to fisheries resources. However, some distinction was found regarding whether the public or the private sector should pay for stock assessment, monitoring, surveillance, and control activities. European institutions should cooperate with developing countries, even if fishing possibilities are not available for EU fleets: Greenpeace opined that current agreements should be replaced by sustainable sourcing agreements, which would promote local sustainable fisheries for supplying European markets. For the World Wide Fund for Nature, the EU could influence the governance of international stocks even without a DWF through international organizations and RFMOs, due to the importance of its market.

3.2 Bilateral fisheries agreements with Northwest African Countries

Over the past few decades, the EU has concluded bilateral fisheries agreements with about ten Northwest African countries, from Morocco to São Tomé and Príncipe.¹⁰ Among these, the most

⁷ Including fishermen and processors.

⁸ EU Fish Processors and Traders Association, and EU Federation of National Organizations of Importers and Exporters of Fish

⁹ Asociación Nacional de Fabricantes de Conservas de Pescados y Mariscos

¹⁰ State of FPAs can be downloaded from the Commission website [23]. News regarding the negotiation processes and comments are taken from reference [24].

important in both the financial contribution and number of vessels involved, have been Senegal, Mauritania, and Morocco. Many of these agreements, particularly those involving mixed fisheries (including the three largest), have had several issues with their renovation processes. The EU has also been accused by environmentalist and humanitarian NGOs, scholars, [4] and international organizations such as United Nations Development Program [30] of depleting fish stocks, elevating the food crisis, and driving emigration from those countries, especially in Senegal. From 2006 to 2014,¹¹ Senegal refused to sign a new agreement, permitting only a few EU vessels to fish through private agreements or EU vessels to fish under the Senagalese flag. On the other hand, the agreements with Guinea Bissau and Guinea have been suspended by the EU as a result of military coups and government violence during citizens' protests.

3.2.1 Morocco

The first fisheries agreement concluded between the EU and Morocco dates back to 1995. The protocol was not renewed in 1999 and a new agreement signed in 2007. When the first protocol expired in February 2011, a second provisional protocol, which was an initiative of the European Commission (strongly wanted by the Spanish government), was applied. However, this provisional protocol required the approval of the European Parliament and the Council and created several issues. In fact, several considerations drove some Member States and members of the European Parliament (MEPs) to oppose the agreement. An evaluation report concluded that the agreement was the least successful of all the FPAs in terms of economic cost-effectiveness, while five of the 11 demersal stocks fished in the Moroccan waters appeared to be overexploited [25]. Furthermore, a significant source of controversy concerned the inclusion of fishing in the waters off Western Sahara: advocates against the protocol believed that the agreement did not respect international laws on non-self-governing territories because there was no proof that the Sarawi population was receiving benefits from the agreement and the Polisario Front, a representative of Sarawi population, explicitly opposed it.

The extension was approved by the Council despite the initial protests of Sweden, Denmark, and the United Kingdom. Positions were even more confused in the European Parliament. Members of the European Parliament's Budget and Development Committees were against extending the fisheries agreement, while the Fisheries Committee was in favor of it. Fourteen social and environmental organizations sent a letter to all Spanish MEPs requesting they vote against the agreement's renewal based on the flagrant violation of the international law. In December 2011, the European Parliament rejected the extension of the current fisheries agreement and Morocco demanded that EU vessels leave immediately that same day.

After a long and complicated negotiation process, the EU completed its internal ratification of a new protocol on December 16, 2013. Several parliamentary groups condemned it because, notwithstanding a human rights clause, it continued to allow EU vessels to fish in the waters of Western Sahara. On the other hand, the EU will reduce the financial contribution to Morocco by 17% while ship owners' contribution will increase by 194%.

3.2.2 Mauritania

¹¹ In 2014, Senegal and the EU agreed on a new tuna fisheries partnership, excluding demersal species exploited by local fishers.

