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ACP Position on EU's Common Fisheries Policy (CFP) Reform

A. Introduction

1. The Commission published a Green Paper on 22 April, 2009 on the EU's Common Fisheries Policy (CFP) and invited views of stakeholders on potential options for the way forward. Inputs need to be submitted by 31 December, 2009. The ACP Group welcome this opportunity.
2. The first Meeting of ACP Ministers in Charge of Fisheries, which was held in Brussels on 2-5 June, 2009, urged the ACP States to develop and submit to the ACP Council of Ministers a formal ACP position in response to the EU's Green Paper on the Reform of the Common Fisheries Policy, focusing in particular on the external dimension of the CFP policy.
3. The EU market is of critical importance as an export destination of ACP fisheries products. Another dimension in the fisheries relationship between the EU and the ACP is the operation of EU fleets in some ACP waters in the framework of fisheries agreements signed between the EU and some ACP Member States.
4. In these relations, the interests of both blocs may be served. The EU is able to supply its markets with fish originating from ACP States. EU fleets are granted access to stocks in ACP waters, and ACP States are financially compensated for the resources that are accessed by foreign vessels.
5. However, a number of issues have arisen over time, which have undermined the mutually beneficial nature of these relations, and it is hoped that the following comments will help the EU develop a reformed Common Fisheries Policy that will reinvigorate the fisheries ties that link the ACP States with its EU partners.

The Context - ACP Group

6. The ACP Group has a direct interest in the reform of the CFP. In this respect, it is to be noted that Article 53 of the Cotonou Partnership Agreement states:
"The Parties declare their willingness to negotiate fishery agreements aimed at guaranteeing sustainable and mutually satisfactory conditions for fishing activities in ACP States".
7. It is also mentioned that neither the ACP nor the Community shall discriminate against each other, without prejudice to special arrangements between developing States within the same geographical area, including reciprocal fishing agreements.
8. The EC currently has bilateral fisheries agreements with 15 ACP States. Six other agreements have been suspended. Some ACP countries have also refused to conclude bilateral fisheries agreements.
9. In some Economic Partnership Agreements, specific provisions have been made both for market access and development support for the ACP fisheries sector. At present, ACP export of fishery products to the EU enjoys a 24% custom duty preference for the export of fishery products to the EU provided that the ACP exporting countries have either initialed/signed an Interim EPA or concluded a full EPA , or are EBA-beneficiaries as LDCs . However, this margin of preferences may be seriously eroded by large cuts in the MFN tariffs

as a result of the ongoing WTO negotiations and EU concluding FTAs with third countries, with the potential risk of the serious decline of the fisheries industry of ACP states.

C. Fisheries Agreements

10. While the denomination of “fisheries agreements” has been changed to “fisheries partnership agreements” a few years ago, there have been no fundamental changes in the approach. The EU and the ACP State negotiate an agreement, and a financial compensation is paid in return for the ACP State granting a certain number of vessels access to certain types of resources.
11. Challenges that have arisen through the signing of such agreements are many. They range from agreements stipulating different management and control regimes for EU fleets than those enshrined in national laws, to EU operators not reporting catches, not following VMS reporting guidelines, and not getting sanctioned by their Flag States. In addition to this, several ACP States have signed agreements which have placed their own national fleets into direct or indirect competition with heavily subsidized and technologically superior EU fleets.
12. The compensation paid by the EC is generally considered inadequate compared to the value of the fisheries resources to which EU fleets have access. The compensation should also take into account the associated management and environmental costs. An additional problem has been IUU practices by some EU operators in ACP waters. This has been shown by different sources including VMS tracking, which some ACP states now make use of. It should be emphasised that both the EU and ACP wish to address IUU practices and to make judicious use of precious fishery resources.
13. It is therefore important to better align new approaches and the new EU instruments, such as the EU IUU Regulation, with the existing international legal framework such as the Agreement on Port State Measures that was recently passed in Rome. These will provide new drivers as to how fisheries agreements could and/ or should evolve and improve in time.
14. While it is intended that the overall objective of the CFP was to *achieve sustainable fisheries*, the objective of the external dimension of the CFP, and of fisheries agreements in particular, is the defense of the EU’s interests.
15. The conditions for ensuring sustainable development of the ACP fisheries sector need to be clearly understood. This is required for the implementation of measures to promote sustainability of small-scale fisheries, upgrading of processing industry and value-addition in ACP countries, creation of favourable conditions for access to EU markets taking due consideration of non-tariff barriers and necessary stock assessments.
16. The founding principles of fisheries access are defined in UNCLOS. The relevant provisions in UNCLOS foresee that a country, which wants to grant access to outsiders, has got the duty to establish what natural fisheries production surplus there is, and that on the basis of this finding, it should grant access to third country fleets which have the capacity to harvest those resources, and which demand to do so. This situation creates a clear case of positive discrimination in favour of EU national fleets.

