

Working Group 2: EU Market Minutes

Monday 2 September 2019

11:00-13:00

Avenue de Cortenbergh 168,
1000 Brussels

Welcome from the Chair, Andrew Kuyk

Adoption of draft agenda and minutes of last meeting (16.05.19): adopted

Focus Group on Level Playing Field – discussion

- **Update on the work done: Pierre Commère, Chair of the Focus Group**

Pierre Commère (ADEPALE), Chair of the Focus Group on the Level Playing Field, recalled that the dossier had been under examination since May 2018. It arose from concerns about potential discrepancies in treatment between EU products and imported products, notwithstanding actual differences relating to the nature or origin of the products in question.

Work had concentrated on looking at regulations applicable to the fisheries and aquaculture products market in order to identify specific examples and case studies in order to better understand the difficulties in achieving a level playing field. During the first period, the FG collected information and case studies, as well as exchanging views among the FG members. During the second period, there was a focus in organising a draft report, taking account of the many views expressed in relation to the issues raised..

Mr Commère underscored the political nature of some of the topics under discussion, especially in relation to third country practice compared to EU law (extra-territoriality). In terms of scope, it is a triangular issue between trade, environment and development policies. There were also outstanding issues relating to food safety and hygiene, though these tended to be less controversial. . On the Customs Code, there are some pending comments. Food information to consumers remains a difficult point. There are two sets of legislation involved: FIC and CMO. The discussion relates to the rules for products that are imported and products that are locally produced, plus the rules for products that are highly processed and products that are less processed. The issue of consumer information is connected to the WG3's draft advice on consumer information and it was not possible to solve at the FG's level. Another issue addressed by the draft text is EU flagged and non-EU flagged vessels in EU waters, even though it is not necessarily a question of markets. There is also the question of EU legislation being taken on board at RFMOs' level as well as the question of the Control Regulation, which is connected with the IUU and Catch Certification Schemes legislation.

The second pillar of the draft text is Chapter 5, which covers the case studies. These case studies



illustrate discrepancies between imported and exported products. Problems arise in connection to the harmonised implementation of the legislation among EU Member States. The problems are due to the implementation by Member States and not due to the intrinsic value of the EU's legislation. The third pillar of the draft text (Chapter 6) is focused on the EU's trade policy and the connection with GSP and GSP+, FTAs, and the EU's legislation in RFMOs. It is a matter that relates to trade vs development and trade vs environment, which is not an issue specific to fisheries & aquaculture. The document provides some examples and impressions on the mentioned matters.

- **Way forward**

The Chair noted that the draft was now at an advanced stage, reflecting the considerable work undertaken by the Group, even though it had not yet been possible to produce a finally agreed version. Taking into account the MAC's calendar, the aim should be to conclude work and produce formal advice by September 2019, in order to be a deliverable under the present operating year's activity. In the light of progress during the day's discussions, he hoped it would be possible to report to the Executive Committee to take the view that, with a final round, it will be possible to adopt an advice by the end of September. If that is not the case, then the process will be more open ended.

Discussion continued on the basis of reviewing all outstanding comments. In relation to the issue of uneven implementation of the legislation, the Chair considered that the matter is within the scope of the exercise and that it should be highlighted in the text. If the rules are fair, but are unevenly applied, there is still unfairness. The words "implementation" or "enforcement" should be included in the text. The Chair confirmed with the members that there were no objections to including the topic of discrepancies within the scope of the exercise.

Discussion then moved to the draft text submitted by Beatrice Gorez (CFFA-CAPE) concerning an uneven playing field between EU products.

CFFA-CAPE agreed that the issue of discrepancies should be covered. The text talks about the LPF between EU products, which related to differences of implementation on the same product. Still, the text is not very clear on this.

The Chair commented that there are practical differences due to the way that the legislation has been enforced.

Pierre Commère (ADEPALE), Chair of the Focus Group on the Level Playing Field, explained that there was a lengthy discussion in the FG. The issue is between EU and imported products, EU products from different Member States or different implementation of labelling rules.

CFFA-CAPE expressed their satisfaction with the explanation provided.

