

The International Trade Regime in Fish Products

some considerations

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This report is an evaluation of a proposal to incorporate the fishing industry into the GATT Agreement on Agriculture. At present, fish and fish products are explicitly excluded from the Agreement.

Section 1 of this report presents the different historical context within which the trade regimes governing the agricultural and fishing industries have developed. Section 2 evaluates the implications of the heavy degree of subsidization which characterizes the global fishing industry. Section 3 presents Canadian priorities in the design of an international trade regime in fisheries. Section 4 presents our conclusions regarding the appropriate direction of international trade policy in the fishing industry. The serious problem of the accurate presentation of fisheries statistics is discussed in the appendix.

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1. The Historical Context

The fish products industry has some superficial similarities with the agricultural sector. Both involve the production of foodstuffs; both are typically heavily subsidized and sometimes rather inefficient; both are subject to a considerable degree of instability both on the price side and the quantity side. These similarities lend themselves to the suggestion that the current exemption for fish and fish products contained in the GATT Agricultural Agreement be eliminated. Notwithstanding these arguments, the international trade regime for these two product classes has developed along quite different lines. This fact suggests that the two sectors be treated differently insofar as international trade is concerned.

Historically, agriculture has been regarded by most nations as an important industry for the maintenance of national self-sufficiency during war and other calamities. As a result, most nations took it upon themselves as a matter of national policy to maintain a substantial agricultural sector, irrespective of comparative advantage. Not infrequently, this policy of self-sufficiency sustained a protected inefficient industry. This rationale is less compelling today than it used to be, but nonetheless persists because of the dependence of a powerful and cohesive interest group on its continued maintenance.

The GATT Agricultural Agreement reflects the political reality of the existence of this entrenched interest group. The Agreement itself states as among

its objectives “to establish a fair and market-oriented agricultural trading system” and “to provide for substantial progressive reductions in agricultural support and protection,” but clearly recognizes that the achievement of these objectives is more seriously constrained in agriculture than in most other industries. As well, the Agreement recognizes the special interest of LDC's in utilizing the agriculture sector as an instrument of economic and rural development.

In some respects, the fishing industry has developed along roughly the same lines as has agriculture. Fisheries were considered to be a source of food alternative to an agricultural sector, and so several countries established large distant-water fleets to feed their populations by harvesting fisheries resources throughout the world — all without regard to comparative advantage. This strategy was particularly important for countries with small or inefficient agricultural sectors — for example, Britain (the world's largest harvester in the early fifties), the USSR, Japan, the two Germanies, and several other European countries (and later Korea) are examples of counties which pursued this strategy. Very often, substantial subsidies were required to maintain these fleets.

For the most part, these fleets harvested for their own domestic market — subsidizing a large fleet to feed other nations was not considered sensible. There was an international market of sorts, consisting of eastern Canada and the Scandinavian countries selling to the eastern US and western Europe. These fishing fleets had a clear comparative advantage and were close to fishing grounds, so they were able to penetrate markets despite the overall protective structure. But overall,

most international trade was marginal to the harvesting activities, however inefficient, of most of the large consuming nations. The industry was not driven by international trade.

This regime was delivered a rude shock when most coastal nations adopted Extended Fisheries Jurisdiction in 1977. Almost overnight, any distant water fleet country without a substantial coastline of its own found itself with drastically reduced resources to exploit. The “property rights” to most of the resource had been transferred from the distant-water nations to the coastal nations — or more suggestively, from the consumer nations operating distant-water fleets to the producer nations with newly privileged access to the resources previously exploited by these fleets. (Johnston *et al.*¹ outline the consequences of this process with particular reference to groundfish resources). This transfer created an environment which encouraged a tremendous expansion in international trade in fish products. The newly established coastal nations (e.g., Canada, the US, Norway) typically had more resource than they could utilize domestically, and were required to export in order to realize the benefits of their new property rights. The consumer nations could no longer fully supply their population with fish products except through imports. Some fleets (e.g., Britain, the two Germanies, France, Spain, and

¹ Johnston, R. S., I. Arnarson, and J. Zieziula (1991), "Extended Fishery Jurisdiction and the Internationalization of Groundfish Markets and Market Channels," *The Econometric Modelling of the World Trade in Groundfish*, William E. Schrank and Noel Roy, editors. Dordrecht: Kluwer Academic Publishers, pp. 125-137.