However, ACP States clearly lack the capacity to run full fledged stock assessment programs that would permit them to establish what surplus there is, and take responsible decisions with respect to how much access could be granted, where and how. On concluding agreements or other forms of trading arrangements with the ACP States, the EU must disclose the result of any impact assessments which they conduct.

17. Where information is insufficient, the FAO Code of Conduct guides us to apply the precautionary principle, and to fish rather less, than more.
18. After close to three decades of signing EU-ACP fisheries agreements, and making available funds attached to agreements for *fisheries management, fisheries research, stock assessment* and the like, very few or no formal, transparent and freely available evaluations on surplus production available for third countries have surfaced in any of the ACP Member States. This must change and both the ACP countries and the EU should endeavour to commit to such changes. If fisheries in ACP countries are to avoid the deepening crises that affect European over-sized fleets and a depletion of fish stocks, there is a need to manage ACP fisheries resources in a different and much more responsible manner. These fisheries resources are of strategic significance to our societies and economies. , Our partners must assist us in achieving that goal – and their extractive activities in our waters can not run contrary to that aspiration.
19. Access to fishery resources in ACP waters should take into account the following:
 - The size of the EU fleet must be balanced with the size of the catch opportunity.
 - The EU vessels must make use of fishing practices, methods and gears that are appropriate for the nature and size of the fisheries resource base to be exploited, and in line with relevant national law and/or regulations of ACP countries.
 - Investment from EU is needed in research and stock recovery in developing countries.
 - Total Allowable Catches must be legally set at or below scientifically recommended levels.
 - Technical assistance to ACP countries for the carrying out of resource surveys with a view to contributing to the sustainable development of the local fishing sector (artisanal and small-scale fisheries) as a means of supporting livelihoods and ensuring food security.
 - Compulsory landing of at least part of the catch in ACP countries that have, or wish to develop, processing industries, but which face challenges posed by the absence of a critical mass to allow for the development of a competitive industry.
 - Compulsory landing of by-catch and discards also need to be pursued, including banning discards at sea, to contribute to ACP countries' efforts in achieving relevant economic, social and/or environmental objectives they have set for themselves..
 - The need for ACP countries to receive assistance to develop and upgrade their processing sectors including developing capacity for value addition.
 - Technical support for compliance with hygiene and food-safety standards.
 - Promotion of joint ventures for direct processing in the third country including development of local fleet capacity.