The fisheries agreement with Mauritania (whose first signature dates back to 1987) required renewal almost simultaneously to the agreement with Morocco. Following a long negotiation process in 2012, a new protocol that was previously promoted by the Commission and was signed by the Council six months later, was eventually agreed to. However, the ratification procedure continued waiting for the vote of the European Parliament. The new protocol contained some differences compared with the old one, including a human rights clause. From a technical point of view, the requirements were tightened to access Mauritanian coasts and costs for the fleet were also increased, leading many European vessels to leave the African fishery waters. Furthermore, the agreement excluded the cephalopod fleet, mainly affecting Galician vessels, due to sustainability issues and competition with local fishers. Delegates from the European Union and Mauritania met several times in 2013 to discuss solutions to these issues. Galician authorities were proactive in reforming the fisheries protocol and advocating the return of the cephalopod fleet. Spain also wanted negotiators to accept a scientific report produced by the Spanish Institute of Oceanography regarding the improved status of cephalopods' stocks. In this context, the European Parliament Budget and Development Committees approved the new protocol, while the Fisheries Committee rejected it (the opposite of the Moroccan case), arguing that the pact "is not profitable" [26]. In September 2013, a dramatic division took place on the Spanish front. While the Spanish central government, supported by the Galician Government and the National Association of Cephalopod Producers (ANACEF), requested the non-ratification of the agreement, the Andalusia government and other national fisheries associations representing the tuna and shellfish sector, expressed their approbation. The renewal was finally approved by Parliament on October 8, 2013, with a division between the Spanish MEPs.

3.3 The Economic Partnership Agreement between the EU and Pacific ACPs

Off-shoring and internationalization of enterprises and supply chains in the tuna economy are very advanced. Rules of origin are considered a key element for safeguarding the position of the European industry, including both EU vessels, which can sell raw material to ACP countries, and EU processing industries which can invest in these countries enjoying preferential tariffs toward Europe. Without these preferential tariffs, or with global liberalization, leadership would likely move to highly competitive Asian countries such as Thailand and Philippines, to the detriment of ACP countries, as well as EU fleets and plants in Europe, while EU globalized companies could offshore in more advantageous countries [27].

In November 2007, Papua New Guinea (PNG) agreed to an interim Economic Partnership Agreement (EPA) with the EU, approved by the EU Parliament in 2011.¹² After the trade provisions in the Cotonou Agreement expired, the interim EPA was the only way for PNG to maintain and improve preferences for their main exports and benefit from the improved rules of origin for key products such as canned tuna. With the new rules, fish products, regardless of their origin, are deemed to originate from PNG as long as they are transformed from fresh or frozen into a pre-cooked, packaged, and canned product in PNG. They can then be exported to the EU free of duties and quotas.

In 2011, the European Ministers expressed their concern that the exceptions to the rules of origin could transform PNG into a platform for processing and export, benefiting China, the Philippines, Thailand, the USA, and Australia. Upon approving the agreement, the European Parliament asked the European Commission to suspend the exceptions to the rules of origin if they proved to have "a

¹² Progress on the negotiation processes and comments are taken from Fish Information & Services [24] and Pacific Islands Forum Fisheries Agency [48]

disruptive impact" on European industry. The Spanish National Association for Producers of Canned Fish and Shellfish (ANFACO) declared that they were ignored by the Commission and reiterated that the agreement was a serious threat to the interests of the Spanish seafood industry, particularly the 67 canneries in Galicia, and their 12,000 employees. Following the 2007 agreement, several foreign companies began building macro-plants in PCP, including a French fishing firm, which also took advantage of the creation of a new Special Economic Zone [28].

All 14 Pacific ACPs (PACPs) are currently negotiating a full EPA. The Pacific ACP ministers are disturbed by the EU's demands, which include specific commitments on access to fisheries resources in the trade agreement that should otherwise be addressed separately in bilateral FPAs. On the other hand, PACPs expect that rules of origin are similar to what was offered to PNG under the interim EPA. In a 2013 report, the EU Parliament Committee on Fisheries [29], highlighted the danger posed by the derogation on rules of origin for unfair competition in the European market, and remarked that "guarantees need to be obtained that IUU fisheries products would not be able to benefit from derogation of rules of origin [...] so that sustainable fishing took precedence over financial profits" and that "access to the resources of the EEZs of those countries must also be secured, as a counterparty to the granting of a derogation, as a form of compensating the EU fishing industry" [29].

