NON-TRADITIONAL TRADE PROVISIONS AFFECTING MARKET ACCESS AND COMPETITIVENESS OF FISHERIES AND AQUACULTURE PRODUCTS

By Bhakti Anand

Fisheries and aquaculture regulations are increasingly influenced by preferential trade agreements that extend beyond market access to promote sustainability and responsible practices including labour rights, environmental protection and sustainable development. Today, non-traditional clauses emphasize transparency, capacity development, and combating IUU fishing, often referencing Food and Agriculture Organization (FAO) instruments and multilateral environmental agreements. The rise of these provisions highlights the stronger connection between trade and environmental sustainability, alongside shifting consumer preferences. Furthermore, as a shared global resource, aquatic food production necessitates international cooperation for effective and responsible management.



Global production from fisheries and aquaculture has steadily expanded in recent years, making aquatic foods one of the most widely traded products in the world.

In recent years, preferential trade agreements (PTAs) have become increasingly important in shaping fisheries and aquaculture regulations, going beyond the traditional focus on market access. PTAs are agreements between two or more countries designed to reduce or eliminate tariffs and non-tariff regulatory barriers, thereby fostering more substantial trade and commercial ties. Traditionally, these agreements—often also referred to as free trade agreements (FTAs) or regional trade agreements (RTAs)—have focused on liberalizing market access and enhancing economic integration.

However, PTAs have evolved to incorporate non-traditional clauses that extend beyond the core commitments of tariff reduction and market access. Non-traditional trade provisions are additional provisions that address a range of broader issues, such as labour rights, environmental protection, digital trade and sustainable development, which have increasingly been incorporated into several new-generation trade agreements. These clauses are especially significant in fisheries and aquaculture as they promote sustainability and responsible resource management by integrating environmental measures.

Rise in fisheries-related nontraditional provisions in PTAs

As global trade policies increasingly align with broader sustainability goals, PTAs are now used to ensure that fisheries and aquaculture practices support global environmental objectives while maintaining international market competitiveness. This evolution reflects a growing recognition that trade instruments must drive economic integration and contribute to the long-term health of natural resources and the well-being of communities dependent on these sectors, fully addressing the three dimensions of sustainability.

According to FAO's Ag-ERP database¹, 164 fisheries provisions were found in 318 agreements analyzed between 1995 and 2022. From 1995 to 2001, very few PTAs initially included specific fisheries provisions. However, by 2018–2022, the number had increased nearly ninefold, making such provisions much more common. Similarly, the World Bank's Deep Trade Agreement Database² recorded

198 fisheries provisions across 400 agreements from 1958 to 2023. Furthermore, the TREND (Trade & Environment Database)³ suggests that 182 fisheries-related trade provisions were included in 775 agreements signed between 1947 and 2021.

A feature distinguishing the fisheries and aquaculture sector from other resource industries is its dependence on biological regeneration within the ocean's finite productive capacity. Unlike non-renewable resources such as fossil fuels or fully controlled biological resources like agricultural crops and commercial forestry, fisheries rely on natural fish population cycles that can be disrupted by overfishing, that is, fishing beyond the Maximum Sustainable Yield (MSY). The MSY is the highest catch that can be continuously taken from a fish stock without jeopardizing its long-term health. Overfishing depletes existing stocks and affects regeneration rates, threatening long-term availability. This unique characteristic makes

FAO Ag-ERP database compiles environmental provisions related to the agriculture, fisheries and forestry sectors and can be accessed here

² World Bank Deep Trade agreement database provides information on the content of eighteen policy areas (including fisheries) frequently covered in preferential trade agreements and can be accessed <u>here</u>

³ The TRÉND database (updated in 2022) identifies nearly 300 different types of environmental provisions found in preferential trade agreements and can be accessed <u>here.</u>

sustainability a critical concern for countries, leading to incorporating provisions in trade agreements that regulate fishing practices, prevent overexploitation, and ensure the long-term viability of marine resources.

Secondly, consumer awareness has substantially driven demand for sustainably sourced aquatic food, influencing trade policies. The results from the <u>GlobeScan Seafood Consumer Perceptions Study 2024</u> indicate that, across 23 countries surveyed, 74 percent of seafood consumers consider choosing sustainably sourced seafood an important motivator for their purchasing decisions. Thirdly, the <u>shift toward ecosystem-based</u> <u>fisheries management</u>—which considers broader environmental factors beyond fish stocks—has also influenced international environmental norms, increasing pressure for trade policies that align with marine conservation objectives. As the seafood industry becomes increasingly globalized, trade policies play a crucial role in harmonizing environmental standards, mitigating trade distortions, and protecting the interests of developing countries that heavily rely on fish exports.

