

Need for Vigilance

The following is a summary of the study titled “Globalization, Trade Treaties and the Future of the Atlantic Canadian Fisheries” by the Canadian Centre for Policy Alternatives

International trade is vital to the economic well-being of the Atlantic Canadian fisheries. When properly regulated within sustainable ecological limits, trade creates opportunities for both fish harvesters and local communities. Unfortunately, the broad scope of new trade and investment treaties and the corporate-led globalization they facilitate pose considerable threats to many aspects of fisheries regulation.

to pursue public policies that curb domination of fisheries by large corporations. These policies help spread the benefits of fisheries more widely among smaller, independent fishers and coastal communities. They also allow the regulation of fisheries for conservation and other public purposes without fear of undue pressure from international corporations or the threat of challenge under unaccountable international trade treaty enforcement mechanisms.

In recent years, demand for seafood—particularly wild-captured fish—has risen beyond most countries’ available domestic supply. With some exceptions, tariffs on Canadian fish exports are modest and can be expected to fall in countries that depend heavily on fish imports to meet rising consumer demand.

A straightforward agreement to reduce or eliminate tariffs would give Canadian producers an opportunity to sell their products in foreign markets at more competitive prices. The 2009 trade agreement between Canada and the European Free Trade Association is an example of a tariffs-only agreement which enhanced trade and market access while leaving regulatory authority over the fisheries largely unaffected.

Conservation

But reducing foreign trade barriers is not the most fundamental challenge facing the Atlantic Canadian fisheries. Protecting Canada’s ability to regulate the fisheries for conservation purposes and to ensure that the benefits from fisheries are shared with independent fishers and coastal communities should be greater priorities. Canadians

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The next generation of trade and investment treaties, such as the Canada-European Union (EU) Comprehensive Economic and Trade Agreement (CETA) and the TransPacific Partnership (TPP), deal with matters far beyond tariffs and trade. Just as the freezer trawlers that ply the world’s oceans today are far more extractive and destructive than earlier fishing vessels, so the latest trade and investment treaties are more intrusive than previous ones.

The Canadian fisheries sector, because of its strong export performance and Canada’s already low tariffs on fish, is often touted as an unequivocal winner in the face of deeper trade liberalization. Yet fisheries is also a sensitive sector, with many domestic policies at risk from the far-reaching provisions of these new trade and investment treaties. At stake is the ability of Canadians

*This summary of an earlier published report is by **Scott Sinclair** (ccpa@policyalternatives.ca), a senior research fellow with the national office of the Canadian Centre for Policy Alternatives, where he directs the Trade and Investment Research Project*

should not make significant concessions in ongoing trade and investment negotiations that might impair these higher priorities, in order to attain the modest, and diminishing, benefits available from reducing the remaining foreign tariffs on fish and fish products.

The potential conflicts between trade and investment treaty rules and Canadian fisheries regulations are numerous and profound. For this reason, successive Canadian governments have endeavoured, through various exceptions and exclusions, to shelter domestic fisheries management policies from the full impacts of trade and investment treaties.

National treatment is one of the core principles of international trade treaties. It requires that governments must extend the best treatment given to domestic goods, services or investors to their foreign counterparts. The Atlantic Canadian fisheries are built around policies and regulations that favour Canadians and must be shielded from the application of these non-discrimination rules.

Policies that favour Canadians in the fisheries sector include:

- Fishing licences are restricted to Canadians. In the Atlantic inshore sector, only independent owner-operators, who must be Canadian, can hold a fishing licence. In the offshore sector, foreign corporations can only hold a minority interest (up to 49 per cent) in a Canadian corporation that has a fishing licence.
- With few exceptions, only Canadian fishing vessels can be registered to be involved in a commercial fishery.
- Policies to assert domestic control of sectors, such as the northern shrimp fishery, rely on licensing restrictions, foreign ownership rules, crew requirements and preferences for community-based groups that explicitly favour Canadians.
- Historical dependence and geographical adjacency policies ensure that fishers from

communities located near a resource and those who have made their livelihoods in fisheries for many generations get first consideration when fishing stocks are allocated.