At the same time, the EU initiated a Free Trade Agreement with Thailand, the world's leading producer of canned tuna. The Thai Tuna Industry Association supported Thailand's request for unlimited quantities of duty-free canned tuna exports to the EU market, stressing that the current 24% duty stamped on Thai exports creates unfair competition compared to other countries such as Papua New Guinea (with 0% duty). There is an important commercial precedent for a tariff reduction for Thai tuna exports. From 2003 to 2008, Thailand, Indonesia, and the Philippines shared an EU tariff quota of 25,000 tons of canned tuna at a 12% duty [31] as a result of a WTO mediation following a request by Thailand and Philippines. In that situation, Northern Europe supported the WTO mediation, as they had no tuna industry to protect, while Spain and Portugal were opposed [32].

The Spanish tuna industry already demanded that canned and processed tuna not be included in negotiations of the free trade agreement as it is a "sensitive product." They also required guarantees on preferential rules of origin, the ratification and effective implementation of international covenants on social, labor, and environmental governance, and a chapter on sanitary measures to be included providing the highest guarantee of food security. On the other hand, there have been no controversies on the single duty quota for cooked loins which currently permits 22,000 tons of semi-processed tuna to enter the EU at zero duty, regardless of origin, and which Thailand has been the major beneficiary.

3.4 Salmon trade measures

The EU has applied safeguards, anti-dumping, and anti-subsidy measures for a few aquaculture products in the past, mainly salmon and trout. It can be noted that these cases are relatively rare compared to manufactured products and to similar measures used for fish products by the USA [33]. The salmon case is particularly interesting for its length and complexity [33-35].

Trade defence instruments on farmed salmon from Norway date back to 1991, following a complaint filed by Scottish salmon growers. A system of minimum import prices was introduced in 1991, abolished in 1992, reintroduced in 1993, abolished again in 1994, and reintroduced in 1995. In 1996, a new complaint was filed by Scottish growers alleging both dumping and subsidization. In June of 1997, Norway and the European Commission signed a five-year agreement known as the "Salmon

agreement,” which contained the following six measures [34]: 1) increased export tax on Norwegian salmon; 2) tentative limits on the export volume from Norway to the EU market; 3) minimum import price on Norwegian salmon; 4) surveillance mechanisms; 5) trilateral co-operation between the industry in Norway, Scotland, and Ireland; and 6) a consultation procedure.

This system was revoked in May 2003 despite opposition from the UK and Ireland. Since a new anti-dumping complaint could not be made because the European Commission would not consider a complaint made less than twelve months after the termination of the anti-dumping and anti-subsidy proceeding, the Commission suggested that the salmon farmers pursue safeguard measures with the UK and Irish governments [36]. This resulted in the imposition of provisional safeguard measures by the Commission in August of 2004. Reports say that “several Member States with salmon processing industries opposed the imposition of provisional safeguard measures, arguing that they would result in loss of employment in the processing industry and adversely affect consumers” [36]. Denmark most likely led this campaign [36]. As a fallback against the failure of the definitive safeguard measures in the Council, the UK government supported a separate anti-dumping complaint submitted by the industry in September 2004.

Both safeguard measures (withdrawn on 23 April 2005) and anti-dumping measures (applied by the Commission the same 23 April 2005) were challenged by Norway under the WTO’s dispute settlement process. On April 21, 2007, a partial interim review of the anti-dumping measures was initiated at the request of five EU Member States (Italy, Lithuania, Poland, Portugal, and Spain), with the findings indicating that there was no need for the continuation of the measures against Norway. The measures were definitively terminated in July 2008.

