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The perspectives on world trade regulations

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SUMMARY - International trade has now entered the new era of GATT 1994 resulting of the Uruguay Round Multilateral Trade Negotiations finally concluded in December 1993. While the schedules of tariff concessions negotiated will provide more security for market access, their value also will depend on rules limiting alternative forms of protection. This was the purpose of revising and converting most of the GATT 1947 Agreements into multilateral trade agreements (by which all WTO Members will be bound), to strengthen and expand rules, procedures and institutions governing measures that could be used to restrict market access and thus offset part or all of the increased market access contained in the schedules of concessions. Exporting nations, however, will have to ensure that any future interpretations of normative terms defining rules and procedures do not give rise to a growing variety of non-tariff barriers, more particularly SPS and TBT measures. For this purpose, they will be able in last resort, to rely on the new Understanding on Rules and Procedures Governing the Settlement of Disputes which sets out procedures for resolving contentions over the interpretation of countries' obligation under both schedules of concessions and Agreements.

Key words: Aquaculture, trade, GATT, WTO.

RESUME - "Les perspectives de régulations du commerce au niveau mondial". Le commerce international est maintenant entré dans la nouvelle ère des accords du GATT 1994 issus de la conclusion, en décembre 1993, des Négociations Commerciales Multilatérales du Cycle d'Uruguay. Alors que les listes de concessions tarifaires négociées apporteront plus de sécurité quant à l'accès au marché, elles n'auront de valeur que si des règles limitent les formes alternatives de protectionnisme. C'est pourquoi la majorité des accords du GATT 1947 ont été révisés et convertis en des accords multilatéraux (auxquels tous les membres de l'OMC doivent se conformer). Aussi, ils renforcent et étendent les règles et procédures ainsi que les institutions gouvernant les mesures qui pourraient être prises à l'encontre de l'accès au marché. Les pays exportateurs devront néanmoins s'assurer qu'aucune interprétation des termes normatifs qui définissent les règles et procédures ne donne lieu à une variété croissante de barrières non tarifaires et plus particulièrement des mesures sanitaires et phytosanitaires ou techniques. Aussi, ils pourront en dernier recours s'en remettre au nouveau Mémoire d'accord sur les règles et procédures régissant le règlement des différends, lequel expose les procédures pour résoudre les contentieux issus des divergences d'interprétation des obligations des pays liés aux concessions tarifaires ou aux accords.

Mots-clés : Aquaculture, commerce, GATT, OMC.

INTRODUCTION

Since 1 January 1995, international trade regulations are subject to the new framework of the Final Act Embodying the Results of the Uruguay Round Multilateral Trade Negotiations signed in Marrakech in April 1994. Agreements of interest for fish and fish products sectors consist of The General Agreement on Tariff and Trade 1994 (so called GATT 1994) and more particularly (i) the Marrakech Protocol to GATT 1994 which contains schedules of concessions on goods; (ii) six of the twelve Multilateral Agreements on Trade in Goods (MTAs), and (iii) the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

The present paper makes an attempt at assessing the outcome of the Uruguay Round Multilateral Trade Negotiations as it relates to the international trade of fish and fishery products in general and of aquaculture products in particular with an emphasis on the implications of the new rules and commitments.

RELEVANT PROVISIONS OF THE FINAL ACT

The relevant provisions of the Final Act for fish and fish products are contained in Annexes 1 and 2 of the Marrakech Agreement Establishing the World Trade Organization (WTO), this is to say Annex 1A: "Multilateral Agreements on Trade in Goods" (MTAs) and in Annex 2: "Understanding on Rules and Procedures Governing the Settlement of Disputes" (DSU).

Relevant Multilateral Agreements on Trade in Goods

Marrakech Protocol to the General Agreement on Tariffs and Trade 1994
 Agreement on Sanitary and Phytosanitary Measures
 Agreement on Technical Barriers to Trade
 Agreement on the implementation of Article VI of the GATT 1994
 Agreement on Imports Licensing Procedures
 Agreement on Subsidies and Countervailing Measures
 Agreement on Safeguards

Multilateral Agreements on Trade in Goods

While the Marrakech Protocol to the GATT 1994 provides increased market access by reducing or eliminating trade barriers as well as legal security for market access through tariff bindings, Agreements on Non-Tariff Barriers strengthen and extend the Rules, Procedures and Institutions governing measures that could be used to restrict market access and thus offset part or all of the increased market access contained in the Schedules of Commitments.