Portugal) were substantially reduced. Others (the USSR, Japan, Korea) were able to maintain their fleets, but nonetheless became important fish importers.

Extended Fisheries Jurisdiction, then, introduced a **fundamental regime change** in the international trade of fish products, from a series of more-or-less independent national markets, sometimes loosely linked by trade at the margin, to a system **driven** by international trade and marketing. This change is clearly reflected in the statistics. Between 1977 and 1992 landings rose only modestly by about 50% (from 69 to 98 million tonnes). Imports, in contrast, expanded to a much greater degree, by 130% (from 7.6 to 17.6 million tonnes).² Presently, more than half of the production of fish products enters into international trade.

Therefore, while EFJ had only modest (if any) effects on the level of harvesting in the world, it induced a major reallocation in this harvesting among nations, one which absolutely required a major expansion in international trade. It is ironic that the widely anticipated beneficial effects of EFJ on resource management have sadly not so far been realized. At the same time, EFJ has had a major (and for the most part unanticipated) modernizing effect on the international trade regime in this sector.

In conclusion, then, we conclude that insofar as international trade is concerned, fisheries and agriculture are very different industries, developing in a very different context. This suggests that an international trade regime for fisheries

² In value terms imports expanded to a much greater degree, from US\$7 billion to US\$45 billion.

should be constructed separately from that for agriculture. Fisheries are far more market-driven than agriculture is.³

³ It must be noted that this conclusion applies only to trade in processed and semi-processed fish products. Restrictions on trade in unprocessed fish are much more common. Typical are limits exports of raw fish without some domestic processing, and on imports of raw fish not caught by domestic fishermen. The intent of the former is to protect domestic employment and profits in processing operations; the intent of the latter, to protect the market for primary fishermen from foreign competition.

2. Subsidization in the Fishing Industry

The fishing industry is one of the most highly subsidized sectors in the world economy. A 1992 FAO report⁴ concluded that “the annual operating costs of the global marine fishing fleet in 1989 were in the order of US\$22,000 million greater than the total revenues, with no account being taken of capital costs.” Since it is unlikely that fleet owners would knowingly fund fleets which cannot recover even their variable costs, the conclusion is inescapable that this deficit must be covered predominantly by state subsidies. It is worthy of note that even this high level of subsidization does not reflect either capital subsidies or subsidies to processing activities.

While this degree of subsidization creates serious problems in other respects, it is not clear that a serious degree of trade distortion results from such subsidies. Therefore, there may not be much concern with respect to international trade policy.

The GATT Agreement on Subsidies and Countervailing Measures explicitly prohibits export subsidies and import-substitution subsidies (Article 3), except within agriculture, which is governed by a separate Agricultural Agreement. Other than these prohibited classes of subsidies, the GATT Agreement restricts the implementation of subsidies which are both specific to an enterprise or industry (or

⁴ FAO, *Marine Fisheries and The Law of the Sea: a Decade of Change*. Rome: FAO, 1992.

a group of enterprises or industries), as defined in Article 2, and have “adverse effects” on the interests of other GATT members (Articles 5 and 6).⁵ Again, there are special provisions for agriculture.