Since that time, no new measures were adopted against Norwegian salmon. On the other hand, it is interesting to note that in February of 2014, the EU initiated an anti-subsidy proceeding concerning imports of certain rainbow trout originating in Turkey after receiving a complaint from the Danish Aquaculture Association.

4 Discussion

It can be concluded, from the analysis of these heterogeneous cases on the external dimension of the European fisheries policy, that supply of fish products seems to be the only objective that fisheries agreements and trade regulations have in common. On the other hand, a convoluted set of other concurrent objectives, constraints, and hidden purposes contribute when defining policies. The situation is particularly complex because the EU is far from being a granitic and homogeneous institution with a sole interest. On the contrary, different groups of European stakeholders have different priorities and are differently affected by policy decisions. Groups of stakeholders differ in both economic and geographic perspectives. From an economic perspective, it is possible to distinguish between fishers in EU waters, fishers in outside-EU waters, joint ventures, aquaculture producers, processors, consumers, citizens in general as stakeholders of environmental and social objectives, and as taxpayers. It is important to notice that each of these groups are anything but homogenous since, for example, the interests of tuna fishers in West African waters can be untied with the interests of demersal species fishers in the same waters. Furthermore, stakeholders differ by nationality, and geographic distribution of the economic groups cause divergent positions between Member States and between sub-national authorities, (e.g. the differing positions of Galicia and

Andalucía in the FPA with Mauritania). Due to the relevance of its DWF, Spain often appears as the advocate of the most conservative or protectionist positions. On the other hand, with salmon import, the UK and Ireland had this role.

More generally, case studies have shown that each group of stakeholders can attempt to pursue their true interests by resorting to a wide set of *policy drivers* to strengthen their positions and requests. This set of drivers is heterogeneous and includes EU budgetary problems, environmental issues, social, humanitarian, and development needs of third countries population, previous international (e.g. WTO) agreements, sanitary issues, and EU weight in international organizations (e.g. FAO, RFMOs).

The supply of the European market is just one objective, not the most important, of FPAs. Until now, protecting the interests of DWFs (which is complementary to market supply) remains the main objective pursued by these agreements. Contributing to sustainable fishing governance can be seen, depending on the point of view, as a constraint (in the short-term perspective) determined by international agreements and by the pressure of environmentalist lobbies, as a prerequisite for economic objectives (in the long-term), or as an objective itself by NGOs. Similarly, fostering the development of third countries may be considered as a constraint to avoid contradictions with the EU development cooperation policy, or as an objective itself. In fact, FPAs have been recognized by the EU as one policy area that could accelerate progress towards the millennium development goals [37]. Apart from most extreme, but honest, opinions (e.g. the position of the Galician Government on the CFP), fishery organizations generally recognize the importance of these secondary objectives, including the supply of EU markets. In fact, this allows them to request financial and institutional aid to access third countries' waters.

Fishery organizations highlight that the presence of European fleets in international and third countries' waters permit the EU to have a higher weight in RFMOs and other international organization. If the EU DWFs were substituted by other fleets, fisheries sustainability would not be guaranteed and, as a consequence, neither would the supply of EU markets. Until recently, this position had been endorsed by the European Commission [38], although it was been called into question in the 2009 Commission Green Paper [39].

Literature on trade policy frequently analyzes the effect of tariffs on importing and exporting countries, and on different groups in each country [40]. Non-tariff barriers are also habitually discussed. It is well known that liberalization in an importing country benefits consumers and disadvantages producers [40]. However, in the case of the EU, it is most likely the fish-processing sector, which employs more people and produces more revenue than fisheries [1], that exerts power in fish trade decisions. In fact, in addition to existing tariff differences between processed, semi-processed, and fresh products, all tariff quotas are granted solely for raw materials specifically addressing processing. Other aspects such as sanitary requirements, technical requirements, anti-dumping, anti-subsidy, and safeguard issues are important prerequisites to import, but have rarely been used as protectionist measures, except in the case of salmon. They are more rarely used than what EU fishery organizations would expect. On the contrary, [43] consider that periodic bans for sanitary concerns such as repeated bans on fish imported from Uganda and Kenya in the late 1990s, and later, implementations of new regulations and inspections are only part of a "ritual" to reassure anxious EU consumers, politicians, and regulators. Finally, the recent introduction of measures against the import of products from IUU and non-sustainable fisheries should be more carefully analyzed in the coming years.