Marrakech Protocol to the GATT 1994

The result of the market access negotiations in which participating countries have made commitments to eliminate or reduce tariff rates and non-tariff measures applicable to trade in goods are recorded in Schedules of Concessions annexed to the Marrakech Protocol that form an integral part of the Final Act.

Tariff reductions agreed upon by each Member shall be implemented in five equal rate reductions, except if otherwise specified in a Member' Schedule. The first such reduction was to be made effective on 1 January 1995. Each successive reduction shall be made effective on 1 January 1995. Each successive reduction shall be effective on 1 January of each of the following years, and the final rate become effective no later than four years after the date of entry into force of Agreement Establishing the WTO. However, participants may implement reduction more quickly (i.e. in fewer stages or at earlier dates than indicated in the Protocol).

Agreements on non-tariff barriers.

Although the original GATT covered a wide range of trade-related domestic policies, governments were left with considerable discretion in the administration of such policies. To avoid an inappropriate and unbalanced implementation, Governments found it necessary to add transparency to their administration and to extend the rules to trade measures not originally or inadequately covered by GATT 1947.

Most of the Agreements are more extensive versions of those concluded in the Tokyo Round. As they were open to acceptance on an optional basis, less than one-third of the GATT contracting parties subscribed to them. In contrast, the Uruguay Round agreements on non-tariff measures will apply to all WTO Members, and will thus have a *multilateral* status, ensuring a global coverage of the rules. A Committee will be established to oversee the operation of each of these agreements. As a result a WTO Member applying non-tariff measures is required to follow precise guidelines to make the system transparent and predictable, as well as provide procedural guarantee for exporters.

Although the Agreement on Sanitary and Phytosanitary Measures is currently associated with the Agreement on Agriculture, it is of similar importance for international trade in fish and fishery products. An OECD report on Problems of Trade in Fishery Products stated that measures other than quantitative restrictions (including licensing) such as sanitary standards may be operated in such a way as to constitute distortion or barriers to trade. Technical regulations and standards are extensively used for fish trade and, like the SPS standards, they sometime constitute distortion or obstacles to trade. By contrast to the SPS and TBT measures, Anti-Dumping measures have not been extensively used in international fish trade. Import licenses and import quotas for fish and fish products are still widely used by a majority of developing countries (Thailand, Republic of Korea, Brazil, Venezuela amongst others). However, some

developed countries like Japan, Norway, Sweden and Finland¹ also use them. Although subsidies are widely used in the fishery industry, whether for the harvesting sector, the processing sector or the aquaculture production, they have seldom given rise to countervailing measures. At this stage, export subsidies are, at least for developed countries, not the major problem to trade in fishery products as there is little evidence to suggest that they are used. Lastly, concerning the Agreement on Safeguards, of the three principal importers, the European Union seems to be the only one to use safeguard measures for fishery products.

Understanding on Rules and Procedures Governing the Dispute Settlement

The dispute settlement system of the GATT is generally considered to be one of the cornerstones of the multilateral trade order. The system has already been strengthened and streamlined as a result of reforms agreed following the Mid-Term Review Ministerial Meeting held in Montreal in December 1988. Disputes currently being dealt with by the Council are subject to these new rules, which include greater speed and automaticity into dispute settlement procedures under fully integrated arrangement (eliminating competing dispute settlement forums within the system).

Since the creation of the GATT in 1947 and up to March 1994, 194 cases have been brought to the GATT of which six involve the trade of fish. The last dispute involved the EU against the USA for its import restrictions on tuna.

SHORTCOMINGS OF THE MARRAKECH PROTOCOL TO THE GATT 1994

The new tariff schedules and structures

Whereas fish exporting nation led by Canada, had sought total elimination of fisheries tariffs, on a reciprocal basis, the Tokyo compromise of July 1993 reached an agreement on a reduction of 50 % of all "peak" tariffs (15 % and above) and 30 % of all others. The results of the Round fell short of both objectives although the outcome of the fishery sector is certainly positive as 90 % of world fisheries exports will benefit from trade concessions negotiated during the Uruguay Round.