The Chair explained that, concerning the hygiene package, the aquaculture sector wanted to include more details concerning substances that are used in third countries, but that are not



permitted in the EU. Some of these might be detectable in the final products, while others might not be. When the substances are detectable, the provided inspections should be frequent and detailed enough. There are clear examples of detectable substances through health alerts. There are also issues of proportionality. It depends scientifically on the types of tests. If tests are done at the border, it can end up holding up the consignments, in order to send analysis to a laboratory. The Chair asked the members to provide their input on the need to be more specific and list the substances that are prohibited in the EU's aquaculture, plus their input on the best practice to control at the border.

FEAP would like to include the list of forbidden substances in European aquaculture farms. The list should be detailed, because, if these cannot be detected or analysed at arrival, it is important to insist on the fact that these products are forbidden in Europe. These must be banned from products that are imported in Europe.

Pierre Commère (ADEPALE), Chair of the Focus Group on the Level Playing Field, suggested to move the example under Chapter 5 as another case study, in order to better structure the text. The Chair of Working Group 2, Andrew Kuyk, proposed a compromise to include the list of veterinary substances.

EMPA agreed with removing the list from the section on the hygiene package. Further items on the hygiene package could be added that deal with veterinary products.

The Chair, under Chapter 4 of the draft text, suggested including “with sufficient frequency to ensure compliance”, since the checks should be regular. Therefore, a line on the frequency of the tests is added under Chapter 4, then a separate case study is included in Chapter 5. Concerning the ATQ regulation, the Chair recalled that it is a matter of appreciation by the Council following an analysis by the Commission. There is a consultation and the Council reaches a decision. Different interests are at stake. Mr Kuyk expressed his personal view that deleting the wording would not particularly change the argument, since the position continues to be understandable.

Pierre Commère (ADEPALE), Chair of the Focus Group on the Level Playing Field, argued that the sentence is very important. The deletion of the sentence would give the impression that ATQs are given by the good will of the Council, without exploring the economical background. The Chair of Working Group 2, Andrew Kuyk, stated that it is already in the legislation and that it is part of the process.

Killybegs Fishermen's Organisation supported the compromise proposed by the Chair, adding that they could not support maintaining the text.

Bundesverband der deutschen Fischindustrie und des Fischgrosshandels e.V. wanted to understand the rationale to remove the sentence.

The Chair explained that it is a matter of emphasis. The text outlines that there are tariffs, but that there also exceptions for a variety of reasons. One of the reasons is the ATQs. There is no



actually need to explain it in detail, since it is in the actual regulation. Retaining the wording does not particularly add anything. In the case of strong division among the members, the sentence could be amended, to include that “the ATQ regulation permit the EU processing industry to access at competitive costs raw materials that are not, or not, in the opinion of the Council, sufficiently, available in the Union”. The Council reaches a conclusion based on its perception of the market situation.

CFFA-CAPE disagreed with the compromise and with maintaining the sentence. This is an issue of LPF for some of the members. In some cases, it was arguable that the industry was receiving ATQs when there were still raw materials available, so it was a question of price. If the sentence is maintained, CFFA-CAPE could not agree with the text.

The Chair asked for the CFFA-CAPE’s view on including “in the opinion of the Council”, as a compromise.

CFFA-CAPE expressed disagreement, adding that they were not interested in referring to positions of the Council or other institutions.

The Chair stated that it is a point that will need to be flagged as an unresolved issue at the WG’s level, so that the Executive Committee can decide. The Chair argued that deleting the sentence does not prejudice the position. Still, some members consider that the sentence should be maintained.

Concerning trade defence mechanisms, the Chair explained that the text draws attention to the importance of these instruments, but it is relatively neutral. Mr Kuyk drew attention to Europêche’s comment under the “producer’s organisations” heading and asked the member to provide more information concerning their request.

Europêche informed that they were withdrawing the comment. Initially, the sentence was under a broader chapter, which did not make sense, but under “producer’s organisations” it does.

The Chair highlighted that the discussion on “labelling tools – FIC and CMO” was rather difficult and open to different points of view. WG3 is already tasked with analysing labelling and consumer information. Therefore, instead of trying to find a solution on that matter within the advice under discussion, WG3 should come to its own conclusion. There could be some language that flags up the situation concerning the different positions on the issue, but that notes that it will be further explored in a parallel WG. The Chair proposed to remodel the text to note that there are differences, which gives concerns to several MAC members across the seafood value chain. Those views are being explored separately in a WG that is specifically focused on labelling and information to consumers. Therefore, the text would note the issue and point to a future advice from WG3 to provide a way forward.

