

Occasional Paper 8

ECONOMIC LIBERALISATION AND GENDER DYNAMICS IN TRADITIONAL SMALL-SCALE FISHERIES

*Reflections on the proposed
EU-India Free Trade Agreement*

A Report for **Focus on the Global South**
by Susana Barria | Rohan Dominic Mathews

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TABLE OF CONTENTS

I	SUMMARY OF MAIN FINDINGS	1
II	INTRODUCTION	4
III	INDIAN FISHERIES: A TRADITIONAL COMMUNITY VIEW	8
	1) Traditional fisheries: Intrinsic features	8
	2) Traditional fisheries and the development of market relations	9
	3) Export orientation and modernization: The technocratic drive in Indian fisheries	10
	4) The division of labour	16
	5) Marketing and women in fisheries	20
	6) Challenges for traditional small-scale fishworkers	21
	a) A balance is to be found	21
	b) Access to coastal land	23
	c) Work in fisheries sector	23
	d) Gender dynamics and international competition	24
IV	INDIAN FISHERIES AND POLICY: AN OVERVIEW	26
	1) Domestic policies impacting small-scale fishworkers	26
	a) Background	26
	b) Regulation of marine resources utilisation	27
	c) Coastal Regulation Zone Notification	28
	d) Traditional Coastal and Marine Fisherfolk Bill	30
	2) India's international commitments on fisheries	31
	a) The United Nations Convention on the Law of the Sea	32
	b) Food and Agriculture Organisation Code of Conduct for Responsible Fisheries	33
	c) International Labour Organisation Work in Fishing Convention	35
	d) Fisheries in the World Trade Organisation	35
V	EU-INDIA FTA AND FISHERIES	37
	1) India's Free Trade Agreements	37
	2) The European Union and fisheries	39
	a) Overview	39
	b) Access to foreign waters	40
	c) Access to raw materials	42
	d) Favourable environment for EU companies' investments	42
	3) EU-India FTA: Concerns from a small-scale fisheries perspective	43
	a) Foreign vessels in Indian EEZs	44
	b) Displacement of local fish vendors	45
	c) Illegal, unreported and unregulated fishing	46
	d) Imports and livelihoods	47
	e) What to expect from exports?	49
	f) Who's coastal land?	50
VI	CONCLUSION	51

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ABBREVIATIONS

AA - Association Agreement
ACP - African, Caribbean and Pacific Group of States
ASEAN - Association of Southeast Asian Nations
CEPA - Comprehensive Economic Partnership Agreement
CRZ - Coastal Regulation Zone
EC - European Commission
EEZ - Exclusive Economic Zone
EFTA - European Free Trade Association
EU - European Union
FAO - Food and Agriculture Organisation
FPA - Fisheries Partnership Agreement
FTA - Free Trade Agreement
FTP - Foreign Trade Policy
GCC - Gulf Cooperation Council
GoI - Government of India
HLTG - High Level Trade Group
ICSF - International Collective in Support of Fishworkers
ICTSD - International Centre for Trade and Sustainable Development
ILO - International Labour Organisation
INP - Indo-Norwegian Project
IPOA-IUU - International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
KFCC - Kerala Fishworkers Coordination Committee
LOP - Letter of Permission
MFN - Most Favoured Nation
NAMA - Non-Agricultural Market Access
NFF - National Fishworkers' Forum
N-S FTA - North-South Free Trade Agreement
PTA - Preferential Trade Agreement
RTIA - Regional Trade and Investment Agreement
SEZ - Special Economic Zone
S-S FTA - South-South Free Trade Agreement
UNCLOS - United Nations Convention on the Law of the Sea
WTO - World Trade Organisation

LIST OF TABLES AND BOXES

Table 1: India fisheries - At a glance (Section II)

Table 2: Variation in India's seafood exports (Section III.3)

Table 3: India's fisheries sector production (Section III.3)

Table 4: Fisherfolk's occupation in India (Section III.4)

Table 5: Kerala fishworkers in fishing allied activities (Section III.4)

Table 6: India fisherfolks involved in fishing related activities (Section III.5)

Table 7: India's fleet size (Section III.6.a)

Table 8: Main imports of seafood from India to the EU (Section V.2.a)

Table 9: Major destinations of India's seafood exports (Section V.3.e)

Box 1: Characterisation of small-scale fisheries (Section III.3)

Box 2: The four zones of the Coastal Regulation Zone Notification (Section IV.1.c)

Box 3: The swordfish dispute (Section IV.2)

Box 4: EU fishing agreements (Section V.2.b)

Box 5: The European Commission traceability certificates (Section V.3.c)

I SUMMARY OF MAIN FINDINGS

1. Violation of the federal structure

Underlying the fundamental tension between the Union and Kerala Government on Fisheries policy, is the deeper clash between neo-liberal policies, livelihoods of small-scale producers' and systemic ecosystem management. This conflict also emerges at the international policy level, such as between the United Nations Convention on the Law of the Sea and the World Trade Organisation. In the face of these conflicts and challenges, any international commitment, like the Free Trade Agreement between the European Union and India (EU-India FTA), or national legislation that marginalizes small-scale fishworkers will constrain the scope for decentralised policy-making that seeks to recognize, protect and enhance the rights and livelihoods of these small-scale fishworkers.

EU-India FTA is of a new generation of trade agreements, which are far more invasive in nature. The prerogative of the executive in such matters cannot hold and these agreements must be placed under scrutiny of elected representatives in the parliament - who represent the constituencies that will be affected, including women and men fishworkers.

2. Export orientation impact on sustainability and food security

In the 70s, indiscriminate exploitation within export-oriented fisheries and the attractiveness of a lucrative export market was followed by a radical decline in fish caught for local consumption by the masses, threatening their food security, especially for the women. The condition of overfishing directly affected the traditional fishing communities, which bore the impact in terms of the shrinking of their livelihoods. The reduced landing of fish also impacts fish vendors, mainly women further increasing their dependence on credit and undermining their livelihood. The traditional fishermen adapted, but the investment needed for such adaptation was large and took a toll on the sustainability of traditional fishing activities, in terms of investment needed and technologies used.

The EU-India FTA further reinforces the export-led model for the fisheries sector. While there is evidence of the adverse impacts of such a model, no impact assessment was made public regarding the impacts on fishing communities' livelihoods, environmental sustainability and food security. At the same time, the agreement does not provide efficient and accessible checks and balances to handle the same. The penetration of a neo-liberal agenda further into Indian fisheries threatens the very existence of traditional fishworkers and their livelihoods. The disavowal of traditional fisheries is detrimental to the prospects for curbing further damage to the coastal ecosystem. Any such measure, in the form an FTA intensifies the exclusion of fishworkers from the very sphere of production.

3. Deteriorated conditions of life and vulnerability of women fishworkers

The introduction of a strong export-orientation in the fisheries sector has reduced large sustainable opportunities for several women and men fishworkers who require alternative

activities to maintain an income. There has been a trend towards increased employment of women from fishing communities in organized processing units. Migrant women form the majority of the work force on a sub-contracting basis. Here they have no social protection or unionizing rights, but instead face worrisome working conditions. The deteriorating condition of life is seen as the reason for taking up such deplorable work.

The EU-India FTA furthers the same export oriented model for the fisheries sector and there is no reason to expect that it will not further deteriorate conditions of life in traditional fishing communities and directly increase the vulnerability of women in this sector.

Women constitute the majority workforce in processing firms. These firms are expected to increase their activity due to the preferential access provided in the FTA. Surplus labour, especially women, have moved to modern fish processing units where work conditions are deplorable and wages paltry. In this new social environment, patriarchal rules redefine themselves, resulting in distinctions between masculine and feminine labour, 'justifying' workers being underpaid by firms that, in turn, are better able to compete on the international market. In such conditions, the challenge one faces is the prospect of decent work.

4. Threat from competition with EU players

The rules for investment of the EU-India FTA can invalidate the present policy that regulates the operation of foreign fishing vessels in Indian waters. This would provide EU fishing vessels access to Indian waters as well as landing rights. Alongside, through the rules on trade in goods, this FTA requires for drastic cuts in import duties, giving EU products a preferential access to the Indian market, as compared to other imported products. The EU has requested cuts in import duties for fish found in Indian waters. In such a situation where potential access to Indian waters is unrestricted, it would amount to EU vessels landing duty-free fish that would compete with the local products in the local markets, thereby threatening the livelihoods of fisherman (who will face competition in the sea) and fish vendors – who are primarily women (who will face competition in the market). The facilitated operation of EU companies in fish retailing would mean serious competition for women fish vendors, by displacing them from the place they occupy now – as the only vendors of good quality fresh fish on a day to day basis.