Weighted MFN tariff averages for developed economies have, following the Tokyo Round, been reduced of 37 % from 6.5 to 4.1 %. It was estimated that the Uruguay Round cuts will average 39 to 41 %. However, fish and fish products tariff reductions for developed countries reached gains lower than the 34 % cut of MFN tariffs on natural resource-based products.

Tariff cuts, reduction and elimination of non-tariff measures by developed countries

A study by the GATT Secretariat reveals that developed countries cut their

¹As Sweden and Finland are now Members of the European Union they will have to adopt the Common Custom Tariff which doesn't include imports licenses.

average tariff on imports² of fish and fishery products from all sources by 26 percent, from 6.1 to 4.5 %. Average tariff on imports from developing countries alone were cut by 27 % from 6.6 to 4.8 %.

Table 1. Average MFN tariff cuts

| Pre- and post-UR MFN Tariff Rates Averages (%) | Pre | Post | Cut |
|--|------|------|------|
| Japan | 5.7 | 4.1 | 28.6 |
| EU | 12.9 | 10.7 | 17.4 |
| USA | 1.2 | 0.9 | 20.6 |
| EFTA | 1.7 | 1.4 | 17.9 |
| Canada | 3.2 | 2.1 | 34.4 |
| Australia and New Zealand | 0.7 | 0.5 | 28.3 |

Source: "The Uruguay Round: A global General Equilibrium Assessment" (François, McDonald and Nordström, 1994).

Tariff structure for fish and fish product vary widely. However, as a general rule, tariffs are built up on the basis of the species most commonly caught by, or imported into, the country concerned. Following the Uruguay Round, the majority of imports, 44 %, would be paying between 0.1 and 5 %, up from 42 percent of imports prior to the Round. This percentage, 1 % higher for imports from developing countries alone will remain unchanged at 45 %. From one end, imports submitted to peak tariff will decrease from 7 to 3 % from all sources and from 9 to 5 % from developing countries alone, while imports benefiting from duty-free rate will increase from 21 % to 24 % from all sources and from 19 to 20 % from developing countries alone.

Table 2. Tariff structure of developed economies imports (million US dollars and percentages)

| Total imports values ³ from all sources | Total percentage of imports | | | | | | | | | | | |
|--|-----------------------------|------|--------|------|---------|------|----------|------|----------|------|----------|------|
| | Duty-free ⁴ | | 0.1-5% | | 5.1-10% | | 10.1-15% | | 15.1-35% | | over 35% | |
| | Pre | Post | Pre | Post | Pre | Post | Pre | Post | Pre | Post | Pre | Post |
| 18527 million \$US | 19 | 24 | 42 | 44 | 18 | 21 | 12 | 10 | 7 | 3 | 0 | 0 |

Source: Reproduced from GATT, "The Results of the Uruguay Round of MTN - Market Access for Goods and Services: Overview of the results", November 1994.

²Imports from MFN and GSP origins excluding imports from free trade area partners and imports under contractual preferential arrangements.

³The import value exclude tariff lines for which duties are not available in *ad valorem* terms since these lines cannot be distributed by duty ranges.

⁴Figures refer to tariff lines which were duty-free prior to the Uruguay Round, including those that were fully bound, partially bound or unbound.

The Japanese tariff structure for fish and fishery products still presents few duty-free rates (16 tariff lines on a total of 184). In various instances, however, temporarily reduced rates are applied. Protective treatment is normally applied to species caught locally. Several tariff concessions, nonetheless, have been made. Reductions in the Uruguay Round concerned 158 tariff lines including all the peak tariffs (36 tariff lines). Reductions were made notably (i) for fresh, chilled or frozen salmon, trout, eels, sea bream and sea bass (frozen only) and fresh, chilled and frozen sea breams (from 5 to 3.5 %); (ii) for smoked salmon, live, fresh or chilled mussels (from 15 to 10.5 %); (iii) for live, fresh, chilled or frozen oysters (from 10 to 7 %). Japan could not agree during the Uruguay Round to phase out its import quota system designed primarily to protect Japanese fishermen and processors from foreign competition. However, Japan has made efforts to provide regular increases for most quota items and improve the accessibility of new importers under the quota system but such increases are not guaranteed and can be changed at any time.