Furthermore, trade liberalization promotes economic growth by reducing trade barriers. However, increased demand can lead to overfishing, overcapacity; illegal, unreported and unregulated (IUU) fishing; and subsidies on harmful fishing activities that ultimately reduce long-term supply. Trade agreements address this risk by incorporating sustainability clauses to prevent environmental degradation while facilitating market expansion. A major concern in the fisheries sector is the role of subsidies, which often lead to overcapacity and unsustainable fishing practices. Practices such as IUU fishing undermine sustainable fisheries management and create unfair competition. In addition to multilateral trade negotiations at the World Trade Organization (WTO), trade agreements can provide a framework to regulate these subsidies, ensuring that no country gains a competitive advantage through environmentally harmful practices.

Additionally, these agreements strengthen cooperation with Regional Fisheries Management Organizations (RFMOs), enhancing monitoring mechanisms to deter unsustainable fishing practices. Thus, trade agreements act as effective tools to discourage unsustainable practices. At the global level, the <u>WTO Agreement on Fisheries Subsidies</u> aims to curb subsidies that contribute to overfishing and IUU fishing; fishing on the unregulated high seas; and overfished fish stocks. Negotiations at the WTO continue to expand the coverage of the WTO Agreement on Fisheries Subsidies to include subsidies linked to overfishing and overcapacity, as outlined in the negotiation mandate.

Lastly, fisheries provide public goods such as biodiversity and healthy aquatic ecosystems; however, unsustainable practices threaten these benefits. Trade restrictions on unsustainably sourced aquatic foods encourage responsible fishing practices. As aquatic food markets expand, trade agreements are crucial in enforcing sustainability measures ensuring economic and ecological stability.

Types of non-traditional provisions in PTAs

PTAs integrate non-traditional provisions that affect fisheries and aquaculture trade through various mechanisms. The FAO Ag-ERP database, as well as the TREND Database suggest that the provisions

primarily address key issue areas, including the conservation of fisheries resources; sustainable trade in fisheries products; combating IUU fishing; preventing pollution arising from fishing activities and bycatch; and eliminating harmful subsidies.

The scope of these provisions ranges from best-effort phrasing that promotes sustainable fisheries through broad cooperation to more specific commitments, such as the need to implement measures to monitor and manage fishing activity to foster sustainability. This section examines each type, highlighting notable examples from trade agreements incorporating these provisions.

Provisions on cooperation

<u>Cooperation provisions</u> foster collaboration among trading partners in sustainable fisheries practices, research, and policy alignment. These provisions can cover various areas, including enforcement, scientific collaboration, information sharing, regulatory harmonization, capacity-building assistance, and the establishment of joint institutions. These are the <u>most</u> <u>commonly found provisions</u> within trade agreements, owing to their neutral nature and enabling countries to make softer commitments.

Provisions related to compliance and enforcement for specific issues

Provisions about compliance and enforcement establish mechanisms that ensure the effective implementation of specific non-trade obligations made in trade agreements. These compliance and enforcement provisions in fisheries and aquaculture focus on issues such as IUU fishing, overfishing, habitat destruction, fisheries subsidies, traceability, bycatch reduction, and the sustainable management of fish stocks and aquaculture practices. To ensure that sustainability commitments are complied with, these provisions establish enforcement mechanisms such as oversight committees, reporting requirements, and dispute resolution procedures. Some common key issues and areas, along with examples of policy measures, are discussed below.

• Fisheries subsidies, overfished stocks and IUU fishing

The compliance and enforcement provisions in PTAs that address fisheries subsidies prohibit subsidies for fishing on overfished stocks and IUU fishing. In some cases, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP, 2018), the provisions aim to eliminate subsidies contributing to overfishing and overcapacity. Compliance with the provisions is ensured through mandatory notification and reporting requirements. This includes detailed information about the subsidies, the fisheries they affect, the status of fish stocks, and the conservation measures in place.