5. Abdication of protection from imports

EU marine exports to India may not be seen as a potential threat for local producers at this point, but unforeseen competitive EU products could threaten local producers in the future. Despite this, the provisions on trade in goods amounts to an abdication of the right to apply import duties as a protective mechanism for producers at any point of time.

6. Benefits of increased exports to bypass fishworkers

The EU-India FTA is expected to increase marine exports from India; however, the foreseeable beneficiaries would be larger fishing conglomerates and exporters owing to the systemic marginalization of small-scale fishworkers in the export market because of the investment required.

7. Intensification of the pressure on coastal land

The EU-India FTA provides for facilitation of investments, which could include access to coastal land for setting up any kind of economic operation, thus, intensifying pressure on access to coastal land. Infrastructure development activity on coastal land not only affects livelihoods, but interferes with the functioning of fishing communities by encroaching upon village lands and housing spaces. These activities also cause high levels of pollution and disturb the ecological balance in coastal areas.

8. Situation of policy freeze

Policy frameworks on fisheries are being debated at the Kerala state level (the Inland Fisheries Bill is a work in progress) and central level (with at least 3 fisheries legislations in the pipeline – Coastal Regulation Zone Notification, Traditional Coastal and Marine Fisherfolk Bill and the Fishworkers Act and Marine Fisheries Bill), often as part of a controversial yet, democratic process of consultation with the fishing communities. Signing a comprehensive treaty such as the EU-India FTA that runs counter to the principle of subsidiarity and federalism could compromise these processes and result in a policy freeze environment. It is therefore prudent that until a robust domestic legislative framework is in place, commitments under fisheries be put on hold.

II INTRODUCTION

With a coastline of 8118 km., and a total Exclusive Economic Zone (EEZ) area of 2,305,143 sq. km., India possesses a vast variety of marine fish resources. According to the Marine Fisheries Census the total marine fisherfolk¹ population is 3,519,116, and the total fisherfolk population, including inland fisheries and aquaculture is estimated to be 36 million [Working Group on Fisheries 2001:14].² The importance of the fishing sector cannot be underplayed, especially, if one considers the large population of traditional fishing communities that are dependent on this sector for their livelihood and the contribution of this sector, in terms of population nutrition.³

Historically, traditional fishing communities have depended on the coastal ecosystem for their livelihood, developing a knowledge of the eco-system, that is fundamentally hinged on the premise of conservation and replenishment of marine resources. The cultural practices of these communities reflect a deep linkage with the ecosystem, which are maintained through a strong community bond.

The Development of fisheries in post-independence India proceeded with state directed first world intervention focused on a modernization process with less regard to traditional fishing communities and their practices. The focus was on principles of industrial fisheries, which depended strongly on technology imported from the developed world. This meant applying techniques and technologies suited to temperate coastal ecosystems with a low diversity in fish species - a stark contrast to the tropical waters, which possess a diverse range of fish species. Additionally, the stress was put on export development. This has been the creed within which Indian Fisheries have developed, leading to several processes, including the shift from low-value species to high-value export-worthy species, all of which contribute towards the in-flow of foreign capital. The traditional fisheries were made to compete for a livelihood with a profit-oriented mechanized fishing fleet, largely owned by investors and not wholly involved in the fishing operations. This has also created a condition of gross overfishing in the territorial waters, directly affecting the fishing communities. Incomes between seafood exporters and traditional fisherfolk are incomparable, by sheer virtue of the available disparity. Similarly, traditional occupations for women fisherfolk, such as marketing, curing, salting and traditional processing have also been affected by globalisation, translating into worsening working conditions, and an increased pressure on their occupation, inside and outside the household. It cannot be understated that the historical growth of Indian Fisheries has not only marginalized the

¹ The term fisherfolk is one used to include all individuals involved in the act of marine fishing and those who belong to the traditional fishing villages (not necessarily active full-time fishers). It is the term used in the Marine Fisheries Census 2005. However, through the course of the paper we will be using the term 'fishworkers'- which is commonly used in social movements and trade union parlance and adequately encompasses the variety of work involved in fisheries- including those of women.

² Including full-time, part-time and occasional workers.

³ Fish is especially important for the economically weaker sections of the population, providing a cheap and important source of protein, hence contributing to India's food security. In 2003, the annual per capita consumption of fish in India was estimated at 4.8 kg [FAO website]. http://www.fao.org/fishery/countrysector/FI-CP_IN/en

traditional fishing communities, but, has also made them vulnerable, in terms of their livelihoods and ability to adapt with phenomenon such as globalisation.

It is in this era of globalised economies that several instruments of economic liberalization have gained weight. The scope of public policy and economic activity was radically redefined with the economic reforms of 1991. India endeavoured to integrate into the global economy through economic liberalisation. This included the structural adjustment programs of the World Bank and the International Monetary Fund, along with massive deregulation and opening up of the economy as prescribed by the World Trade Organization (WTO), created in 1995. Such policy recommendations were based on principles that seek to transfer part of the control of the economy from public to the private sector, under the belief that it will produce a more efficient Government and improve the economic health of the nation.

With the deadlock in the WTO process, Free Trade Agreements (FTAs) have emerged as the new instrument of neoliberal policy - relying on the same principles of the WTO - ensuring a framework requiring drastic changes in the policy space of the state, and providing favourable conditions for corporate interests. The WTO was understood as the international forum where decisions pertaining and influencing national foreign trade policies were to be discussed.⁴ The proliferation of FTAs is coupled with an added emphasis on their 'comprehensive' scope- covering a 'substantial amount of trade', and, they govern a wide variety of so called trade-related aspects.⁵ The replication of such 'comprehensive' agreements with all the major trading partners leads to a direct impact on a country's overall foreign trade policy. Hence, these FTAs pose a significant threat to the independent trading policy of sovereign nations, as a whole. At the same time, while 'tying their hands' to the principles set within the WTO and going beyond what has been agreed in the WTO, FTAs are preparing the terrain for further commitments within the WTO. The EU-India FTA is a case in point, owing to the scope of the proposed agreement and the importance of the EU as trade partner, including fisheries trade, and investment source for India.

In light of the EU-India Free Trade Agreement, the paper intends to highlight possible concerns for small-scale fisheries, locating facets of and challenges for Indian fisheries that are relevant from the perspective of the traditional fishing community. The research for this paper is based on fieldwork in Kerala and observations in Maharashtra. The processes and forces that will be elaborated are largely based on observations and previous research studies in Kerala. We have chosen Kerala for several reasons: first, the vast variety of fish resources available there, second, the vast amount of documentation and research that has taken place in the state, third, it is a major fishing state contributing to 19% of all exports from India with a marine fishing population of 602,234, fourth, a strong history of agitation and fishworkers awareness within the state, fifth, the intra-state diversity in terms of craft and gear usage, population diversity, socio-economic profiles. While the term Indian fisheries is used as if it would encompass a single unified sector, there is

⁴ In the past, several Preferential Trade Agreements, limited in their scope, were made with several of India's neighbouring countries.

⁵ Intellectual property rights, government procurement, competition policies, investments, and even environment and labour issues.

diversity not only in terms of scale of activity, but also in terms of the regional and state characteristics. Hence, an inherent feature of Indian small-scale fisheries is its diversity. This can be seen between states, but also within states, as there are different communities (in terms of religion, castes). While there are specific features to each state, even intra-state diversity, we are merely attempting to draw the dynamics and linkages, which are important in the face of a discussion on economic liberalisation. A qualification must be made however, as to the perspective that governs our knowledge of traditional fisheries, which is greatly oriented towards the male-centred occupation of fishing. We will definitely rely on this perspective, while also looking at the greater concern of a women's perspective on fisheries, owing to their diverse roles within the sector, and large workforce participation.