Adverse effects occur when a subsidy enables a subsidized industry to displace the market of a competing industry in another country. The economic mechanism is straightforward. A subsidy, by increasing the supply of the subsidized industry, causes the international price of the commodity produced by the industry to fall, and this in turn induces a reduction in the quantity supplied by competing countries. The expanded output by the subsidized industry thus displaces some of the production of competing industries in other countries, reducing producer surplus in these industries. It is worth noting that under “normal” economic assumptions, a country can gain in strict economic terms from such subsidies only if it is a net importer of the commodity being subsidized. This is because the induced price reduction has the effect of transferring surplus from producers to consumers (in both countries). Insofar as domestic production in the subsidizing country is involved, this transfer is offset by the revenue effect of the subsidy, so that what consumers gain as consumers, they lose as taxpayers.⁶ Where imports are involved, however, there is a transfer from the foreign producer to the domestic consumer, and therefore at least the potential of a net gain to the country.

⁵ The GATT Agreement does permit certain subsidies which fall into this category if they fall within certain restrictive classes such as regional development grants (Article 8).

⁶ Some excess burden is also involved.

If, on the other hand, the subsidizing country is a net exporter, part of the revenue effect of the subsidy is transferred (through the domestic producer) to the foreign consumer, and there is a net loss to the economy over and above any excess burden involved. This analysis suggests that we should be particularly concerned with subsidies when they are granted to industries producing goods for which the country is a net importer, because these subsidies may have a beggar-your-neighbour rationale, and certainly will have a beggar-your-neighbour effect.

To what extent can this analysis be applied to the fishing industry? It is clearly applicable only to fisheries for which the resource is less than fully utilized, because only in this case does the industry have a conventional upward-sloping supply curve. If we accept FAO estimates, such “underutilized” stocks account for 30 percent of world fisheries at most.

In the more usual case in which fisheries are exploited at or beyond maximum sustainable yield (MSY), on the other hand, it is impossible for a subsidy to expand domestic production, at least in the long run, and therefore there is no mechanism through which the subsidy can have adverse effects on the fishing industries in competing countries.⁷ If the subsidizing country is successful in maintaining fish stocks and fishing effort at existing levels, the subsidy will be capitalized into producer surplus, with no effects outside the domestic industry. If,

⁷ In the short run, and in the absence of effective catch management, the subsidy will cause an expansion in the domestic industry, at the expense of competing industries in other countries, but this expansion cannot be sustained as fish stocks are depleted.

as is likely, the subsidizing country is less than fully successful in controlling the level of fishing effort, then the subsidy will be dissipated in additional capitalization and perhaps in greater overexploitation of the resource. The former effect is a problem only for the subsidizing country. The latter effect would lead to increased world prices for the fish commodity, which in turn would lead to *increased* producer surpluses in competing countries. These surpluses, of course, could be dissipated as well in whole or in part if fishing effort is not controlled in these countries. There *is* an adverse effect on consumers, both in the subsidizing country and elsewhere. Such is the producer focus of the GATT Agreement, however, that these adverse *consumer* effects would not be considered a material “adverse effect” under the GATT.

We can conclude that while the level of subsidization prevalent in the world's fisheries is a serious problem, the nature of the problem relates to the tremendous waste it creates in terms of overcapitalized harvesting (and perhaps processing) facilities and in overexploited resource stocks. There is no evidence that these subsidies are trade-distorting in a major way.

3. Canada's Priorities in the International Trade in Fish Products

Canada is a major exporter of fish products. At one time it was the world's largest exporter, until the United States began to fully exploit its abundant resources of Alaska pollack (the largest fish stock in the world). Therefore, Canada sees its interest in minimizing international trade barriers for these products. Its status as a major fish *importer* does not dilute this interest. Canada's imports are spread quite broadly across sources and products, and consist mainly of products which Canada does not produce itself, or which it cannot fully supply to its domestic market, or which are imported for further processing before reexporting.⁸ Given the relative lack of substitutability among fish products in the Canadian market on the demand side, there is little attenuation in economic interest in permitting market access to imports.