The weight of environmentalist and third-world positions has increased in the discussion of the external dimension of the CFP, although it can be noted that some themes are likely used to strengthen other requests. This was the case of the FPA with Morocco where the Western Sahara issue was first raised and then abandoned when the protocol changed including a reduced financial contribution from the EU and an increased contribution from the ship-owners. Environmentalist and third-world positions have been efficiently advocated and spread by scholars, NGOs, and media [41]; the same can be said about the knowledge on the cost of certain policies. Fishery associations frequently declare that the Commission easily succumbs to pressure from environmentalists and biased media, and representatives of the Spanish fishing industry complained that a recent investigation of the International Consortium of Investigative Journalists was part of an “international campaign against Spain and its fishing industry” [42].

The complexities of the arguments involved in the external dimension of the CFP are so elevated that unusual coalitions can appear. For example, when environmentalists criticize the erosion of tariff preferences to ACP countries, they express the same opinion, but for different reasons, of EU fishers and EU processors¹³ (EU processors only concern of processed products). Environmentalists are also the allies of EU fishers when they advocate halting the import of products from IUU and non-sustainable fisheries and allies of joint enterprises when advocating the necessity of fisheries cooperation agreements with third countries even when fishing opportunities are not allocated to EU DWFs. Finally, they are allies of countries without DWFs when advocating the end of public aid for FPAs.

Until recently, the work of the European Commission in the preparation of FPAs has been considered a mere instrument for the objectives of countries with DWFs. Member States without DWFs did not show a great deal of interest in the negotiations, but with increasing knowledge and increasing sensibility of EU citizens on environmental and social themes, this pattern is slowly changing. At the institutional level, states without DWFs and specific groups of the MEPs can successfully advocate these positions. In a general economic crisis framework, this trend is fostered by an increasing preoccupation on the EU budget (see: the preoccupation of the FPA with Morocco). Thus, the combination of environmentalist positions and economic rigor can lead to anti-protectionist decisions. Analysis of recent FPAs shows that protocols are more and more difficult to renew, and ship-owners have to increase their financial contribution. The situation with demersal DWFs is more critical compared to tuna DWFs because EU fishers often compete with local artisanal fishers and because surplus fishing possibilities are quickly decreasing¹⁴ [13].

Without institutional FPAs, demersal fleets have to choose between options including stipulating private agreements (such as tuna vessels in Senegal until the renewal of the FPA), reflagging (such as tuna vessels in the Seychelles), or forming joint ventures (such as demersal vessels in Namibia and Argentina). Clearly, the behavior and choices of third countries are also critical in this aspect as those with abundant resources can attract foreign investment by improving the business climate or linking the access to EEZs with the creation of mixed companies. Namibia and PNG went further to link the rights of foreign fleets to the establishment of post-harvest activities [15, 28].

¹³ Environmentalists are concerned that tariff reductions granted to Asian countries (e.g. Thailand) would affect the fishery economies of ACP countries exporting to the EU; at the same time, this tariff reduction increases the competition for EU fishers and processors operating both in Europe and in mixed companies in ACP countries.

¹⁴ The agreements with the Ivory Coast, Mozambique, Gabon, and, more recently, Senegal, have changed from mixed agreements into tuna agreements.

Since reflagged vessels and joint ventures are considered foreign enterprises, there is and will be increasing pressure to maintain or increase the tariff preferences for the third country where these enterprises are established, and for decreasing non-tariff barriers. Under these circumstances, these enterprises clearly have opposite objectives compared with EU fishers, but (in the case of raw material trade) their objectives are similar to EU processors.