Such provisions enhance sustainability in fisheries management and promote responsible practices that align with international standards. This, in turn, can improve access

to premium markets where sustainability is a key requirement. Additionally, prohibiting such subsidies helps prevent marketdistorting practices, ensuring fair competition within the fisheries sector. Apart from the CPTPP (2018), various other agreements also contain similar provisions, such as the United States-Mexico-Canada Agreement (2020); the United Kingdom-New Zealand Free Trade Agreement (2023); and the United Kingdom-Australia Free Trade Agreement (2023), among others.

• Traceability, catch documentation schemes, vessel documentation

The compliance and enforcement provisions addressing traceability require parties to implement measures such as catch documentation schemes, vessel documentation and other measures to verify the legal provenance and ensure the trade of sustainably sourced fisheries products. Strengthening monitoring, control, and surveillance (MCS) measures—including vessel tracking systems, observer programs, and port inspections—further reinforce efforts to enhance traceability. Compliance is enforced through requirements for vessel registration, monitoring systems, and collaboration with Regional Fisheries Management Organizations (RFMOs).

Some agreements require parties to maintain vessel documentation schemes and unique identifiers, such as the United States-Mexico-Canada Agreement (USMCA, 2020). Agreements such as the United Kingdom-New Zealand PTA (2023) and the New Zealand-European Union PTA (2024) encourage the adoption of measures facilitating traceability, including electronic traceability and certification. Similarly, the United Kingdom-Singapore PTA (2021) mandates the implementation of catch documentation or certification schemes to eliminate IUU products from trade flows. Various agreements enforce the catch documentation or certification schemes of RFMOs, as well as the adoption of effective control, monitoring, and enforcement of the RFMOs' management measures, alongside the implementation of port measures. Some examples include European Union-Kenya (2024), United Kingdom-Viet Nam (2021), CPTPP (2018), USMCA (2020), and EU-Japan (2019), among others.

This provision enforces measures that help verify the accuracy of catch records, prevent fraudulent documentation, and ensure compliance with sustainability standards. Many major markets, such as the European Union, the United Kingdom and the United States, impose strict import controls to avoid market entry of products originating from IUU fishing. By integrating MCS measures alongside traceability requirements, these provisions facilitate compliance with international trade regulations, enhance consumer confidence, and improve market access. Sustainable management of fisheries through increased cooperation with RFMOs

These provisions emphasize cooperation with RFM0s to ensure effective governance, conservation, and responsible trade in fisheries products. They require parties to actively participate in RFM0s by adopting conservation and management measures, supporting scientific research, and strengthening compliance mechanisms. Additionally, they promote the periodic review of RFM0 performance and encourage the adoption of MCS measures, including port-State controls, vessel tracking systems, and catch documentation schemes to combat IUU fishing.

Compliance is enforced through obligations to implement RFMO regulations at the national level; mandatory reporting on conservation efforts; and collaboration with international enforcement initiatives. Agreements such as European Union-Kenya (2024), EU-Colombia and Peru (2013), EU-Eastern and Southern Africa States (2012), CPTPP (2018), United Kingdom-Viet Nam (2021), and New Zealand-European Union PTA (2024) include commitments to strengthen RFMO governance and ensure the effective enforcement of fisheries management measures.

By aligning fisheries management with RFMO-led sustainability initiatives, these provisions enhance the credibility of fisheries product exports, ensuring compliance with the sustainability standards of major import markets. Strengthened cooperation with RFMOs supports long-term resource availability; facilitates responsible trade; and prevents market disruptions caused by unsustainable fishing practices.

Provisions on consultation

Consultation provisions are commonly found in PTAs; they are used to accommodate and incorporate different perspectives on environmental protection; address sustainability concerns; and align environmental regulatory approaches among PTA partners. They enhance inclusion through stakeholder engagement, fostering more inclusive decision-making that reflects the needs of both industry participants and conservation efforts. These provisions also play a crucial role in facilitating market access and competitiveness by ensuring regulatory alignment with key trading partners and facilitating dispute resolution, thereby promoting smoother trade flows between partners.

Provisions reaffirming commitments of international environmental agreements

PTAs often include provisions that reaffirm commitments to key international environmental agreements, ensuring that fisheries and aquaculture practices align with globally recognized standards for sustainability and conservation. These provisions reinforce adherence to agreements such as the United Nations Convention on the Law of the Sea (UNCLOS); the UN Fish Stocks Agreement (fisheries management of highly migratory and straddling fish stocks); the Convention on International Trade in Endangered Species of Wild Fauna and Flora, i.e. CITES (governing wildlife trade of endangered species); and FAO instruments. They also integrate animal welfare guidelines and standards developed by organizations like the World Organisation for Animal Health.