20. Therefore, the EU is urged to consider the following:

- I. Not to seek access in ACP waters in the absence of scientifically established surplus figures and beyond what these figures would allow for in terms of effort. This also applies to the types of gears that could or should be deployed. The precautionary principle, such as proposed in the FAO Code of Conduct for Responsible Fisheries, should be applied to all situations where existing surplus estimates come with large margins of error. In the case of tropical multi-species fisheries, surplus assessments should be duly underpinned by relevant ecosystem approaches. The EU should assist ACP States through the RFMOs inter alia to conduct prior stock assessment to ensure resource sustainability and publicize their results for transparency in ACP countries and SIDS.
- II. In its bid to strengthen its role on the international stage to promote better global governance of fisheries resources, the EU should spare no effort in encouraging other distant water fishing nations to publish details of their fisheries agreements in the same way as the EU does.
- III. ACP States are sovereign and have the responsibility and duty to ensure proper management of their respective resources. Existing FPA's with the EU should therefore be redrafted to make this clear. Any binding or non-binding clauses implying otherwise should be removed from those agreements. There should be no binding or non-binding budgets for *targeted actions* inserted into fisheries agreements.
- IV. Fisheries agreements should come in the form of a regulating framework which firmly establishes the duties of the coastal, port and flag States involved in the agreement. The conditionalities laid down in this framework should closely follow the relevant provisions of international instruments on the matter, and provide for practical *modus operandi* guidelines between the ACP State and the EU. The accent should be set on full compliance with national fisheries laws, including all relevant clauses on MCS, catch reporting, transshipments, observers, inspection, VMS, etc. National laws should not be not up for negotiation anymore and should take precedence over provisions of any fisheries agreement.
- V. Furthermore, and especially for the case of straddling and transboundary fisheries resources, such a new generation of fisheries agreements would not necessarily have to remain bilateral, if agreed to by the parties concerned. From a perspective of such a new generation of agreements, the ACP Group of countries would encourage the EU to evaluate the possibility of negotiating fisheries agreements that would fall under a regional framework, where there is interest among regional groupings. Such framework could make detailed provisions for dealing with issues on IUU fishing, catch reporting, collaboration at RFMO level, etc. on bilateral and multilateral bases.
- VI. With regards to IUU fishing, the EU should mobilize all necessary resources to discipline EU States into implementing their duties as flag and port States respectively, making clear provisions for legal recourse in fisheries agreements, should they fail to meet their obligations. Too many flag States continuously fail to take applicable sanctions against vessels committing offences in third country waters, and the new Community Fisheries Control Agency based in Vigo (Spain)

should be tasked with vigorously addressing this lack of flag State responsibility. The ACP recognize important first steps in that direction having been taken through Council Regulation of 29 September 2008 concerning authorizations for fishing activities of Community fishing vessels outside Community waters. Lax port State controls also continue to be reported on a regular basis, especially from southern European ports, where internationally renowned black-listed EU vessels banned from many fishing regions and ports of the world continue to gain access to ports, services and support from their own administrations.

- VII. While the ACP States are committed to fight IUU to the extent possible, it should be recognized that adequate cooperation is required both regionally and with the EU to combat IUU practices, which are often committed by large vessels. The ACP States therefore request the EC to provide adequate resources to help them in this endeavour. The EC should not, as a rule, link Action Plans to prevent, deter and eliminate Illegal, Unreported and Unregulated fishing in ACP waters and ports to the conclusion of FPA's..
- VIII. It is noted that the Commission is working on a regulation on minimum criteria for eco-labelling. ACP countries recognize the possibility of a positive linkage between eco-labelling and responsible fishing and sustainable fisheries, and of the potential of eco-labelling in providing new product/market opportunities. However, ACP countries are concerned that a regulation on minimum criteria for eco-labelling may act as a non-tariff barrier to their export of fish and fishery products to the EU market. This would place additional burden on ACP countries if no resources or assistance is provided to implement such a regulation.
- IX. Finally we encourage the EU, when implementing these wide-ranging reforms, to ensure that vessels under beneficiary EU ownership remain flagged within EU jurisdictions. It will be essential to strengthen the genuine link between a vessels' flag and its beneficiary owners. Heavy sanctions should apply to individuals who would re-flag their vessels to known flags of convenience for the purposes of evading EU flag State enforcement.