The Common Custom Tariff of the EU covers 323 tariff lines of fish and fishery products of which 192 were peak tariffs (15 to 30 % tariffs for prepared and preserved caviar and caviar substitutes) and very few duty-free rates. Peak tariffs are primarily for processed products. Final EU offer concerned 91 tariff lines of which 74 were peak tariffs. Therefore, only 36.5 % of the tariff lines are now peak tariffs instead of 59.5 % prior to the negotiations. Several tariff lines were chosen because of the low volume traded. Other tariff lines selected concerned products which already benefited from preferential tariff either under the European Economic Area (EEA), the Lomé Convention and Andean Pact countries. Aquaculture species as well as most of the product defined as "other" in the custom nomenclature were excluded from the final offer. The EU left unchanged its global tariff quota system under which set quantities of certain fish products can enter at reduced tariff rates. Normal tariff rates apply once the quota has been filled. In addition, autonomous or supplementary tariff quota are opened at low rates of duty for specified quantities of several fish products for limited period of the time during the year.

USA custom tariffs covers 190 tariff lines of fish and fishery products of which eight were peak tariffs (from 15 to 35 % for canned tunas and skipjack in oil). Duty-free rates apply to most of fish, crustacean and mollusks traded fresh, chilled or frozen. Concessions were made on 46 tariff lines of which 3 were peak tariffs (3 fish products classified as other). *Ad valorem* US \$1.1 cent/ kg duty on frozen sea bass (excluding fish fillets and other fish meat) was reduced to zero duty. Tariff rates were kept unchanged for products such smoked fish, including fillets of Pacific salmon, Atlantic salmon and Danube salmon (5 %). In fact, reductions concern mainly products imported from Canada which already benefit from reduced rate under North American Free Trade Agreement (NAFTA).

Most of the fish and fish products now enter Australian market free of duty. However some products which had a zero duty unbound now bears a 5 % tariff rate bound notably for trout. Duty for frozen, sea bass and smoked salmon fixed at an *ad valorem* rate of A\$ 0.017/kg is now subject to a 0 % bound duty rate. Switzerland reduced its tariff on several products, notably for smoked salmon (from 0.1 % to duty-free bound).

Tariff cuts, reductions and elimination of non-tariff measures by developing countries

The tariff structure vary widely from country to country as does the level of duty reflecting, to some extent, the overall level of protection which each country establishes, for various purposes, through its tariff structure in accordance with its basic imports requirements. However, *ad hoc* import restrictive measures persist like suspension on issuing of licenses until improved foreign exchanges occurs or in an attempt to conserve foreign exchange (until recently it was still the case for Brazil, India, Morocco and Tunisia, for example).

Considerable tariff concessions and bindings were granted by many developing countries characterized, in general, by a high degree of protectionism. Average MFN tariff rates for fish and fishery products for developing countries and economies in transition fell from 35.2 % pre-Uruguay Round (UR) to 8.1 % post-UR that is, a 76.9 % decrease.

Table 3. Tariff cut results in percentage

| | Pre-UR Tariff | Post-UR Tariff | Reduction |
|----------------------------------|---------------|----------------|-----------|
| LDCs and Economies in transition | 35.20 | 8.10 | 76.9 |
| Republic of Korea | 20.06 | 13.11 | 34.66 |
| Brazil | 60.56 | 25.56 | 57.80 |

Sources: François, McDonald and Nordström, 1994 for LDCs and Economies in transition; US Department of Commerce, 1994 for Republic for Korea and Brazil

Currently at 60 %, Thailand's tariff rates will be reduced to 5 % by 1999, except for prepared or preserved fish for which tariffs will be reduced to 20 % for most of the products and only to 40 % for canned products. As Thailand has a large processing industry but needs to import raw material, most of the concession for fresh, chilled or frozen tuna and salmon were made in the view of lowering raw material import cost for the canning industry.

The Republic of Korea has agreed to halve its tariffs from 20 to 10 % bound for most frozen items⁵ over 10 years of which salmon, trout and sea bream. Most fresh, chilled and processed items remained at a tariff rate of 20 %, but bound. However, all fish and seafood items are subject to restrictive imports through an import licensing system which, nevertheless, should be dismantled by July 1, 1997.