All such policies are contrary to the national treatment and non-discrimination provisions of trade and investment treaties. To avoid challenge, these policies must be fully exempted. From a trade-treaty perspective, they constitute discrimination based on nationality or local origin. Yet, for reasons of fairness and equity, these forms of positive discrimination are both desirable and morally compelling.

Provincial regulations in Newfoundland, Labrador and Quebec encourage domestic processing by restricting the export of unprocessed fish. Such provincial regulations are designed to maximize socioeconomic benefits from processing, add value to products prior to export, and maintain employment in the processing sector. The Canadian courts have consistently upheld these measures as legally and constitutionally valid.

Minimum processing requirements provide provincial governments with critical leverage to influence the investment and production decisions

FISH, FOOD AND ALLIED WORKERS UNION, CANADA



Small boats loaded up for setting out to sea on the first day of the lobster fishing season in Newfoundland

of large fish-processing companies. Without such regulation, these decisions would be left to companies to make with no consideration for any other factors than how it affects their corporate bottomline.

The EU is strongly pressuring Canada to abolish minimum processing requirements in CETA. Even if these important regulations somehow survive under CETA, they will immediately come under renewed attack in the TPP talks.

Although fisheries are normally thought of as resource or goods-

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producing sectors, the rules governing international trade in services are also in play. Many fisheries-related activities, and even some fisheries themselves, are classified as services for the purposes of international trade and investment treaties. To complicate matters further, in the most recent Canadian trade and investment treaties, including the draft CETA, the market-access restrictions have been shifted from the services to the investment chapter. This has greatly expanded their coverage.

The independent, inshore sector is the most important sector of the Atlantic Canadian fishery and a major contributor to the regional economy.

The fleet-separation policy, which forbids processors from acquiring fishing licences, keeps ownership of the fish-harvesting and processing sectors separate. Another key safeguard for the independence of the inshore fishery is the owner-operator policy, which requires the holders of fishing licences on small vessels to personally fish their licences. This prevents investors outside the fishery from buying fishing licences and hiring others to do the fishing.

Market access rules in next-generation investment treaties prohibit, among other things, limits on the numbers of service providers and investors and restrictions on the types of legal entities through which service suppliers and investors may operate. These restrictions create potential conflicts with Canadian policies to preserve the independence of the inshore fishery, including fleet separation, owner-operator requirements, and limiting entry by restricting the number of licences. There was no legal conflict between these vital fisheries policies and earlier Canadian trade and investment treaties, such as the North American Free Trade Agreement (NAFTA) and the World Trade Organization's General Agreement on Trade in Services (GATS). The NAFTA services chapter contains no binding 'market access' restrictions. The GATS is a bottom-up agreement, applying only to those sectors specifically included by a member government, and Canada wisely did not include fishing services in its commitments.

Harmful fisheries subsidies—those that contribute to overcapacity and overfishing—raise significant international trade and conservation issues. Subsidized fish can be sold at lower prices, reducing competitors' shares in the subsidizing country's domestic and export markets. A subsidized fleet that targets straddling or highly migratory stocks leaves other countries with fewer fish to harvest.

Overfishing

Foreign distant-water fleets, especially European vessels, have a long history of overfishing in, or adjacent to, Canadian waters. There is little prospect, however, that Canada can succeed in disciplining, let alone eliminating, harmful fisheries subsidies through bilateral trade and investment negotiations, such as CETA. In the TPP talks, the risk is that the agreement will go too far and restrict almost all fisheries subsidies, including beneficial ones that promote conservation and

support small-scale, sustainable fisheries. New Zealand and Chile, both influential members in the TPP talks, have led the charge for a broad prohibition of fisheries subsidies. Such top-down restrictions could adversely affect support for Canadian inshore fishers, including differential rules for how employment insurance treats workers in seasonal industries and marketing support for sustainably harvested fisheries products.

An across-the-board prohibition of subsidies would simply further advantage the wealthier, corporate-controlled industry over the inshore sector.