D. The regional approach through RFMOs

21. Regional Fisheries Management Organisations (RFMOs) cover issues of by-catch in tuna fisheries; monitoring, control and surveillance; scientific research; and tuna fleet capacity. EU proposals for the adoption of conservation and management measures would act as a deterrent to industries and enterprises in ACP states, in particular, which often lack the expertise and resources to implement these demands.
22. It is proposed that the EU –
- With respect to its participation in RFMOs, should spare no efforts to align positions defended in RFMO meetings with the key tenet of the CFP – which is to achieve sustainable fisheries, or to contribute to achieving sustainable fisheries.
 - Assists the RFMOs in devising feasible management measures, and
 - Collaborates with and gives full assistance to the RFMOs to control level of catch, the accurate fishing effort by EU vessels.

E Market access, capacity-building and preference erosion

23. EU markets for fisheries products have become the largest most important market for fisheries products globally. For ACP States, owing to their particular trade ties defined in the Cotonou Partnership Agreement, and the tariff preferences they enjoy, the EU market is often the main market to which ACP States export fish and fisheries products. In consequence, ACP vulnerabilities to changing access conditions to the EU market are extreme.
24. The EU hygiene and SPS regulations, as well as the more recent IUU regulation certainly play an important part in the EU's efforts to protect consumer health on one hand, and minimize the amount of imported illegal fisheries products into the European Union on the other. Both undertakings are noble and commendable.
25. However, these undertakings also have direct consequences for exporting developing nations. Exporters must assimilate these regulations, and comply with them in order to maintain market access. In many cases, the necessary capacity to do so is limited in ACP countries. In such cases, EU regulations can become technical barriers to trade, affecting both the fish supply of the EU market, and threatening to send ACP producers and fish factories into bankruptcy.
26. In order to overcome some of the existing challenges, and ensure both EU and ACP interests remain catered for, we propose that the EU considers the following:
 - I. With respect to the development of new regulations, likely to impact producers and exporters in ACP countries, it will be important to improve on the existing consultation processes. ACP countries have to be involved in consultation processes as soon as measures are envisaged. Their inputs and full participation would ensure that these measures are not discriminatory to them. In this connection, the ACP group of countries wishes to inform that an "ACP Fisheries Mechanism" has been created in November 2009, and that all invitations to broad-based consultations with the ACP countries on fisheries should also be copied to the Mechanism. The latter will ensure that necessary positions by the ACP Group be worked out and received at the EU and within specified deadlines.
 - II. Needs at the national ACP level to conform to regulations such as the hygiene package or the IUU regulation, are often so high and so complex that technical assistance will be needed over long periods of time. In such instances, the EU should consider formulating a broad based technical assistance programme that continues to support ACP countries develop their administrative capacities to implement such regulations.
 - III. Time lags for implementation of new regulations should be sufficiently accommodating, in order to allow countries to adjust and implement. In the particular case of the EU-IUU regulation, implementing rules and a handbook on organizing the national administration had only been published two months before the entering into force of the regulation. EU members themselves find it hard to organize in such short time frames, and the EU will certainly appreciate that what is very hard to achieve for EU administrations, will be mostly impossible to achieve at ACP administration level.

- IV. Since rules of origin is an important issue, the ACP calls on the EC to consider extending benefits accruing in the framework of EPA negotiations to rules of origins on fisheries to all ACP countries or regions who so request.
- V. With the potential risk of preference erosion, the ACP fisheries sector may be seriously affected if nothing is done. In order to adapt to this situation, it is crucial for the ACP fisheries exporting countries to receive support through necessary accompanying measures to improve their productivity and competitiveness.

E. Concluding Remarks

- 27. The ACP hopes that the EU would demonstrate how it intends to translate the economic, social and ecological policy goals and aspirations of sustainable development into operational objectives, indicators and performance measures through improved participatory processes, while adopting a non-discriminatory approach to its external fisheries policy to ACP States.