On **tariff levels**, Canada would like to see zero tariffs for fish products, but recognizes that the likelihood of further reductions in the near future is not high. In any event, Canada considers that for the most part, tariff levels have been lowered to levels that it can live with. The major concern lies with tariff levels in the European Union, which are on the order of 15 percent. Canada sees Europe as

⁸ The most important import categories in 1994 were (out of a total of \$1,260 million) shrimp from Thailand (\$137 m.) and the United States (\$66 m.), lobster in shell from the US (\$70 m.), canned salmon from the US (\$59 m.), canned tuna from Thailand (\$56 m.), and frozen cod from Russia (\$46 m.). This last item was for the purpose of further processing in eastern Canada's otherwise idle groundfish plants.

a major potential market, and would like better access. Canada also sees potential in the emerging Asiatic markets, and would like to see reductions in tariff levels in Korea (from 10-20 percent) Taiwan (from 45-50 percent), and perhaps China. The Latin American market is a possibility as the North American Free Trade Association (NAFTA) is expanded into South America; some important potential markets (such as Brazil) are protected by high tariff levels. Canada is keen to expand NAFTA beyond its present membership, and is presently actively encouraging Chilean membership.

Canada is more concerned about existing **quantitative restrictions**, particularly those prevailing in China and the European Union. It is also concerned that the benefits of the tariff reductions won at the Uruguay Round may be dissipated through new quantitative restrictions. Canada would like the WTO to take measures to negotiate a multilateral Code on Quantitative Restrictions to add some discipline to existing measures, and to prevent any slippage from what has been negotiated in the Uruguay Round. However, Canada is resistant to the notion that these quantitative restrictions should be transformed into equivalent tariffs. Canada fears that this so-called “tariffication” process would result in very high tariff levels that would be very difficult to get rid of.⁹

⁹ Canada was able to maintain the protection of some of its agricultural sector during the Uruguay Round by agreeing to drop its quota system in favour of “equivalent” tariffs on the order of 200 percent, so Canada is well aware of how illiberal such “liberalization” in fact is.

On **import licensing**, Canada's main concerns are with Japan and Korea. The latter has agreed to dismantle its licensing requirements by July 1, 1997. As well, Canada has arrived at an accommodation with Japan whereby licensing requirements do not apply when there is an agreement with a Japanese buyer. Given the normal difficulties associated with penetrating this unfamiliar market, working through a local buyer would be a prudent commercial strategy in any event. However, this "accommodation" is a voluntary one on the part of Japan, and could be revoked at any time. It is likely that Canada would support attempts to codify (if not eliminate) import licensing through the WTO.

On **countervailing measures and anti-dumping measures**, Canada is somewhat ambivalent. Canada wants protection from foreign dumping and from foreign trade-distorting subsidies, and wants to preserve its freedom of action to apply countervailing measures. At the same time, Canada has suffered from US measures in this area in the past, and feels that the US actions have been largely unjustified. A priority in negotiations establishing the Free Trade Agreement (FTA) with the United States was to limit the application of US law to Canada-US trade under the FTA. Canada was unable to obtain an exemption from the application of US law, but was able to ensure that disputes regarding the application of anti-dumping and countervail measures could be referred to a binding binational panel for resolution. The two countries have since agreed to accept the GATT Agreement of Subsidies and Countervailing Measures as applying rules to govern subsidies under the FTA. Canada's priorities in this area, then, are to ensure defined and

transparent rules, and a quick and independent dispute-resolution mechanism, without prejudicing its right to take action when it feels it has been victimized by such actions itself. Canada is also concerned with the EU system of **reference prices**, which can act as an anti-dumping or countervailing measure without being subjected to the discipline of the GATT Agreement.

On **seafood inspection standards**, Canada is similarly ambivalent. Canada feels that both the US and the EU have used product quality inspection and enforcement as a disguised barrier to trade, through, for example, what are perceived to be unnecessary delays and red tape in border inspection (it has been claimed that US testing procedures for imported fresh seafood can take longer to conduct than the shelf life of the product). At the same time, the issue of product quality and (especially) safety is one of high sensitivity to the Canadian consumer (and voter). One recent incident will suffice to illustrate the political pitfalls. In 1985, a ministerial licence was granted (against departmental advice) by the Minister of Fisheries and Oceans to a plant to import and can tuna of dubious quality. The rationale was the employment-generating effect of the additional production. There was no suggestion that the product was unsafe, but it was unquestionably unsavoury. After the resultant uproar, the Minister (generally regarded as one of the more competent in government at the time) was forced to resign from the Cabinet, never to return to government. In addition, his Deputy Minister (a non-political position) was fired in spite of his attempts to warn his minister of the political dangers of his action; he was fated to serve out the rest of