The tariff rate of 55 % unbound which applied to a majority of fish and fish product imported to Brazil will be reduced to 35 % bound notably for fresh, chilled and frozen trout, salmon, sea bass and sea bream, fresh oysters and mussels. Tariff rates are now ranging from duty-free for dried and salted cod to 10 % for cod liver oil and 35 % for all other products.

⁵Including frozen fish fillets and other fish meat (whether or not minced) and excluding other frozen crustaceans (14 %) and frozen mollusks.

Tariff bindings

Bindings are essential for securing market access as they prohibit unilaterally raising a tariff, previously lowered during a GATT round. Bound tariffs provide increased security of access to exporters, as they cannot be raised without consultation and compensation. As mentioned before, developing countries bound their tariffs to an impressive extent as the percentage of imports bound rose from 34.2 to 93.1 %. However, the new level of bindings still remains lower in developing countries than in developed economies.

RELEVANT PROVISIONS OF THE MTAs IN GOODS

Agreement on Sanitary and Phytosanitary measures

The SPS Agreement is one of the most relevant Agreement for fish trade as it may prove to be the favourite means of protectionism for developed countries. The relevant provisions of the revised SPS Agreement for trade of fish and fish products are the following:

- the requirement of using harmonization principle in first resort. i.e. to establish national sanitary and phytosanitary rules on standards agreed in the relevant international institutions;
- the requirement, when international standards do not exist or harmonization is not appropriate, to use the alternative equivalence principle whereby the importing country accepts that SPS measures in the exporting country achieve an appropriate level of health protection, even though they differ from the measures used in the importing country;
- the requirement for either scientific evidence or appropriate risk assessment when a country intend to not rely on harmony or equivalence but rather on its own domestic standards⁶;
- transparency, including the publication of regulations, the establishment of national inquiry points and notifications procedures.
- technical assistance and differential treatment for developing countries.
- the recommendation for the establishment of an advisory group of technical experts in a case that a dispute arises.

Agreement on Technical Barriers to Trade

As the international trade of fish and fishery products is affected by many technical regulations, fish exporting nations should welcome the revised TBT Agreement as :

- it creates presumption in favour of harmonized international standards, technical

⁶Whereas the Agreement spells out procedures and criteria for the assessment of risk and determination of appropriate levels of sanitary protection, countries have the right to adopt measures for which the scientific evidence is not obvious, but on a provisional basis (precautionary principle).

- regulations, and conformity assessment system;
- it establishes a code of good practice for the preparation , adoption, notification and application of voluntary standards as well as inquiry points to give information on technical regulations, standards and approval procedures.
- it extends the coverage of the agreement to subnational entities and to standards for processes and production method related to the characteristics of the product itself.

This latter is particularly relevant in dealing with environmental issues, notably in cases where exported products may conform to environmental standards but the production method may be deemed not in conformity. It is therefore of particular relevance for international trade of aquaculture products.

Like the SPS Agreement, the revised TBT Agreement requires that panels dealing with scientific or technical issues in a dispute arising out of provisions under this Agreement shall seek advice from technical experts.

Agreement on implementation of Article VI (Anti-Dumping)

The possibility of using anti-dumping measures is reaffirmed but countries resorting will have to followed tighter disciplines. Relevant and improved provisions of the revised Agreement pertinent to fish trade are :

- dumping margin calculation;
- investigations procedures;
- duration of an anti-dumping measure ("sunset clause").

Tighter disciplines include reducing discretion in the calculation of dumping which has to be based on the difference between the export price and either the domestic price if the sales of the product under consideration on the domestic market constitute 5 % or more of the sales to the importing members⁷, or the cost of production in the country of origin plus a reasonable amount for administrative, selling, general costs and for profit.

The revised Agreement requires that an anti-dumping measure shall not be initiated unless investigating authorities have determined that an application has been made by or on behalf of the domestic industry and moreover that collective production of applicants for anti-dumping measures represent more than 50 % of the total production of the like product and individually for a minimum threshold of 25 % of the production produced by the domestic industry.

Furthermore, the Agreement obliges authorities, after receipt of a properly documented application and before proceeding to initiate an investigation, to notify the government of the exporting country concerned.