The next section of this paper will explore the basis of small-scale traditional fisheries, looking at the strong community-based identity and fundamental aspects of a fisheries economy and the influence of these on social relations, and the development of the market within fisheries. The section will trace the origin of a modern industrial fisheries within the historical context of Indian fisheries, looking at the rapid techno-centric investments in fisheries and the outright isolation of traditional methods and techniques of fishing. It will also follow the trajectory of an export-oriented fisheries and the consequent condition of overfishing in Indian waters. After having provided a context, it will look at the respective roles of men and women within traditional fisheries and the challenges faced by both women and men in the community, which are relevant in the context of the ongoing FTA negotiations. The idea behind this exercise is to provide a general understanding of the dynamic that functions within small-scale fisheries, to look at the forces of change.

The fourth section of the paper will discuss legislation and policies, both Indian and international such as International Labour Organisation (ILO), Food and Agriculture Organisation (FAO) and WTO agreements relevant for the fisheries sector.

The fifth section considers the specific case of the EU-India FTA. A background is given on India's FTA negotiations to set the context of these trade negotiations. Then, an overview of the EU fisheries economy, highlighting possible interest areas of the EU. This opens the floor for the concerns that emerge from a close look at the possible text of the EU-India FTA. Taking into account the expected framework and the little information actually available, we will look at the impacts of reduction of tariffs for imports and exports, but also at the impacts of health and technical standards, such as the Illegal, unreported and unregulated fishing regulations of the European Commission (EC IUU Regulations), the impact of a deregulation of investment in fisheries, on access to fishing grounds and displacement from the coastal land.

While the expansion of aquaculture on a global scale is deeply linked to the global seafood chain, we will not be focusing on that aspect. There are brief mentions of the dynamics governing aquaculture; however, they do not constitute a substantive portion of the paper, and have been done so in order to locate fisheries within whole gamut of global seafood operations and dynamics. This does not, in any way, undermine the great impact intensive monoculture aquaculture has on the production and distribution of seafood around the world.

The task before us is to explore the dynamic within traditional small-scale fisheries in the context of globalisation. In doing so, we hope to arrive at implications for fisheries in Kerala with reference to the EU-India FTA, and identify specific concerns within the larger realm of fisheries and free trade. The concerns highlighted here may not necessarily hold in the other coastal states, but would hopefully serve as a template for a larger study looking at fisheries in all the other coastal states. We believe that by reflecting upon the ramifications of the EU-India FTA on Kerala fisheries, we put a case for a re-look at the premises of the FTA, itself.

**Table 1: Indian Fisheries-At a Glance
(National Marine Fisheries Census 2005)**

India's Coastline : 6,002 km.

No. of Landing Centres : 1,332

No. of Fishing Villages : 3202

No. of Fisherfolk

Total Fisherfolk Families : 756,212

Total Fisherfolk Population : 3,519,116

Total Adult Male Fisherfolk Population : 1,169,501

Total Adult Female Fisherfolk Population : 1,123,924

Total Active Fishermen : 717,999

Women comprise of 73.6% of the Total Involved in
Fish Marketing Activities

Women Comprise of 76% of the Total involved in
Curing/Processing and Peeling Activities

No. of Crafts

Mechanized : 58,911

Motorized: 75,591

Non-Motorized: 104,270

61.7% of Families involved in fishing have no craft in
possession.

Membership in Cooperatives: 749,056

Government Fisheries Cooperatives: 68.7%

Private Fisheries Cooperatives: 31.3%

III INDIAN FISHERIES: A TRADITIONAL COMMUNITY VIEW

1) Traditional fisheries: Intrinsic features

The Sea, *prima facie*, is an open access resource, i.e., it is a vast resource, from which fish are extracted for consumption purposes, and there are no intrinsic barriers to access. However, there is a difference to be made between the sea as an open access resource and that of a community property resource. A community property resource can be defined as: "Under community property the rights to the resource are assigned to an identified group of users who may exclude others from harvesting the resource and manage its use among members of the group" [Feeny et al 1996]. The assignation of right to access, may not necessarily imply *de jure* recognition, but *de facto* govern the conditions of access within the community. A traditional fishery operates on the basis of a communally binding set of rules that govern the access to the sea, establishing the idea of community-based property resources, which allow for a collective system of access to the open seas. Within established rules of access, a system emerges, wherein the recognized users of the resource are responsible to themselves and to the community in not only providing the resource to the community, but also maintaining stock of the resources.

This has resulted in the evolution of community-based fisheries, where the lack of private ownership has led directly to certain fundamental features: a sense of commonality, and sharing patterns that equally distribute the cost and returns on fish catch among all the families within the community. The Sea is seen as a benefactor that 'provides', and any individual claim to the sea is seen as a violation of this organic link [Kurien 1995]. This allows us to establish the first condition in a traditional fisheries society, where the idea of a shared existence prevails. A strong community bond is felt, and the resource is utilized to fulfill the basic necessity of life for all the members, resulting in the development of social relationships that fulfill this condition.⁶

Risk is an intrinsic feature of traditional fishing. The sight of a traditional fisherman going out in his *kattumaram*⁷ reflects the immensity of the task, where two fishermen, with wooden paddles, riding on three logs of wood- go into the open sea, in search of fish. The dangers of tides, waves and sudden shifts in currents result in frequent accidents, and deaths during the course of fishing, and are a common concern shared by all members of the fishing community [Anto Elias, Personal Interview 2009]. The dangers of the open seas and its raw forces have led to the deep faith of fishermen. Folk songs among fishing communities express the risk faced by the community [Ravindran Nair, Personal Interview 2009] and are an instance of the attempt at relocating all forms of risk within the social sphere through collective activity.

⁶ Kurien notes "The social and cultural aspects, which arise from this historical nature-human interaction, takes effect within a workaday routine of livelihood and provide the element of specificity to the society. They accumulate over time and form a corpus of certain behavioural facets of a people...they evolve to represent a 'world view' of the communities and represent in succinct fashion a coherent 'practice-knowledge-belief' system" [Kurien 2000B]

⁷ A Kattumaram refers to a traditional fishing vessel found in the coast of Kerala. Also referred to as a Catamaran.

There is a strong sense of community, one where each individual within the society is justified in believing that his/her actions are geared towards the fulfillment of the needs of his/her community, which in turn, shall guarantee his/her own personal fulfillment of needs. Also, an intrinsic feature of a traditional fisheries, is the component of the traditional, i.e., those norms and methods that have passed on from generation to generation. They not only act as a source of knowledge to fulfill ones needs from the sea, but also reflect the shared nature of their knowledge, the collective epistemology of learning by doing.

2) Traditional fisheries and the development of market relations

A specific distinction needs to be made between the 'fish' as a nutritional requirement and 'fish' as a livelihood requirement. 'Fish' as a nutritional requirement entails the aspect of subsistence and the remaining basket of goods need not be purchased, as it is available in some form. When one catches fish to consume and also, to exchange it for certain other goods, then it implies that one's capture of fish constitutes an occupation - a source of livelihood. It not only provides subsistence by itself, but also, its purported value within a set of exchange relations, allows it to provide for one's other needs. Hence the fulfillment of your basic needs is contingent on the capture of a surplus amount of fish, which is exchangeable.

The process of exchange of fish in the Travancore⁸ consisted of fish captured by fisherfolk, of which a certain component was shared within the community, for private consumption, and the remaining was placed in the market.⁹ Fish became the commodity that served as a basic constituent of the economic transaction between coastal communities and those in the mainland.¹⁰ The moment the process of transaction established itself, and a possibility for bulk transfers of fish was required, the merchant classes intervened with the sole intent of profit, enforcing their lending or credit providing ability as a means to acquire sole proprietorship of the right to provide fish to all sections of the population. They allowed the re-definition of fish as a good to be purchased, as opposed to the earlier situation where the exchange of the good is primarily a means of providing a basic necessity. The element of profit enters the realm of production, and certain features of the fish trade unravel themselves in insidious ways.

Fish is a perishable item, i.e., it cannot remain fresh or be worthy of sale for too long a period, and hence, an immediate concern to the producer is to get rid of the item. The perishability of fish can be controlled by basic refrigeration through ice, or salting it or curing it with preservatives, which do two things. First, they create a divide in the clientele, one who wishes to consume fresh fish, and the other that can do with any form of nutritional requirement, for example, the TAMILIAN labourers in coffee and tea plantations

⁸ Travancore refers to the erstwhile princely state, with its capital at Trivandrum. It consisted of southern part of modern Kerala, Kanyakumari district, and some of the southern-most parts of Tamil Nadu.