FAO instruments within non-traditional provisions in PTAs

Several FAO instruments have been integrated into PTAs as part of nontraditional provisions, reinforcing global efforts to combat IUU fishing, promote sustainability, and enhance fisheries management. These instruments establish international standards that guide national policies and trade-related commitments in fisheries and aquaculture.

One key example comprises the provisions linked to the implementation of the <u>FAO Port State Measures Agreement (PSMA)</u>, which aim to prevent, deter, and eliminate illegal, unreported, and unregulated (IUU) fishing by prohibiting vessels possibly engaged in IUU fishing from using ports and landing their catches. Requiring port inspections and information exchange among parties strengthens compliance and enforcement mechanisms within PTAs referencing PSMA. This facilitates market access for sustainably sourced fisheries products by preventing fisheries products associated with IUU fishing activities from entering trade flows, thereby enhancing consumer confidence and preventing unfair competition from IUU-linked operators.

Furthermore, several agreements reaffirm a commitment to adhere to the principles and objectives outlined in the FAO Code of Conduct for Responsible Fisheries (<u>CCRF</u>). The CCRF outlines fundamental principles to be followed, encouraging responsible practices that ensure the sustainability and preservation of living aquatic resources and the environment, including protecting the ecosystem's biodiversity.

Many PTAs increasingly reaffirm commitments made in the <u>FAO</u> <u>Compliance Agreement</u>, formally known as the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. This Agreement aims to enhance the role of flag States and requires a State to strengthen its control over its vessels to ensure compliance with international conservation and management measures.

Additionally, many PTAs incorporate <u>FA0's Global Record of Fishing</u> <u>Vessels, Refrigerated Transport Vessels, and Supply Vessels</u>, enhancing transparency, traceability, and accountability in fisheries. The Global Record is an international database that compiles vessel identification, ownership, and operational history, helping authorities track and verify fishing activities to prevent IUU fishing.

These PTAs also reinforce trade-related sustainability efforts by incorporating the <u>FAO Voluntary Guidelines for Catch Documentation</u> <u>Schemes (CDS)</u> to support the development of standardized certification mechanisms for verifying the legal provenance of fisheries products. Lastly, the PTAs incorporate the <u>International Plan of Action to Prevent</u>, <u>Deter</u>, and Eliminate IUU Fishing (IPOA-IUU), which serves as a strategic framework for nations to implement measures against IUU fishing, guiding trade policies that align with responsible fisheries governance.

Table 1 provides an overview of different FAO instruments referenced in PTAs.

Table 1. FAO instruments referenced in Preferential Trade Agreements

FAO instrument	Number of PTAs explicitly referring to the instrument	Notable examples
PSMA	14	New Zealand-European Union (2024), USMCA (2020), CPTPP (2018)
CCRF	14	European Union-Kenya (2024), United Kingdom-Viet Nam (2021), EU- CARIFORUM States (2008)
Compliance Agreement	13	United Kingdom-Australia (2023), United Kingdom-New Zealand (2023), EU-Viet Nam (2020)
Global Record	5	New Zealand-European Union (2024), European Union-Kenya (2024), USMCA (2020)
Voluntary Guidelines for Catch Documentation Schemes (CDS)	1	EFTA-Indonesia CEPA (2021)
IPOA-IUU	5	CPTPP (2018), USMCA (2020), United Kingdom-New Zealand PTA (2023)

Source: Author's calculation based on Legal TINA⁴

Conclusion

The growing incorporation of non-traditional trade provisions in PTAs reflects a significant shift in global fisheries and aquaculture governance toward enhancing sustainable market access. These provisions, including commitments to sustainability, traceability, and international regulatory frameworks, not only strengthen environmental and resource management objectives but also enhance the competitiveness of products in import markets. As regulatory and consumer expectations evolve, integrating these provisions will continue to shape the future of international fisheries trade, promoting long-term economic and ecological stability.

⁴ Legal TINA is a tool developed by the United Nations Economic and Social Commission for Asia and the Pacific that provides guidance and analytical capabilities on the legal provisions of trade agreements, covering more than 365 preferential trade agreements signed between 1945 and 2025 and can be accessed <u>here</u>.



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