Pierre Commère (ADEPALE), Chair of the Focus Group on the Level Playing Field, expressed his agreement with the direction proposed.



The Chair concerning point 4.6.1. on “EU flagged and non-EU flagged vessels in EU waters”, drew attention to requests to determine if the chapter should be included under the advice. The chapter concerns more about the different treatments across the catching sector, particularly in the context of FTAs. Therefore, it is necessary to discuss if this chapter belongs in the report. If there is agreement that it does, it is necessary to discuss the point that the MAC is trying to make.

CFFA-CAPE expressed their view that it was not necessarily needed, but they were also not against maintaining the chapter.

Visfederatie argued that this topic should be discussed in a different AC, such as the LDAC. The issue of fisheries should not be handled under this draft advice. They proposed that the topic should be discussed at the LDAC.

Europêche agreed with Visfederatie, adding that it is not relevant for this advice.

Pierre Commère (ADEPALE), Chair of the Focus Group on the Level Playing Field, agreed with the proposed deletion.

The Chair wanted to know if the members had the same conclusion for point 4.6.2. on “Common Fishery Policy outside EU waters (fisheries agreements and RFMOs)”.

Europêche expressed their willingness to maintain the paragraph on social and safety standards, since the European fishing fleet has to respect certain standards that other nations do not when operating in the same waters.

The Chair stated that this could be moved to the chapter regarding extraterritorial application.

ETF agreed with Europeche that the paragraph should be maintained, adding that the issue is currently being discussed under the social dialogue in Europe.

The Chair concluded that there was no disagreement with maintaining the reference. It is simply a matter of changing the location. The Chair wanted to know if the heading on “Direct authorisations” should be maintained. Plus, if it was maintained, if it should be moved with the previous section. The members agreed with maintaining the text.

Pierre Commère (ADEPALE), Chair of the Focus Group on the Level Playing Field, stated that he had not specific opinion on the location of the heading, adding that it could potentially be included chapter 6.

The Chair wanted to know if the members were in agreement with the rewording proposed by CFFA-CAPE.

Killybegs Fishermen’s Organisation informed that they had no problem with the expanding wording proposed by CFFA-CAPE. They urged the MAC to be careful and not go into the remit of



other ACs, such as the LDAC. The MAC should not produce an advice that is counter to the LDAC. The Chair of Working Group 2, Andrew Kuyk, proposed adding some wording of context. The text could note that there are issues and that these are being assessed in other fora. So, there could be more general language without trespassing on other recommendations. There was agreement on this proposal.

Concerning IUU, the Chair stated that there is strong support for the IUU scheme and its principles. Under the advice on the Control Regulation, the MAC already expressed support for further development of the IUU system both in terms of making it more electronic and increasing transparency. The draft texts drew attention to some practical differences. There are some questions connected to the size of fishing areas and IMO numbers. There were no specific comments. The MAC is supportive of the IUU system, recognised that there is a process of development and improvement. The MAC strongly supports the principles and notes that there is room for improvement.

Regarding Chapter 5 on the case studies, the Chair explained that these are examples of inconsistencies of implementation. It is rather strange to have differences between close neighbours within the EU. There is value in having some of these examples, since these illustrate that the current framework has some issues in relation to the treatment of EU production and imported products, but that, even within the EU, there are different standards that apply in a short geographical distance. The Chair proposed to maintain the chapter, highlighting that these are only examples, not extensive, to illustrate some of the potential issues that can arise in some forms of legislation.

Compared to the case study "Minimum clam sizes - Italian derogation", the EMPA declares that the study could gain clarity if added tonnage data, in addition to the geographical areas concerned. The passages subject to divergence should be better discussed. The size of the clams varies and depending on whether they are fishing or farmed while they are going on the same market, in the absence of precise instructions on this subject, the factor becomes insignificant size should not be a source of disputes. The case study could be kept, but parameters of original segments (fishing or farming), volumes and prices should be added. Without this data, the passage is incomprehensible. The aquaculture sector has a size classification system for its livestock products which has never faced the problem of unfair competition rules with fishery products on identical markets.