⁹ We may consider this to be a far more primitive form of a market, where the essential conditions for production are narrow, i.e., between small distances, low to medium volume, and represent a direct barter. However, this serves as the precursor to the development of a far larger network of markets.

¹⁰ In Travancore, the fishing communities are of the lower caste, within the hierarchy of castes, and the act of fish catching and handling was seen as an impure activity. However, certain middlemen were set to the task of procuring the fish for the inhabitants of the mainland.

in the Western Ghats.¹¹ This means that two markets have been established. Second, the condition of preservation of fish, and making it market worthy requires incurring certain expenses, hence, the need for credit.

The uncertainty of catch plays a significant role, and the fact is that a fisherman's catch that can be marketed and bring in a profit varies from day to day. In fact, Kurien elaborates on this uncertainty, "there is a strong element of chance and uncertainty in their occupation. Fishermen with the same quantum of fishing gear (nets etc.), fishing in the same part of the sea for comparable periods of time can end up catching totally different amounts of fish. Such outcomes defy logical explanation..." [Kurien 1995]. A gradual need for credit establishes itself, and with that the control of the merchant class gradually increases. John Kurien quotes the report of the Banking Enquiry Committee of Travancore in 1930:

"... once the producer is indebted to the middlemen the tendency is that he is unable independently to market his commodity and the natural results are that he gets less price and has to pay interest on loans. This cuts his small margin of profit clean. One of the witnesses at Quilon informed us that two agents at Quilon mostly control the export trade. They advance all the money required on condition that the catch is sold to them. For every Rs. 160 advanced to them they get a promissory note, executed for Rs 200. It was said that they never take back the capital, but only the interest, which is Rs 40 per annum. The fisherman practically loses his liberty to sell his fish to anyone else." (Kurien 1985)

With this uncertainty in catch, along with a case of a perishable commodity, the trap of credit and dependence on the market becomes firm, and the fisherman "were reduced to 'price-takers' on every front: for the produce of their labour and all the inputs required for life and livelihood" [Kurien 1995]. This condition of a price-taker is very important to recognize the perception towards fisherfolk in the early decades post-independence.

3) Export orientation and modernization: The technocratic drive in Indian fisheries

It is within this uncertainty of catch, that one needs to bring into context, the introduction of technology within the fisheries sector, especially through the Indo-Norwegian Project for Fisheries Development (INP 1953).¹² The project made two major assumptions, first, the fisheries of India are under-utilised, i.e., their market potential has not been efficiently utilized, second, the current state of fisheries, with traditional crafts and minimal modernization, is under-equipped to meet the needs of successful and competitive fisheries [Kurien 1985]. The characterization of the fishing community within the higher

¹¹ In fact, a large surge in the fish exports from Travancore state was guided by the need for dried or salted fish for Tamil Labourers. A certain class component also is brought forth, with relation to those that wish to have fresh fish, and are willing to pay the price and those that can make do with any form of fish, as long as it satisfies immediate hunger. Francis Day in *Fishes of the Malabar* constantly makes the distinction between those fish that are consumed by Europeans, or upper classes and those that are consumed by natives [Day 1865].

¹² The Norwegian intervention into Kerala came in the form of an Indo-Norwegian Project (INP) for Fisheries Community Development in the States of Travancore- Cochin and took effect in January 1953 following a tripartite agreement signed in New Delhi between the United Nations, the Government of Norway and the Government of India. [Kurien 1995]

reaches of the Government was as such: “largely of a primitive character, carried on by ignorant, unorganised and ill-equipped fisherman. Their techniques are rudimentary, their tackle elementary, their capital equipment slight and inefficient” [Shah 1948 in Kurien 1985].

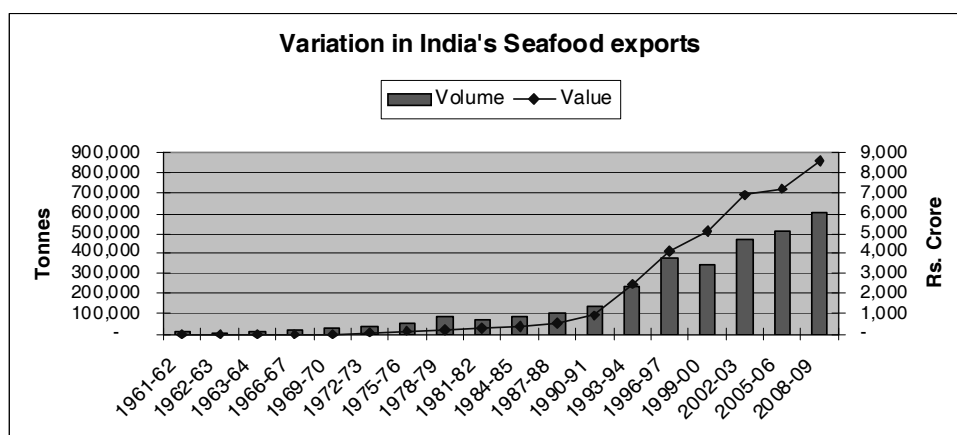
The initial objectives of the INP were to bring about:

- a) An increase in the return of fishermen’s activity;
- b) An efficient distribution of fresh fish and improvement of fish products;
- c) An improvement of the health and sanitary conditions of the fishing population;
- d) A higher standard of living for the community in the project area, in general.

These objectives were in alignment with the intentions of the Fisheries Department of the Travancore and Cochin states, which recognized that the development of fisheries must necessarily be oriented towards basic objectives of maintaining the livelihood of the traditional fishing community. At the same time they were also directing the output towards an increase in the protein intake of the local population, and hence, all possible state assistance was geared towards the provision of basic equipment such as crafts, higher-quality nets, infrastructure for landin or building efficient and institutionalized credit mechanisms.

The INP was able to intervene in craft experimentation, attaching motors to traditional crafts and attempting to improve processing yards, but it proved to be a very typical example of first world intervention in the economy of the third world. The INP was ignorant towards the nature of social reality and it failed to recognize the social forces that determined production and distribution of any commodity within the society.

Subsequently, a particular incident took place, that John Kurien aptly terms as the ‘turning point’ in the fisheries of Kerala. This incident was largely reflected all over the country, both in terms of economic trend and consequent policy. In the early 1950s and 1960s, the paradigm of marine exports included dried items like anchovies, shrimps, shark fins, mainly to developing countries such as Sri Lanka, Malaysia, Singapore, and Burma [Vijayan 2010]. A certain ‘brave’ merchant sent a small consignment of prawns to the U.S. in the early 1960s, and received a very favourable response. This generated an immense response on part of the individual merchant class, and can be seen as a



Source: MPEDA website

significant phase within the Indian fisheries sector. Thus began the transformation of the needs and demands of the sector across the country. In Kerala, while still maintaining a predominant traditional base, the fisheries sector started re-inventing itself to fit in with the norms of the international market.

All responses by the state, and at this time the INP represented a significant aspect of state intervention, were geared towards the increase in exports. The idea of export orientation was developed, without actually having its roots in state action or being guided by state investment. Kurien notes that the state unintentionally fuelled the spurt in private merchant capital investment in export-oriented fisheries.

This is a significant aspect within export-oriented fisheries, depicting the complicity of the state in supporting the cause of private merchant capital. The risks are largely borne by the state: development of harbours, landing yards, and other allied infrastructure, in the name of fisheries development, while the actual benefit goes to the private merchant who reaps a satisfying profit through each of these transactions. Kurien notes:

“The prawn export euphoria had its immediate effect on state policy reflected best in the state’s plan expenditures during the period 1961-69. Of the total Rs. 110 million spent on fisheries development during this period Rs. 82.5 million (75 percent) was spent on production oriented schemes; Rs. 54 million of which went for financing mechanised boats equipped primarily to fish for prawns and Rs. 20 million for supporting infrastructure and training facilities” [Kurien 1985].

In terms of products, frozen items took the centre stage, along with high-value fishes, and major markets shifted to developed countries like US, Japan and the European nations [Vijayan 2010]. This led to a surge in earnings for the exporters¹³ and in the early stages of exports, acted as a cushion for the fishworkers as it helped maintain a steady price for their produce even during seasons of bumper landings [Vijayan 2010].