Co-management involves the sharing of power and responsibility between arms-length regulators, independent scientists and those who make their livelihood in fisheries. It cannot exist without strong State regulatory capacity and high levels of public investment in independent scientific expertise, along with industry, primary producer and coastal community involvement in policymaking.

Each of these three essential pillars of co-management is being undermined by recent federal government policy decisions, including:

- ongoing cuts in science, research and regulatory capacity at the federal Department of Fisheries and Oceans (DFO);
- the weakening of DFO's authority to protect fish habitat, through amendments buried in the omnibus bill implementing the 2012 federal budget; and
- the disbanding of collaborative institutions, such as the Fisheries Resource Conservation Council.

The central emphasis on sharing control with local harvesters, coastal communities and community-based fleets puts co-management at odds with trade and investment treaties, which aim to root out such geographical discrimination. Co-management increasingly finds itself between a rock and a hard place. The expanding scope of these treaties, the ever-increasing series of bilateral and regional negotiations,

and the steady erosion of safeguards for non-conforming fisheries policy and regulation exert long-term, indirect pressure on the foundational principles of co-management. At the same time, it faces direct threats from cutbacks, deregulation and the dismantling of supportive institutions.

Reservations are country-specific exceptions which protect otherwise nonconforming measures from the investment and services obligations of trade treaties. Given the high degree of inconsistency between domestic fisheries policies and international trade and investment treaty rules, strong exceptions are critical. Such reservations are the last line of defence for vital fisheries policies from any challenge under the investment and services rules of these treaties.

There are two different types of reservations. Annex I reservations exempt existing measures. They are bound, meaning that the measures can only be amended to make them more consistent with the treaty. If an exempted measure is amended or eliminated, it cannot later be restored. Annex II reservations are unbound.

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This means that they protect existing non-conforming measures and also allow governments to take new measures that would otherwise be inconsistent. An Annex II reservation provides stronger protection because it allows for future policy flexibility in an exempted sector.

Restricting licences

The federal government has proposed an Annex II reservation under CETA which, despite certain gaps, would protect its ability to restrict fishing licences to Canadians and to limit foreign ownership in the fisheries sector. Importantly, the proposed reservation would also exempt

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otherwise non-conforming licensing measures, including the fleet-separation and the owner-operator policies. But the very fact that Ottawa must now, for the first time, rely on a reservation to safeguard policies crucial to the survival of the inshore sector is a cause for concern. Once a policy, or set of policies, requires protection from Canada's international trade and investment treaty obligations, it invariably becomes a bargaining chip and target in future negotiations.

There are very serious shortcomings in the reservations for provincial measures. If unaddressed, these would result in a serious erosion of provincial government authority over fisheries. Canada recently lost a NAFTA investor-State case brought by Exxon against minimum local research and development requirements in Newfoundland and Labrador. The case clearly demonstrates that provincial governments cannot rely upon an Annex I reservation to protect the discretionary authority of the minister and officials under existing legislation. To safeguard their full authority, they must take an Annex II,

unbound reservation. Otherwise, these governments are surrendering their future legislative and constitutional power through which the wealth generated by fish and other natural resources could contribute to the sustainable development of their province.

Those who depend on the Atlantic Canada fisheries—from harvesters to the coastal communities themselves—cannot afford to be complacent about how the federal government's unprecedented trade and investment treaty agenda threatens their livelihoods. Without policy guidance, enforcement and, above all, governmental determination to use the leverage provided by public ownership of the resource, large corporations have little incentive to create local benefits in the fisheries. The hands-off approach facilitated under trade and investment agreements allows global fishing corporations to organize their activities for their own and shareholders' benefit, without regard to fishers, coastal communities or marine ecosystems. A lack of vigilance could put the long-term sustainability of the Atlantic Canadian fisheries at risk. **3**

For more

ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/canada/

Comprehensive Economic Trade Agreement with Canada

www.policyalternatives.ca/publications/reports/globalization-trade-treaties-and-future-atlantic-canadian-fisheries

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