Pierre Commère (ADEPALE), Chair of the Focus Group on the Level Playing Field, stated that keeping the examples enriches the document.

Europêche recalled that the case study on "5.5. Minimum sizes Clams – Italian derogation" was a contribution from Europeche. It is a problem that affects the fishing industry. The Technical Measure Regulation determines a minimum market size for clams from the fishing industry. Italy adopted national legislation to reduce the size of the clams. Other neighbouring countries in the Mediterranean are marketing clams with a higher size. They proposed including a sentence reminding that it is a fishing industry issue and not an aquaculture sector one.



The Chair proposed to maintain the case study, but to include a clarification, as proposed by Europepeche. Concerning case study 5.8 on “5.8. EU China difference in control”, the Chair commented that, even though statistics show that a large number of fish is imported from China, it is not always Chinese, in the sense of being caught by Chinese vessels. It might be a EU product or fish that has gone under processing, but that appears as Chinese in statistics. The Chair recalled that the various case studies will be maintained, so he wanted to know if this case study had an added-value, plus if it would be possible to amend the text to reflect the different submitted comments.

Europepeche underscored that this was one of the first cases raised by the members of the FG. There are huge differences between the EU and China, when comparing both under the FAO’s Code of Conduct. It is not just differences of control, but also of social, environment, and safety standards, among others. They added that there could be a highlight that not all fish is originally from China.

Pierre Commère (ADEPALE), Chair of the Focus Group on the Level Playing Field, argued that it is worth splitting the question of the way of fishing by the different fleets and the access to FTAs. The official statistics reflect more the trade that happens through China. Mr Commère agreed with the comments by Europepeche.

The Chair highlighted that it is not about a potential fraud on origin, but it is simply the way that official statistics record shipments. The paperwork should provide traceability of the fish. The Chair proposed that Mr Commère could find some wording on the issue bilaterally with Europepeche, in order to have a more expanded wording, while removing the reference to China being the second biggest supplier after Norway.

Pierre Commère (ADEPALE), Chair of the Focus Group on the Level Playing Field, agreed with the suggestion.

The Chair asked MSC to provide an overview of their comments in relation to Chapter 6 on “Extraterritorial legislation”.

MSC explained that, while agreeing with all the recommendations, there are cases, even though there is an unfair LPF in comparison with the EU, where certain fisheries in those countries are the exemption. So, there can be fisheries that are acting in a sustainable manner with fully traceable products. This could be proved through MSC certification. Rather than punishing those operators for the actions of their governments, MSC would like to incentivise these producers and to create internal pressure on the governments. MSC would not like for these fisheries to be excluded from the EU’s market or suspended from market preferences. None of the recommendations under Chapter 6 take in consideration that individual third-country fisheries might adhere to more demanding standards than the ones from the national government.

The Chair highlighted that there is a general issue surrounding the extraterritorial legislation. There are timing, resource, and political issues at stake. The Chair agreed with including a reference to the recognition of good practices.



CFFA-CAPE, concerning MSC's comments, agreed with providing incentives to individual operators in third countries. This does not mean that action should not be taken in relation to certain third countries. It is only when governments support these efforts that the situation improves across the board. CFFA-CAPE highlighted that schemes like MSC do not look into social concerns. Therefore, the MAC should not state that MSC certified fisheries should be left to enter the EU's market with some preferences, when these governments do not take into account sustainability issues. So, they could support some MSC comments, but not all.

The Chair asked Mr Commère to integrate the non-controversial contributions from MSC. The Chair highlighted that, in some countries, there are good and bad practices, so a balance is needed to not remove incentives and drivers for change. It is a matter that affects trade and development policy.

Pierre Commère (ADEPALE), Chair of the Focus Group on the Level Playing Field, expressed appreciation for the MSC's comments that brings the situation to the level of the operators. Still, Mr Commère considered that the second comment takes it too far "in the absence of EU regulation". If there is no regulation or institutional framework, it is not possible to move forward. In terms of text, in the second comment, it is necessary to remove the last part of the sentence.

- **Conclusion**

The Chair thanked everyone for their contributions and expressed his hope to provide a positive response to the Executive Committee, in order to produce a "clean text" within a week to ten days of the meeting. This would allow a written produce to conclude the advice under the current activity year. The Chair thanked the members of the WG for the positive discussion.