This push in exports was followed by a radical decline in fishing output, in the 70s, which did not immediately affect net returns to exporters, but in fact, was met with a constant increase in the rate of investment [Kurien 1985]. This is symptomatic of the belief that the modernization of the fleet will always lead to a positive growth rate in output, which was not the case. In fact, not only had the surge in fishing, through measures such as bottom trawling, brought about a reduction in the levels of prawn stocks,¹⁴ but is also brought about a significant decline in the fish caught by traditional communities for local consumption, i.e., low value species catered towards the local market.

This indiscriminate exploitation within an export oriented fisheries brought out a critical feature, of the paradigm of fisheries development that characterised Kerala fisheries sector

¹³ “A very simple investment-output comparison for the decade of the sixties shows that for the Rs. 92 million spent by the state between 1961-69 for investments directed towards export-oriented fisheries, an export value of Rs. 909 million was realised between 1962-69” [Kurien 1985].

¹⁴ This was partly due to the indiscriminate nature of the technology used and the its high rate of by-catch. By-catch are fish caught in a fishery while intending to catch other fish. Additionally, a certain amount of fish caught is discarded. Now, the Food and Agriculture Organisation claims “The most common reason given for not retaining more of the bycatch is the difference in value between shrimp and the non-shrimp” [Alverson et al 1996].

in that generation, featuring a sudden integration to a global supply chain: the consistent failure to recognize that the fish of the sea constitute an ecosystem with particular laws of regeneration, i.e., they are a renewable resources, and can be conserved only within certain limits of use and utilization. Inevitably, any violation of those laws, any attempt to collapse them within the idea of an infinite supply commodity is hazardous. During the period 1969-70 to 1979-80 “the output per fishermen plunged from 3340 kg per annum to 1780 kg- a fall of about 47 percent”¹⁵ [Kurien 1985]. A condition of overfishing of waters was reached. And, this directly affected the traditional fishing communities, because while they were de-linked from the export surge due to merchant dominance, they bore the impact.

This aggressively modernized fishery failed to recognize the basic nature of traditional fishing technology, ignoring their traditional methods of fisheries conservation. These methods suit the particular eco-system, with a range of “selective fishing nets (a special mesh-size/share for catching a specific species of fish) and the ‘passive’ nature of fishing operations (allowing fish to get entangled in the net rather than going in hot pursuit of them or catching them by disturbing their milieu)” [Kurien and Achari 1998]. It must be noted that a perception exists that classifies these techniques and gear as primitive and simple in nature. However, it is very important to realize that these gears represent a fundamental aspect of traditional fisheries: the passive extraction of resources on the basis of an accumulated knowledge of the most elementary aspects of the eco-system ranging from, sea-floor depth, fish size, and fish breeding patterns. In addition, the raw materials for these gears are available in the vicinity of the sea, and are renewable and their extraction does not adversely affect the ecosystem.

In the face of ‘overfished’ waters, a re-orientation and re-invention of the traditional fisheries was necessary. Livelihood depended on capture of fish, which were no more abundantly available in the immediate territorial waters. Hence, the physical scope of traditional fishing operations needed change, resulting in the proliferation of motorized boats. The vagaries of life were accentuated. Alongside, began aggressive marketing by Japanese motor companies such as Suzuki and Yamaha. The basic investments - the cost of production - for traditional fisheries increased substantially. The outboard motor became a necessity to compete within the small-scale fisheries sector. It meant faster boats, easier beach landings, and at the same time, more expenses on kerosene and diesel, and the incursion of boat building yards,¹⁶ and greater costs of crafts. The traditional fishermen adapted, but the investment needed for such adaptation was large, and hence, a sort of a segmented system of craft ownership was seen within a fishing community [Anto Elias, Personal Interview 2009].¹⁷

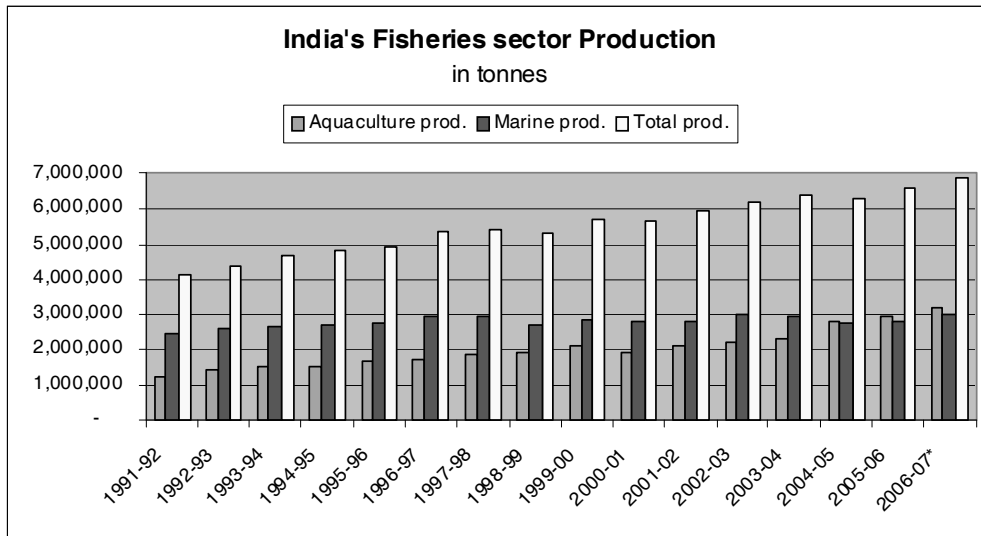
The attractiveness of a lucrative export market diverted fish usually sold to masses. A classical example is that of ‘Ribbonfish’, a low value fish, which is found from the Gujarat

¹⁵ The circuit constituting catch, consumption and internal domestic market is outside the ambit of an export oriented fisheries, both in terms of volume and value of species; however, due to an excess concentration on the export-oriented fisheries within the same waters, this sector is affected.

¹⁶ Boat Building yards can be seen near major fishing villages. They are largely funded by the state or NGOs, but require a host of private investments in terms of the raw materials.

¹⁷ Rarely did any fishermen own a complete motorized craft, but patterns of shared ownership varied- with some owning 50% stake in a boat, some merely 10% [Anto Elias, Personal Interview 2009].

coast up to the Gulf of Mannar. It was traditional processed, dried and then was marketed by women in Tamil Nadu and Kerala, where it is an important source of nutrition for poor households; however, with the trawl nets in the Gujarat coast, the migration of these species to the South reduced. This led to traders from Kerala and Tamil Nadu transporting large quantities, in dried or salted form, to their home states. But, the situation got worse when the Chinese started importing frozen or chilled ribbonfish from Gujarat, diminishing the amount catered for local consumption needs [Vijayan 2010].



Sources:

Aquaculture production: FAO website

Marine and Total Fisheries Production: MPEDA website

Overfishing and the consequent decrease in fish catch also resulted in the increased share of farmed fish, especially through aquaculture, in the total production of fish and export of seafood. In 2005-06, aquaculture contributed close to half of India's total fish production.

In the case of aquaculture, a tension arises between traditional polyculture and intensive monoculture. Traditional polyculture aquaculture is an old Asian practice, but the effect of export led or foreign demand driven development in this sector has increased the share of intensive monoculture aquaculture production. In 2003, India's total aquaculture production was 2.2 million tonnes, of which carp alone counted for 1.87 million tonnes. Shrimps from brackishwater counted for 115,000 tonnes and giant river prawn 30,000 tonnes [FAO website].¹⁸

Frozen shrimp exports account for 63.5% of total value of Indian exports in fisheries products. While intensive monoculture is used less in the case of freshwater aquaculture, Andhra Pradesh has seen cases of intensive monoculture for the production of catfish and carp fish [Nina Koshy, Personal Interview 2009]. These are two fish species that are of high

¹⁸ For details on India's aquaculture production, see FAO website, National Aquaculture Sector Overview: India page. Available at: http://www.fao.org/fishery/countrysector/naso_india/en

export interest, especially in the EU, as the demand is strong.¹⁹ It needs to be mentioned that intensive monoculture comes with its account of social and environmental issues.