In some cases, trade liberalization seems to proceed even faster. The recent interim EPA with Papua New Guinea, with its exceptions to classic rules of origin, benefits neither EU processors nor EU fishers (except processing enterprises that decide to establish in PNG). It will be necessary to wait for the conclusions of the next EPAs and trade agreements, such as the one with Thailand, to verify if the agreement with PNG has been an exception or if it is a new wave. World Trade Organization rules and complaints to the WTO's Dispute Settlement Body should foster liberalist and anti-protectionist policies, as seen in the case studies. On the other hand, WTO rules do not prevent trade restrictions against IUU and non-sustainable fishing products unless they discriminate between WTO members [44].

5. Conclusion

Convoluting explicit objectives, constraints, and hidden purposes generally lead to convoluted policies if priorities are not clearly defined. On the other hand, if defining priorities is difficult for a normal state, it is even more difficult for the European Union where 28 countries must come to an agreement and where internal ratification must pass through a triad of the Council of the European Union (representing national governments), the European Parliament (an elective body representing the people), and the European Commission (a body independent of EU governments that upholds collective European interests). Under this framework, interest groups representing fishers in EU and outside-EU waters, processors, consumers, and environmentalists have varying opportunities for lobbying via structured institutions such as the Advisory Committee on Fisheries and Aquaculture or through informal channels including the national governments and national MEPs.

The Commission has no legislative power but still has a crucial political role as agenda-setter, a provider of information, and a promoter of proposals. With these powers, the Commission should guarantee the coherence to EU policies, the respect of priorities previously defined by the Council and the Parliament, and the coherence and respect of international agreements. The Commission is advised in all decisions by the Scientific, Technical, and Economic Committee for Fisheries, which is composed of highly qualified scientific experts, and is typically considered to have the most top-down, long-run, science-driven positions [45]. From this perspective, long-run trends promoted by the Commission should include: 1) liberalization in trade policy as a result of WTO rules, negative balance sheets and lobbying from fish processors; 2) rigorous sustainable approaches in fisheries management (including the external dimension) as a result of international agreements and increased awareness of EU public opinion; and 3) decreased support for DWFs due to the increasing competition with local fleets. Thus, the supply of EU markets would seem destined to depend more on imports rather than on DWFs.

Unlike the Commission (which is composed of civil servants), both national ministries (members of the Council) and MEPs are elected delegates. They are preoccupied with their likely popularity at home during the next election [41] and are more receptive to lobby interests. For better or worse, the

Council of Fisheries Ministers has been closer to the fishing industry's positions, including DWFs, when compared to the Commission. According to [45], the balance of power is shifting in the Commission's direction as they have become more assertive; on the other side, Council positions are probably becoming less monolithic due to a new public opinion and to new budgetary issues.

With the Lisbon Treaty enacted on December 1, 2009, the European Parliament now has co-decisional powers regarding fisheries policy legislation and its role should be investigated further. In trade policy, the Parliament has recently criticized that fish products are subjected to a liberalization environment, highlighting the risks for EU producers and sustainability in external waters [46]. The analyzed case regarding the renewal of FPAs with Morocco and Mauritania demonstrate how the Fisheries Committee often has differing positions compared with the Committee on Budgets and the Committee on Development, most likely caused by the weight of national MEPs in the three committees.

In this complex framework, it is not surprising that until now the EU has not a coherent strategy to guarantee the supply of fish products. In no official document it is clearly stated which objectives are pursued in terms of supply from EU waters, from DWF and from import. Normally, these three issues are regulated in separated areas of the CFP or in other policy areas. A clear definition of priorities appears to be difficult since this could definitively displease some of the economic and geographic groups of stakeholders. Thus, decision-making on this theme inevitably arises, in a chaotic form, from the collision of several currents of pressure. This paper has indicated which currents are becoming stronger, but the situation is far from being definitive.