Trade Agreements

- **EU / USA discussions, notably tariffs on US seafood products – Presentation by Commission Representative (DG TRADE)**

The Chair asked the European Commission to provide further information concerning potential retaliatory actions connected to the EU/USA discussions. The Chair drew attention to other trade tensions, such as between the USA and China, which could have repercussions in international trade. In the EU/USA discussions, there is the specific issue of the publication of lists.

Concerning the EU-USA negotiations and potential retaliatory measures, the European Commission (DG MARE) explained that the European Commission has been continuously working on this matter. Even though the relation with the USA is quite unpredictable, the



Commission is prepared for all events and there are different possibilities.

The European Commission (DG TRADE) explained that the EU-USA tariff negotiations have not yet started. The problem is the coverage agreement. The USA wants to include agricultural products in the overall discussion, while the EU does not. President Juncker and President Trump have agreed on negotiations on industrial products. After that, there was a mandate from the Member States to negotiate with the USA. Still, the teams have not met to discuss any topic and there are no news from the USA.

- **Exchange of views on potential MAC's reaction**

The Chair requested further information concerning the future trade relationship and the provisional lists in the event of mutual retaliation.

The European Commission (DG TRADE) explained that there are lists prepared by both sides. These lists are reviewed from time to time. There is no developments on this matter, since the lists have already been circulated. The situation remains “frozen”.

Bundesverband der deutschen Fischindustrie und des Fischgrosshandels e.V. asked for information concerning the trade situation with Thailand and Vietnam. It is still unknown when the FTA with Vietnam will enter into force, plus there are different tariffs entering into force. Under the GSP, the tariff rate for shrimp is 7%, while, under the FTA, there is a 12.5% duty. Therefore, they wanted to understand what will happen with those tariffs in 2020. Additionally, they requested information on the developments of the trade situation with Thailand.

EMPA refers to the pilot program developed between several Member States and two United States of America on trade in live bivalve molluscs. France wished to join the project. Under the protocol between the EU and the USA, imports and exports are possible provided that they respect the protocol under the supervision of the FVO and the FDA: the European participants in the pilot program will have to comply with the American criteria in terms of protection of human health of molluscs, in particular the establishment of buffer zones around farming areas. AEPM considers that, in order to be able to export molluscs to the USA, EU legislation should therefore be reviewed and buffer zones introduced there. The changes and the creation of small buffer zones have been analysed in France when the farms are located at the top of the foreshore in the immediate vicinity of terrestrial sources of pollution. It was concluded that in many places this is not feasible, as the buffer zone would be close to houses, farms and ports, so it is impossible to create such buffer zones in France in many places. This would therefore introduce unfair competition between operators located in an operating area with a buffer and one that does not have one, the former being able to export and not the latter. In terms of public health, the buffer zone has no advantage; it is simply a water quality management tool for the local authorities in charge of these files. AEPM calls on the Commission to be cautious and urge it to pay attention to the pilot project and its results in the context of a wider negotiation of a free trade treaty with the United States.



In relation to the negotiations with Vietnam, the European Commission (DG TRADE) explained the process of ratification by the various parliaments in Europe is currently taking place and that the trade agreement cannot enter into force before that. The GSP regime tallies with the WTO schedules. Under the agreement with Vietnam, there is a provision for Vietnam to continue to benefit from the GSP for at least two years after the agreement is in place. When the schedule was developed, the colleagues must have included a reduction of tariffs, so that, in the third year, it will reach the level of the GSP. Therefore, the Vietnamese exports would not face higher duties than the current ones. In the meantime, the importers in Europe will benefit of the GSP. The mentioned two years period will only start counting when all parliaments ratify the agreement.

ADEPALE asked about the difference in implementation when comparing the Vietnam FTA with the anticipated implementation of the FTA with Canada.

The European Commission (DG TRADE) clarified that it was a political decision, which was not made by the Commission.

Europêche drew attention to an article published in IntraFish on April 2018, according to which the Commission proposed tariffs for many products in the USA. The preliminary list of tariffs were subject to public consultation and included fish products. They requested information on the state-of-play, including the result of the public consultation. In relation to the EU-Mercosur FTA, they also wanted to know when the list of products subject to reduced or zero tariffs will be made available.