In order to ensure immediate and high returns, the use of large farms and monoculture as a mode of production have turned aquaculture into a largely capital intensive industry. This has increased privatization of farmland, through land grab, and has created displacement and loss of jobs in the agricultural sector. 1,909 million hectares are amenable for brackish water aquaculture and “only” 0.152 million hectares have been brought under shrimp culture [Ayyappan et al 2006]. Monoculture aquaculture is known to be environmentally unsustainable. Pollution and destruction of mangrove and other coastal systems have also been reported impacting communities living in coastal areas, including the fishing community [Alder and Watson 2007]. Even so, this pattern of production is preferred, as immediate returns are higher. The GoI has shown its intention to promoting investment in aquaculture. If this translates into an overly unregulated framework, without checks on profit-led investments, the environmental and social consequences are to be disastrous.

Aquaculture in India gives 3 lakh direct employment and 6 to 7 lakh employment in ancillary units [Ayyappan et al 2006]. Even though there is no segregated data of male and female employment in aquaculture, it has been observed that while women play a substantial role in traditional polyculture (non intensive) aquaculture, they are rarely employed in the semi intensive or intensive (often monoculture) aquaculture sector [Nina Koshy, Personal Interview 2009]. Hence, in terms of the employment created by this sector, women are displaced and left out.

Also, there is strong link between the growth of the aquaculture sector globally and the demand for fish meal [Alder and Watson 2007]. Recent years have seen a rapid expansion of intensive monoculture of carnivorous species (like shrimp) that demand large amount of feed, water and fertilizer. Consequently, fish that would have been sold on the local or city market and used as cheap source of human food are diverted to the fishmeal sector, compromising food security. While the fish meal production industry is at an early stage in India, it can be expected that an expansion of aquaculture production will be accompanied by an expansion of the fish meal industry in the country. As per now, there are no systems in place to monitor and regulate fish used for fishmeal or for human consumption.

It can be said that the export surge in Indian Fisheries, along with the modernization drive, led to fundamental conflicts: first, the clash between local nutrition needs in terms of low-value species availability, and high-value export-worthy fish, second, between traditional and mechanised fisheries where a large quantity of these species were available, third, the introduction of trawl nets, and indiscriminate fishing leading to a condition of overfishing. This has led to a condition where “the (traditional) producer fishers’ community continue to remain one of the poorest and the marine products exporters’ one of the richest” [Vijayan 2010]. It can be summarised that the fishermen faced a decline in catch,

¹⁹ The share of aquaculture in total inland production doubled from 46% in the mid 80s to 84% in the mid 90s. Until the mid 90s India exported mainly freshwater prawn. It started exporting other freshwater aquaculture products from 1996-97 onwards. Still, at the end of the 90s, the major part of the export of cultured products was shrimp. The contribution of carps has increased over the years to reach the current level [Bhatta 2001].

competition from state-supported export fisheries, and over-fished inshore waters. On the other hand these features accentuated the worsening condition of fishermen caused by pre-existing structures, such as moneylenders, the failure of collective action, and inadequate investment capability to augment their status.

Box 1: Characterisation of Small-Scale Fisheries

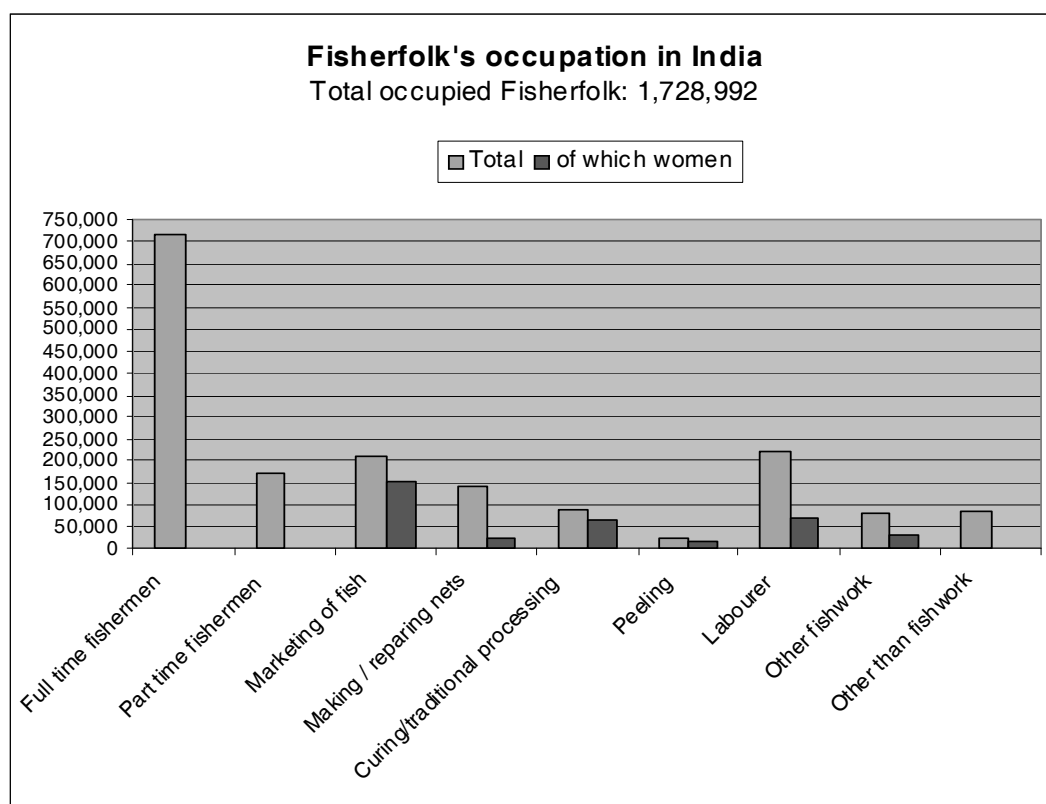
- o Use of small craft and simple gear (though not necessarily simple techniques) of relatively low capital intensity
- o The fishing operations are skill-intensive
- o Operators have an intuitive understanding of the coastal aquatic milieu and the fishery resources in it
- o The knowledge and skills are passed down from generation to generation
- o Incumbents largely work as share-workers or owner-operators of their fishing units
- o Marked by a decentralised and scattered settlement pattern
- o Integrally linked to locally oriented hinterland market networks
- o Considerable financial dependence on middlemen and those who buy their harvest
- o Household enterprise undertaken in pursuit of a livelihood leading to a culturally conditioned way of life
- o Compared with other sections of society, relatively socially and economically disadvantaged with low employment

Source: Kurien 1998

4) The division of labour

Within the traditional small-scale fisheries, the activity of fishing, contains a division of labour between men and women. This division of labour appears to be an inherent feature within the fisheries of Kerala²⁰. The activities of men are restricted to catching fish and landing it on the beach. The women, on the other hand, perform a range of pre and post harvest activities: the marketing of fish, the curing and traditional processing of fish, like salting, peeling, drying, along with net-making and mending activities. The woman is the kernel of the household, taking care of day-to-day activities, including childcare.

²⁰ The origin of this division of labour is not the object of this paper; however, the rigidity with which this division of labour is maintained needs exploration.