The "sunset" provision requires that anti-dumping duties remain in place no longer

⁷Provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such a ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

than five years a review demonstrate that, the removal of a duty would likely lead to continuation or recurrence of dumping injury.

Agreement on Import Licensing Procedures

As import licensing is used by a majority of developing countries and by the leading importer i.e. Japan for fish and fishery products the revised Agreement will serve to :

- improve transparency through the publication of sufficient information for traders to know the basis on which licenses are granted;
- bring application procedures easier;
- limit to 30 days the issuing time of import licenses when given on a first-come-first-served basis and to 60 days when simultaneously examined.

Agreement on Subsidies and Countervailing Measures

As far as fisheries or aquaculture are concerned, the most important feature of the SCM Agreement is that specific subsidies such as research and development funding (subject to precise conditions and tests), subsidies to disadvantaged regions within a country and subsidies to adapt existing facilities to new environmental requirements are defined as non trade-distorting and consequently will not be exposed to countervailing or remedial actions.

Other provisions if the SCM Agreement are of more general implication. Some of them are nevertheless relevant to the fishery trade and consist in :

- the exemption from countervailing duty when subsidy is *de minimis* (i.e. less than one % *ad valorem* less than two % in the case of developing countries);
- the limitation of any countervailing duty to a five-year period, unless a review finds that injury is likely to recur; and
- requirements that applicants for countervail action represent more than 50% of the total domestic production of the imported product concerned.

In recognition that subsidies may play an important role in the economic development programs of developing countries the Agreement contains special provisions for differential and more favorable treatment for developing countries, particularly with subsidies that would be otherwise prohibited (export subsidies and subsidies favoring the use of domestic over imported goods) laying out a set of «graduation» criteria.

For export subsidies, special exemption are provided for least developed countries and for a specific list⁸ of developing countries which will benefit from this exceptions as long as their per capita income remains at less than \$1,000 per annum. Other developing countries are to phase out their export subsidies over a 8-year period (with the possibility of extension).

⁸The so-called «Annex VII countries» includes Indonesia, India, Philippines, Morocco, Ivory Coast and Senegal as fish exporting nations.

If a developing country was to become competitive in a given fish product (defined as 3.25% of world trade in the relevant product for two consecutive years), it must eliminate export subsidies on that product over two years (8 years in the case of the specific list of countries mentioned above).

The prohibition of subsidies linked to the use of domestic over imported products shall not apply to developing countries for five years, and to least developed countries for eight years. In the case of actionable subsidies, developing countries are exempted from the presumption of serious prejudice and benefit from *de minimis* thresholds⁹ in the application of countervailing duties.

Economies in transition are granted a seven year period within which to eliminate prohibited subsidies and are exempted during this period from the presumption of serious prejudice for subsidies on debt forgiveness.

Agreements on Safeguards

As far as fish trade is concerned the relevant provisions of the new Agreement are the following :

- precise and strict criteria to be taken into account when defining a serious injury or threat thereof i.e. a serious impairment in the position of a domestic industry, or an imminent injury to be based on facts and not merely on allegation, conjecture or remote possibility.
- requirement for a substantial increase in transparency by establishing clear investigatory procedures for the application of safeguard measures, which include reasonable public notice, public hearings and the presentation of evidence and their views by other interested parties;
- the sunset clause which sets time-limits on the duration of safeguard measures i.e. an initial period of four years with the possibility to extension under certain conditions but not exceeding eight years (ten years for developing countries);
- prohibition of new "grey area" measures and requirement for all the existing ones to be phased out within a period of four years after the entry into force of the Agreement establishing the WTO with the exception that each importing member may maintain one specific measure up to 31 December 1999.
- application of quota modulation provisions when there has been a disproportionate increase of imports from certain supplying countries,
- differential and more favorable treatment for developing countries in the form of longer time-periods for maintenance of measures and specific thresholds under which safeguard measures will not be applied to products of a developing country whose import does not exceed 3 %, provided that developing countries with share of less than 3 %, collectively account for no more than 9 % of the total imports. This limit on cumulative application provides a degree of predictability for developing countries, particularly small suppliers and new entrants.