his public career as a University president. Therefore, there is a political requirement that the Canadian government be able to control the quality of the product it permits to be imported into the country. At the same time, the government recognizes that its interests are served by ensuring that product quality standards are transparent, non-arbitrary, grounded in science, based on an “acceptable level of risk” (some US practices are criticized on the grounds that they appear to be based on a zero tolerance level), and be the least trade-restrictive necessary to achieve the objective. Canada seems to be basically satisfied with the GATT Code on Sanitary and Phytosanitary Measures, although it recognizes that under the Code unduly restrictive measures will have to be dealt with on a case-by-case basis rather than globally.

Much the same considerations apply to **trade-related environmental measures**, which are particularly favoured in the US and EU. Canada has felt victimized by actions by both the US and the EU inhibiting trade in seal products. These actions have severely limited the east coast seal harvest, leading to a substantial expansion in the size of the seal herds. This is widely considered to have been a factor in the decline of the East Coast groundfish stocks, since seals are a major top-level predator in this ecological system (how much of a factor this has been is however the subject of some considerable debate). While Canada would like the WTO Trade and Environment Committee to deal with these issues, there is a general recognition that this is a battle that it probably cannot win, either internationally or even domestically.

Canada has some concerns on **technical barriers**, particularly with respect to labelling requirements. European countries are considered to have unnecessary or unreasonable labelling requirements for some fish products. Some maximum moisture requirements imposed by the US and the EU are also questioned.

4. The Need for a New Trade Regime in Fish Products

The implication of previous sections of this document is that there is no compelling case for the inclusion of fish products in the GATT Agreement on Agriculture. For the most part, the trade regimes governing the two sectors are quite different in character, and so should be regulated within different frameworks. Moreover, while both sectors are quite heavily subsidized, it appears that these subsidies have considerably less long-run potential for adverse effects in the fisheries sector than in agriculture.

Most of the provisions contained in the Agreement on Agriculture therefore are not particularly pertinent to trade in fisheries. Most of this Agreement is designed to regulate export subsidies and domestic support measures in agriculture. Export subsidies are prohibited elsewhere under the GATT Agreement on Subsidies and Countervailing Measures (Article 3). In any event, export subsidies are infrequently applied in fisheries, probably because the existence of widespread resource depletion does not make export subsidization an attractive marketing strategy. There would seem to be no useful purpose to incorporating fisheries in an agreement which could permit the establishment of such subsidies in the event that recovered fish stocks enhance the incentive to introduce them. Similarly, insofar as domestic support is concerned, the provisions of the GATT Agreement on Subsidies and Countervailing Measures seem adequate for the fishing industry,

since most fisheries subsidies do not seem to act as an impediment to trade. Therefore, the elaborate structure contained in Articles 6 and 7 of the Agreement on Agriculture, and in Annex II to this Agreement, hardly seems necessary to deal with the situation in fisheries.

The persistence of quantitative restrictions is a problem in the fisheries sector, despite the language of Article XI of the GATT Agreement which prohibits such restrictions except in certain limited circumstances. The Agreement on Agriculture has been used as an umbrella to negotiate reductions in such restrictions in this sector, but these negotiations have in practice resulted in the widespread transformation of quantitative restrictions into what are essentially prohibitive tariffs. This is not a reasonable solution to the problem.