Maybe, profiting from the new public opinion on social and environmental issues, a defense of EU fishers, be DWFs or not, could rely on a new strategy for transforming these elements into important marketing attributes. This could be done by supporting private initiatives of processing and retailing enterprises such as the existing Marine Stewardship Council label, or through public labels. Actually, the European Parliament and the Council frequently highlight the importance in providing the consumer with verifiable and accurate information regarding the origin of the product to support responsible consumption [11]. With the new regulation on the common organization of the markets, the European Parliament and the Council are even more explicit [47], and exhort the Commission to examine the possibility of developing and establishing minimum criteria for a Union-wide eco-label for fishery and aquaculture products.

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Figure 1. Trend of EU data (sum of 28 countries that now form the EU). Production in European waters (including fisheries in Northeast Atlantic and Mediterranean Sea, inland waters and aquaculture), catch in non-European waters, import and consumption (=production+import-export; includes fish for feed) (*source*: own elaboration on FAO data).

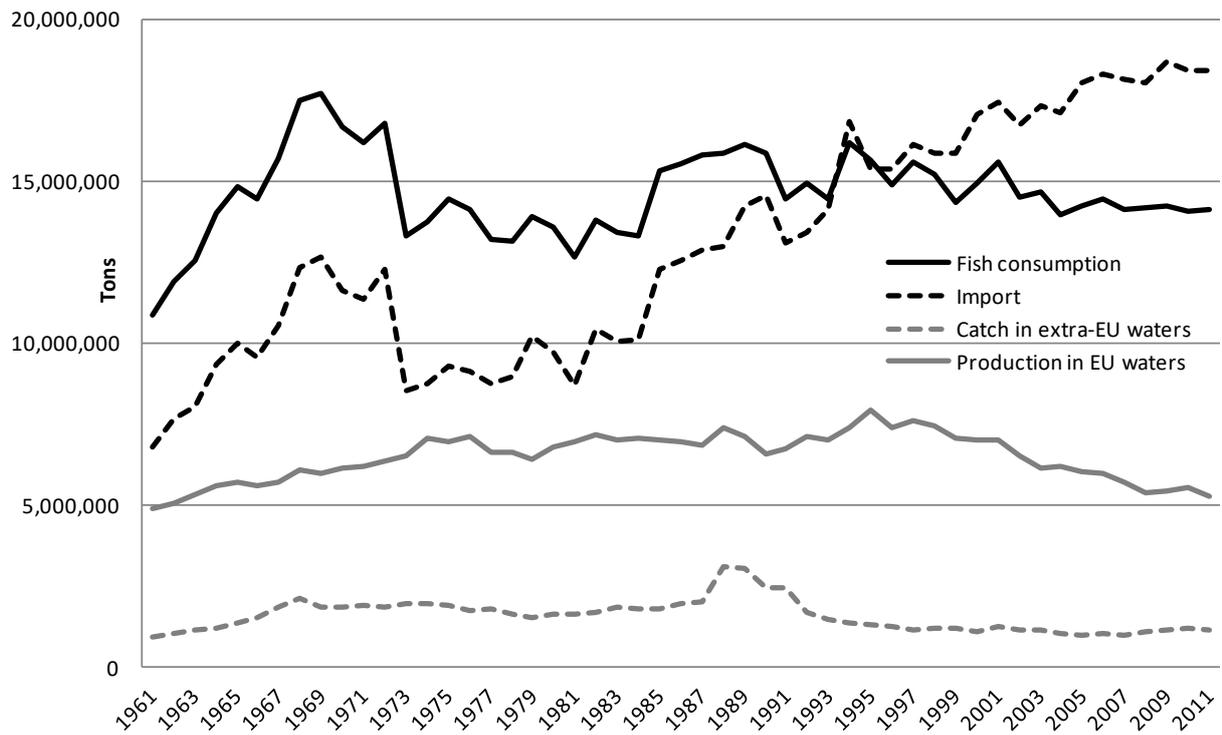


Figure 2. Trend of EU indices. Self-sufficiency rate (=production/consumption); extra-European waters share (=catches in non-European waters / total production); and tuna share (=catches of tuna, bonito, and billfish in non-European waters / total catches in non-European waters) (*source*: own elaboration on FAO data).