⁹When subsidy level do not exceed 2 % (or 3 per cent if a country accelerates the timetable for eliminating export subsidies), or import share are less than 4 %, and cumulatively among countries benefiting from provision, less than 9 % of total imports.

UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE DISPUTE SETTLEMENT

The major change consist in the functioning of the dispute settlement. From now on, the new system will be operating under a Dispute Settlement Body (DSB) and will provide for:

- the integration of all the dispute settlement procedures into a single system, permitting WTO Members to base their claims on any of the Multilateral Trade Agreements included in the Annexes to the Agreement Establishing WTO;
- the creation of an Appellate Body composed of seven independent experts, to hear appeals of panel rulings ¹⁰;
- the automaticity of the adoption of the panels' and new Appellate Body's findings instead of the former need to reach unanimity¹¹.

IMPLICATIONS AND CONCLUSION

A proper assessment of the quantitative implications of the Final Act for fishery and aquaculture products trade flow and world market conditions in the years to come would demand information, analysis and a modeling exercise which is beyond the scope of this paper. However, a few qualitative comments can be offered on both the immediate trade implications and the more general effects of the Multilateral Trade Agreements and the Understanding on Rules and Procedures Governing the Settlement of Disputes.

Marrakech Protocol to the GATT 1994

According to a GATT Secretariat study, estimated increase in fish and fish products exports due to the implementation of the trade liberalization ranges from 12.9¹² to 13.5 %¹³.

Although an integral part of the tariff negotiations, bindings clearly are more akin to rules - in term of their contribution to the predictability of future market access - than to direct increase in market access. One of the major results of the Uruguay Round is therefore an improvement in the security of market access for fishery and aquaculture products through increased bindings, more particularly in Asian and Latin American markets.

If commitments are kept, mainly in the large consuming countries (i.e. Japan, the

¹⁰The Appellate Body will be composed of seven independent members (three of whom serving on any one case) whereas panels are composed of government appointed experts.

¹¹With the new DSU, panel's decisions will be automatically enforceable, unless the DSB decides by consensus not to adopt the report, or one of the parties notifies its intention to appeal.

¹²With assumption of increasing return to scale and perfect competition.

¹³With assumption of increasing return to scale and monopolistic competition.

European Union and the United States), protectionism will be practically dismantled. But, it is imaginable that protectionism will take another aspect such as stricter sanitary or environmental standards.

Agreements on non-tariff barriers and the DSU

Improved sanitary and phytosanitary rules should provide transparency and restrain the use of arbitrary and unjustified standards against exports of fishery and aquaculture products as strengthened requirements in setting technical standards will help ensure that product and production standards cannot be used as disguised technical barriers to trade. Even if provisions are made to allow countries flexibility to deviate from international standards, both agreements encourage to follow international standards, guidelines and recommendations.

INTERNATIONAL STANDARDS

Codex Alimentarius international standards for fishery products exist and are elaborated by the Codex Committee on Fish and Fishery Products. They generally contain the scope of the standard, product definition and presentation, essential composition and quality factors, food additives, hygiene, labeling and methods of analysis and sampling. In 1989, thirteen standards had been issued for frozen or canned products.

HACCP (Hazards Analysis and Critical Control Points) is an international program which sets up procedures at critical points in the food production and handling process. HACCP is considered the most credible system of effective quality control and management tool since its introduction in the 1970s, and now receives international acknowledgment. HACCP is also complementary to the international **ISO 9000** quality standards

However, Agreements on SPS and TBT clearly do not specify any quantitative requirements and, more important, they do not (and given the subject matter they cannot) regulate any specific policies in any specific sense. Hence, there is nothing in the form of individual countries committing themselves to certain adjustments in their policies, like in the Schedules where countries commit themselves to policy adjustments in the areas of market access. Rather, agreements on SPS and TBT establish general guidelines for Government behavior, and unavoidably some of these guidelines are open to interpretation. As a consequence it is at this time difficult to spell out in any details what the implications of those Agreements will be for trade flows and price levels. Much will depend on the spirit in which Governments implement the measures under the new guidelines.

A major implication of the revised TBT Agreement for fish trade can already be foreseen to offer a possibility for Members to enforce production standards on the grounds of environmental concerns.