Are there matters of concern to international trade in fisheries products which have not been adequately addressed in the Uruguay Round? The major problem affecting the sector is the widespread failure of national and international management structures to prevent the related problems of overexploitation of fishery resources and overcapitalization of fleets, which have been both the cause and the effect of the heavy degree of subsidization existing in the sector. This situation has arisen despite the obligation contained in the Law of the Sea Convention to conserve and manage marine resources and to cooperate with other states. The problem is so widespread that it is indicative that fundamental economic forces are at work. Words without enforcement will not be effective here. This is not a matter which can be addressed effectively through the GATT. An FAO Code

on Responsible Fishing is presently being negotiated, as is a UN Convention on Straddling Stocks and Highly Migratory Species. Without enforcement mechanisms, these are unlikely to have much impact either.

The persistence of quantitative restrictions in the fisheries sector is a concern, but Article XI of the GATT Agreement does address the matter. It is not clear whether the continued persistence of these restrictions lies with the language of Article XI, or with lack of enforcement. It appears to us that this is a problem best addressed through bilateral negotiations with the transgressors, at least for the time being.

The invocation of trade-related environmental measures is a general problem, although one of particular impact in the fisheries. This is not a matter which is addressed specifically by the GATT, although a WTO committee has been formed to deal with the issue. It seems clear to me that the matter will have to be dealt with through horse trading *within* the environmental portfolio — that is, fishing nations will have to make concessions to environmental concerns in the design of their fishing regulations if they expect importing nations to limit their ability to impose restrictions on the import of commodities produced in ways which they consider to be environmentally suspect.

In summary, then, it does not seem appropriate to incorporate trade in fish products into the GATT Agreement on Agriculture, since most of this Agreement contains provisions which are not suited to conditions within the fisheries sector. There is some merit in the suggestion that a separate Agreement on Fisheries be

negotiated, since there are some trade issues which are specific to this sector. Almost invariably, however, these issues interact with others relating to resource management, overcapitalization of fleets, excess capacity with respect to both labour and capital, and environmental concerns. It is not clear that the WTO is the appropriate body within which to address these concerns.

Appendix

On the Presentation of Fisheries Statistics

Collection, presentation, and interpretation of fisheries statistics has always been a difficult matter. The associated problems have been getting more serious recently, partly because of budgetary restrictions facing statistics-gathering agencies, partly because the character of the problems has become less tractable.

These data problems can be categorized into three groups. First, some important concepts such as fishing effort are inherently difficult to measure, and are sensitive to changes in fishing techniques and knowledge. Since the assessment of fish populations is dependent in part by relating catch to fishing effort, errors in the measurement of effort can lead to a miscalibration of the level of fish stocks. This is believed to have been a factor in the miscalculation of the health of the Atlantic groundfish stocks.

Second, as fisheries have become more regulated, fleets have an increased incentive to misrepresent their catch. Therefore, catches are undercounted or misrepresented as less desired species, or small fish are illegally discarded. Once more, this is considered to have been a factor in the overfishing of the Atlantic groundfish stocks, where underreporting of the order of 40-60 percent is believed to have occurred. The problem of misreported catches has been publicly

acknowledged by the FAO data coordinating body¹⁰, and the regional international fisheries regulating bodies in the area now make official estimates of “unreported catches” (NAFO) and “unallocated landings” (ICES) to reflect catches which are thought to have been made and not reported by the nations that have made them. For some stocks, these unreported or unallocated landings exceed those officially reported.

Finally, the complexity of some fisheries transactions makes it difficult to trace the origin and destination of some product flows. It is possible, for example, for one state to have jurisdiction over the waters in which a catch is made, another state allocated the quota under which the catch is made, a third state flagging the vessel making the catch, and a fourth in which the catch is actually landed.¹¹ To which state is the catch allocated, which is the exporter, and which is the importer? The FAO does have rules governing such situations. The issue is whether these rules are applied consistently in the field at the data-gathering level, and whether all states apply the rules in the same way.

¹⁰ *Report of the Fifteenth Session of the Coordinating Working Party on Atlantic Fishery Statistics*. Rome: FAO, 1992.

¹¹ Imagine, for example, a Latvian vessel on charter to a Russian firm catching hake in Canadian waters under quota, and landing the catch in Portugal.