The European Commission (DG TRADE) stated that the retaliatory list exists and has been under public consultation, but there are no new developments on that matter. Concerning Mercosur, the final text has not yet been achieved. As long as the text is not final, there will be no list. The Commission cannot predict a date for the list.

The European Commission (DG MARE) took note of the comments on the French buffer zones and the pilot projects. Concerning Thailand, the Commission informed that the pre-talks continues. There is no round of trade negotiations foreseen soon. As for Mercosur, there is an agreement in principle, but the exact products are not yet finalised.

ANFACO requested information on the trade negotiations with Chile.

The European Commission (DG MARE) explained that the negotiations with Chile are ongoing. Most products are already liberalised. The overall intention of the negotiation is to liberalise as much as possible, while taking into consideration the sensitive products of the EU, including processed tuna. Concerning rules of origin, the EU continues to defend its traditional position. Regarding the sustainable development chapter of the FTA, Chile has a more “American-style” approach, meaning a very detailed text on several issues. The EU wants to ensure compliance with international standards for both fisheries and aquaculture.



PRODCOM List 2019

- **Presentation by Commission Representative**

The European Commission explained that PRODCOM List is led by Eurostat, so DG MARE contacted Eurostat to check the situation, particularly in relation to the proposal submitted by AIPCE-CEP. The draft regulation was presented in May. The final classification has been adopted. On EUR-Lex, only the draft proposal is available, since the agreed text is in the process of translation, but it will be the same version as the draft. Concerning potential conflicts between the PRODCOM List and the Combined Nomenclature, the Commission stated it was not possible to split PRODCOM products in a way that would require a split in the CN. The amendments were discussed in the Expert Group. The mentioned situation led to some proposals not being taken into account.

- **Exchange of Views**

Bundesverband der deutschen Fischindustrie und des Fischgrosshandels e.V. underscored that the PRODCOM List refers to production. It is related to EU production and the EU knows the products. The combination with the CN codes could be done later. If members are providing information, there would not be a problem in providing information between different products, since the information is coming from the producers. They exemplified that, for herring products, all the information is together. Since the data is generated by the EU, the CN codes do not actually prevent the separation of products and allow a later combination with the CN codes.

The European Commission clarified that it is not compulsory to have a direct correspondence between the PRODCOM List and the CN codes, but that it led the Member States to not vote for the proposed split, in order to avoid further complications. It might be an issue to be addressed with the Member States participating in the Expert Group.

AOB

None



List of attendees

Representative	Organisation
Christine Absil	Good Fish Foundation
Roberto Carlos Alonso Baptista de Sousa	ANFACO-CECOPECA
Marco Baldoci	AIPCE-CEP
Victor Bouvard	FEDOPA
Emiel Brouckaert	EAPO
Arnault Chaperon	FEAP
Pierre Commère	ADEPALE
Juan Elices	Spain
José Carlos Escalera Aguilar	FECOPECA
Cristina Fernández (observer)	Seafish
Haydeé Fernández Granja	CONXEMAR
Nicolás Fernández Muñoz	OPP72
Cécile Fouquet	Aquaculture Advisory Council Secretariat
Silvia Gil	FEDEPECA
Béatrice Gorez	CFFA-CAPE
Bruno Guillaumie	EMPA
Matthias Keller	Bundesverband der deutschen Fischindustrie und des Fischgrosshandels e.V.
Andrew Kuyk	CEP
Jovana Lippens	MAC Secretariat
Sergio López García	OPP-07-LUGO
Jens Mathiesen	Danish Seafood Association
Eduardo Miguez	Puerto de Celeiro S.A. – OPP77
Daniel Pérez Vega	FRUCOM
Joelle Philippe	CFFA-CAPE
Paulien Prent	Visfederatie
Sean O'Donoghue	Killybeg Fishermen's Organisation





Market Advisory Council

Representative	Organisation
Erik Bjørn Olsen	Living Sea
Basilio Otero	Federación Provincial Cofradías de Pescadores de Lugo
Pedro Reis Santos	MAC Secretariat
Katarina Sipic	CONXEMAR
Angelo Torrente	European Commission
Juan Manuel Trujillo Castillo	ETF
Dana Miller	OCEANA
Rosalie Tukker	Europêche
Pim Visser	Visned
Daniel Voces	Europêche
Georg Werner	Environmental Justice Foundation