Source: DAHD 2005

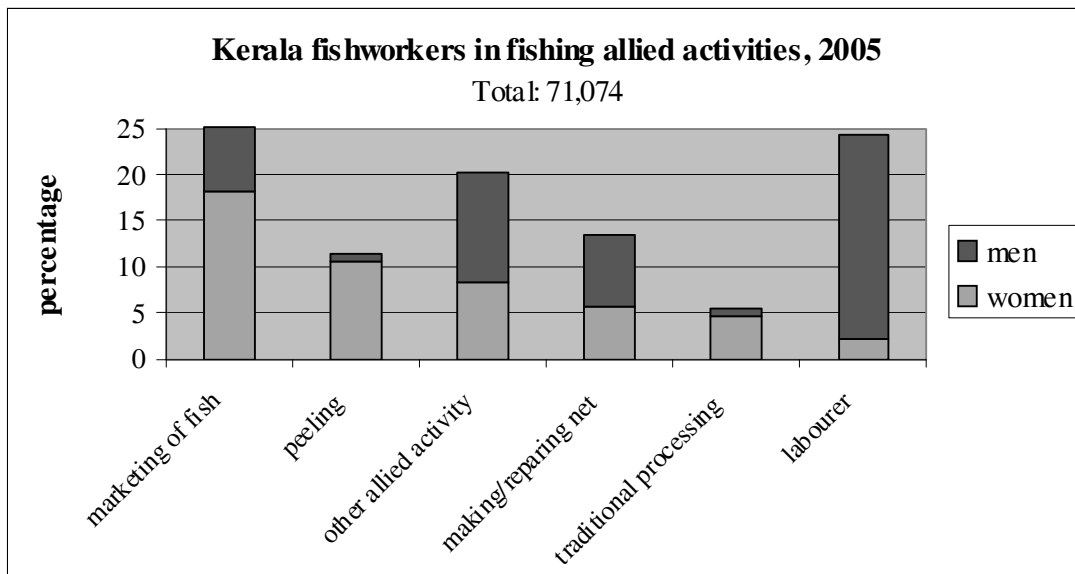
The specific activities assigned to men and women fishworkers present a range of needs and requirements for each of them. In the case of men the fishing craft is a crucial physical requirement, along with a diverse set of gears, including fishing nets. In traditional fisheries within the contemporary period, craft can be classified into motorized craft and non-motorized crafts.²¹ The interchangeability of craft is a common practice, whereby a fisherman may change between going into the sea in a motorized craft or a traditional craft. Fish is sold at a landing centre or at the local fishing village, and is mediated through the several co-operatives available. The role of a cooperative is to ensure the availability of immediate credit to allow the functioning of the sale of fish on a daily basis. The co-operatives are both state run and private, and members maintain their transactions on the daily market through agents of the cooperative, who are present during the sales and are also maintaining accounts.

Women, within a fisherfolk family are the nucleus, being the ones that cook and manage the finances of the house. Simultaneously, women are also seen to provide nutritional security through their curing / salting of fish, which helps in providing food in a lean season, and also acts as an additional income. In India, 365,463 women fisherfolk are employed in fishing related activities [DAHD 2005], providing an income to the household, which is in stark contrast to the accepted belief that a fisherman, by virtue of actually

²¹ In Kerala, there is a vast diversity of traditional craft, with Catamarans, dugout canoes, plank canoes, all of which are used in particular regions. A wider range of gear can also be seen: encircling nets, boat seines, shore seines, gillnets, castnets, hook-and-line [Kurien and Willman 1982].

having captured fish, is seen as the sole breadwinner of the household. Women must also deal with the fact that fishing being a laborious occupation means that a man after a certain age is unable to go out fishing, and therefore must be supported with the income of the wife.²²

Women fishworkers are primarily involved in the marketing of fish, which includes the wholesale purchase of fish from the various landing centres, following which they go about and sell their catch, making a profit, and sometimes none at all. A similar system of credit functions vis-à-vis cooperatives within the fishing village. The importance of credit for a woman vendor is very important, as the uncertainty in sale requires a strong credit system to sustain their livelihood. The transportation expenses, ice for transfer of



Source: DAHD 2005

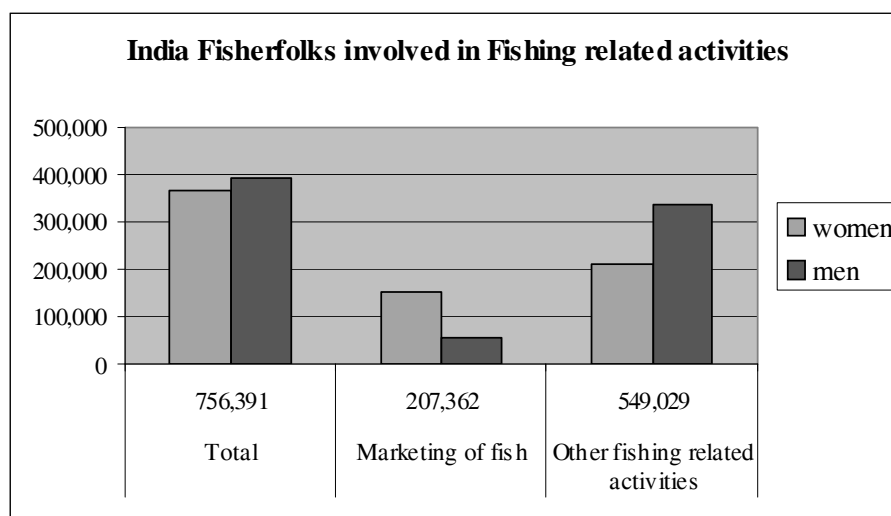
fish over medium-long distances, lack of basic facilities at landing centres and poor market infrastructure are all major concerns within the life of a woman fishing vendor [ICSF 2010].

There has been a trend of an increased employment in organized processing located in processing units, and reduced focus on traditional processing, such as curing, salting and cleaning fish. With the fish processing industry increasing its scope of production, the range of mechanization and capital intensity has increased. And, while a large amount of investment is in acquiring vans, freezers and units - the need for skilled workers is equally urgent [Patro 1998]. The processing operations can be broadly classified as integrated, non-integrated and partially integrated- referring to the relationship between the various stages in the processing operation. For example, in many cases peeling and processing are separate from procurement, while in other cases large conglomerates have integrated with sub-contracted wholesale fisherman to procure fish.

²² Also, due to the increase in physical range of traditional fisheries, fishing takes place near international waters- which pose a constant threat in the form of arrests by neighbouring nations or death by firing by coast guard patrols.

The most important development in the processing sector has been the increase in contract labour. Reports on the working conditions and labour rights in those units are alarming. Migrant women on a sub-contracting basis form the majority of the work force, without any social protection and no unionizing rights [ICSF 2007]. The migrants are generally women from fishing villages lacking employment opportunities and in urgent need of an income, moving to the cities where the processing facilities are located. The introduction of a strong export-orientation in the fisheries sector *prima facie* reduced large sustainable opportunities for several women to singularly focus on marketing fish, by requiring them to take up additional activities to maintain an income. This was accentuated by the lack of state sponsored development schemes for women fishworkers. The reasons given for taking up these jobs are several and diverse, for example, cases of broken families, alcoholism, the urge to gain a 'company' job, i.e., employment in the non-traditional sector, unemployment of male members in family. In fact, the deterioration of conditions of life are seen as the resounding reason for taking up such deplorable work opportunities [Patro 1998].

As large scale migration, intra and inter state, to work in processing units within ports takes place, the additional labour so created is absorbed by the low end sector within processing industries - which is characteristic of the onset of a proletarianisation effect.²³ In this case, this is especially true for women. The advantage of contract labour in conditions of bondage is that it can be woken up whenever consignments arrive, meaning there is never a time lag in production. With the surge in export orientation, the low wages, flexible labour supply conditions, and deteriorating conditions of work in traditional fishing communities, the so called expansion of processing facilities will directly increase the vulnerability of women in this sector.



Source: DAHD 2005

²³ The process of migration is characteristic of a trend within modern capitalist growth in most third world countries, where a process of proletarianisation is set in. Amin notes that proletarianisation is "the modernization of poverty and has devastating effects in all dimensions of social life... (wherein) those who have recently arrived (from villages) and their children are situated on the margins of the main productive systems" [Amin 2003].

5) Marketing and women in fisheries

From the 756,391 fisherfolk involved in fishing related activities in India, approximately 48 % are women, with 152,692 of them engaged in marketing of fish, compared to 54,670 men [DAHD 2005].

A landing centre is “the place or harbour where fishermen land their craft with catch” [DAHD 2005]. Fish Landing Centres can be broadly categorized as a minor landing centre, a major landing centre and a harbour, along with smaller landing centres which are essentially smaller fishing villages. There are a total of 1,332 fishing landing centres, and a total of 3,202 fishing villages, of which Kerala has a total of 178 fishing landing centres and 222 fishing villages [DAHD 2005].

The marketing of fish by women, can be divided in several ways, but a broad structure exists. This structure is largely to be understood within the framework of the source of fish and the destination of sale. Fish purchased from a fishing village, would essentially be sold along the nearby villages, and require very little mobility for the seller, it is bought in small quantity, and consists of low-value catches. This forms a primary kind of fish vendor. Fish purchased at a minor landing centre is also marketed at the local village and some of it is taken to the nearby city or town, where it is sold either at a local market or taken house to house. Fish bought at a major landing centre and harbour is taken to the city, because, it is normally high-value fish, and requires greater amount of mobility and cash investment, and hence, the need for high value catches to remunerate the overhead costs, and to provide a minimum income. So, broadly the vendors can be categorized, as a) those that are seated at the local village street, where fish is sold; b) those that go house to house at local towns and villages; c) those that go house to house in the cities; and d) those that sit at the markets within the various parts of the city or town [Magline Peter, Personal Interview 2009]. These are fixed locations for women vendors.