Whereas GATT' panel found that United States embargo violated, among others, Article III of GATT 1947 because it did not regulate the product directly but discriminated against Mexico's tuna based on its method of production, new Article XX of GATT 1994 allowed for such criteria.

Stronger disciplines on import licensing should improve transparency and license application procedure especially regarding to the allocation of imports quotas for fishery products in Japan and import licensing system used by most of developing countries of which the Republic of Korea and Thailand as the larger markets among developing countries.

Revised Agreement on Implementation of Article VI (Anti-Dumping) addresses many areas in which the previous Agreement lacks precision and detail. The principal implication may be the explicit standard of review provisions of dispute settlement procedures. In addressing the facts of a case, panels are limited to a consideration of whether facts were properly established and their evaluation unbiased and objective. If this standards are satisfied, a decision by national authorities cannot be overturn even if a panel might have reach a different conclusion. In considering matters of law, in accordance with customary rules of public international law, if there is more than one permissible interpretation, a panel shall find in favor of the national anti-dumping authorities if their case rests upon one of these interpretations.

Anti-dumping actions are therefore subjects to a less rigorous standard of review in dispute settlement procedures than that applied in the case of other Agreements (i.e. Agreement on Subsidies and Countervailing Measures and Agreement on Safeguards), obliging panels to accord relatively greater deference to the decisions of the administering authorities, and to the provisions of the implementing legislation, and thus opening up for multiple interpretations of the Agreement. For these reasons, and in view of the relatively greater stringency introduced in the other Agreements, recourse to anti-dumping action may become the preferred trade remedy for protectionism interest.

Subsidies in the fishery and aquaculture sectors and their distorting effect on trade have occupied the OECD Fishery Committee for several years. This has given rise to a number of disagreements including whether or not access to resources of a coastal States' EEZ limited to its domestic fleets constituted an implicit subsidy. The new Agreement on subsidies and countervailing measures will not clarify the subject as this concern should be dealt within the Agreement on Trade in Services (harvesting services).

The Agreement on Subsidies and Countervailing Measures will principally legitimate, among others, Canadian social program for fishery and EU' regional funding and other structural fund (IFOP¹⁴) as well as its research and development funding for fisheries (AIR Program), as those specific subsidies are not actionable.

The Agreement on Safeguards has clarified and strengthened trading disciplines

¹⁴French acronym for "Financial Instrument for Fisheries Guidance".

and improved security of access to markets, particularly for developing countries, smaller and weaker trading partners and new entrants. The vigilance of Members and developing countries in particular, and their active participation in the Committee on Safeguards will be essential, however, to ensure that the Agreement is effectively implemented.

In a general manner, the very attributes of the Agreement on Safeguards, such as the stringency of the injury test, the intensive multilateral surveillance and limited phased-out periods could lead countries to make less use of its provisions and encourage importing countries to make use of other protective devices. Without going that far, the European Union may have to reconsider its minimum import prices and market intervention systems as it may not conform with the new obligations.

Trade liberalization through tariff reductions and other liberalizing actions outlined above, together with security provided by the bindings of those actions, will stimulate world trade in fishery and aquaculture products, investment and production.

The new functioning rules of the Dispute Settlement Body and the establishment of an Appellate Body introduces greater speed and automaticity in the adoption of reports by dispute settlement panels and in the right of retaliation in the event that a Member does not comply with adopted panel recommendations; this is accomplished by the change in the voting procedure from consensus to adopt reports (or authorized retaliation) to consensus not to do so. In particular it should restraint the United States to utilize unilaterally their Trade Act section 301.

Others

The establishment of World Trade Organization (WTO) will introduced substantial modifications of relevance for the overall system of trade rights and obligation. Hence, the contracting parties to GATT 1947 which will become members of the WTO will be required to accept all MTAs without any exceptions or reservation, as well as to submit their Schedules of concessions on goods. This will lead to a substantial increase in the scope of obligations for all GATT contracting parties.

Concerning the Agreement on Agriculture, the Uruguay Round made a big step in liberalizing the agriculture trade. Increase in markets access for meat, poultry and pork as well as reduction in tariff may have a negative impact in the short term on trade in fishery and aquaculture products as those products will be more competitive. In the long term, however, it should lead to an overall decrease in food price benefiting to fish trade.

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