Immediately, one sees an important component within the process of marketing - the need for a sufficient supply of fish. Overfished waters yield smaller catches, which, in turn affect the price at first sale on the beach or landing centre that implies a greater risk to the fish vendor if her fish is not sold. Hence, the risk of uncertainty of catch, increased due to overfished waters, is transferred onto the woman fish vendor - meaning if there is overfishing, there will be a smaller quantity of fish that comes at the landing point, and there will be more competition between them to access the fish that is available. In Maharashtra, a respondent acknowledged the fact that certain informal payments are made to acquire the better catch [Poornima Meher, Personal Interview 2009].

The major landing centres are part of the larger modernization programs of the state, posing a paradox to the woman fish vendor. She has a greater certainty of receiving fish; however, there is also a large cost she must incur in the process of acquiring that fish. For example, a particular respondent from Thiruvananthapuram district who purchases her fish from the major landing centre at Neendankara (Kollam District) elaborated on the various expenses that she must incur, which ranged from 1200 rupees a month to run a shared tempo, which transports the fish to the market, then payments to the porters, a local union charge, payments for ice, and an auto fare, when they return home late at night. She claimed that she must sell close to Rs. 3000-4000 worth of fish, to make about Rs 300-500 per day [Elizabeth, Personal Interview 2009]

This brings out one crucial feature, the need for credit, and the dependence of the woman-fishing vendor on institutionalised and non-institutionalised credit systems. The system of cooperatives is a very crucial link within the realm of credit. Additionally, the respondent (Elizabeth) acknowledged the presence of small chit funds created by vendors to allow short-term credit. In fact, quite often fish vendors rely on informal credit systems such as moneylenders [ICSF 2010].

Certain occupational hazards prevail within a fish vendor's life such as early mornings and very late nights, which are in contrast to the work hours put in by the men- who actively involve themselves for shorter periods in a day.²⁴ Sometimes women have to stay overnight at harbours and landing centres in order to be present for the early morning fish auctions. Basic facilities, like toilets, storage, waiting areas, lights, night shelters are absent at landing centres and harbours. Under these circumstances, women find themselves vulnerable to sexual abuse and harassment [ICSF 2010]. Also, there is a certain stigma attached to the produce they are selling, which has historically affected them in several ways. For instance, the use of public transport was prohibited for fishing vendors, owing to the stench caused by fish. This was removed after a sustained struggle by women vendors in 90s [Magline Peter, Personal Interview 2009].

There is also a sense that each fishing vendor is an individual player, instead of a member of the community, a transformation rooted in the entry of the market. The collective process of vending and sharing of risks transformed into individual acts of sustaining lives and running the family. Also, for instance, because most of the boats are jointly operated, some of the effort is distributed among all the men. In contrast, women fishing vendors work as individual operators in that the fish they purchase and sell, and the remuneration received in the process is held solely by them.

6) Challenges for traditional small-scale fishworkers

Based on the background provided above, we will now try to define some challenges faced by traditional small-scale fisheries sector, which are relevant for reflection on the trade deal under negotiation between India and the European Union.

a) A balance is to be found

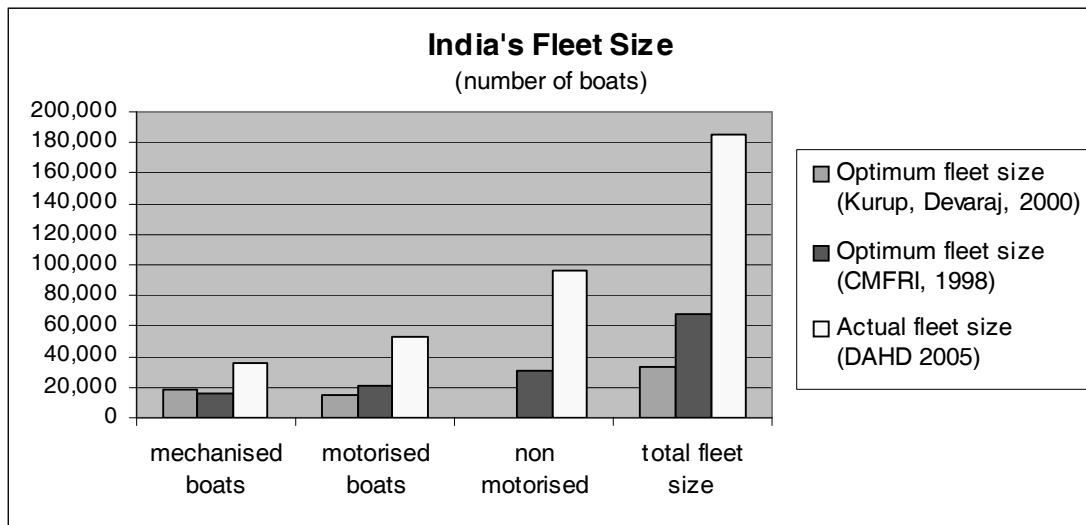
The increasing export orientation of Indian fisheries in the 90's did create higher earnings for the fish economy. However, there was no redistributive mechanism to ensure those earnings equitably among the actors, all of whom were differentially located in terms of their capacity to spend and wield financial influence. This added to the need for credit, created by a higher dependency on new technologies, created a push for higher efficiency, which translated into increasingly unsustainable practices. We have highlighted the export-oriented fisheries' consistent failure to recognise fish as a renewable resource. The failure to indulge in conservatory practices has taken a huge toll on the marine ecosystem and translated into a decline in the fish catch. Concerns regarding fish resources

²⁴ This is not undermining the strenuous task of fishing, and overnight fishing operations of fisherman. But, the qualification of hazards is made to recognize that similar hazards do exist for women vendors, which are quite often not acknowledged in judging the value of their contribution.

management have also been raised ever since and while there are international frameworks dealing with these issues, they have not found a translation into domestic policies as yet (see section IV.1). This compromised the livelihoods of small-scale fishworkers, not only for fisherman, but also for the workers engaged in allied activities. For instance, reduced landing of fish impacting fish vendors, as their final income depends on the quality of the fish they access at the landing centre. Ensuring this access for them will demand a higher initial investment, further increasing their dependence on credit.²⁵ In addition, any hardship on the household income, including lesser income to the fisherman due to lesser catch, will translate into an increased burden for the person in charge of the finances of the house, which is generally a woman.

The demands of the National Fishworkers Forum (NFF), as well as the Kerala Fishworkers Coordination Committee (KFCC) state that decisions taken on imports and exports should be made based on the impacts on the livelihoods of small fishworkers and not under compulsion from obligations under trade agreements (WTO and FTAs) [KFCC 2009][NFF 2008]. While fish exports are valued for earning foreign currency to the country's economy, the adverse impacts on the community creating these earnings cannot be neglected, especially considering the vulnerability of the concerned community.

The decrease in catches from inshore waters has resulted in tensions over access and utilization of fishing grounds. In addition to these prevalent tensions, any increase in industrial fishing fleets is a constant threat to the livelihood of traditional fishworkers.



Sources:

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DAHD (2005): *Marine Fisheries Census 2005 Part-1*.

²⁵ It has already been highlighted that the dependence on credit is a widespread and serious concern within the community. This aspect will not be highlighted again in this section, but taken as an underlying trend.

Issues related to food security have also emerged. In the fisherfolk community, the fish mainly ensures nutritional security, and the responsibility to procure it is on women's shoulders. It can be expected that when the availability of fish decreases, the burden on women in the community increases while also leading to a drop in nutritional deficiency for women. Kurien suggests that policies should "give cautious attention to arriving at a judicious balance on the issue of fish export versus fish for the domestic consumption" [Kurien, 2000B].

b) Access to coastal land

Fishworkers' occupation is completely dependent on proximity and access to the coast and the sea. Housing for fishworkers needs to be close to the beach, and land in the vicinity of the fishing village is central to their activities, not only in that it provides for shorter travel, but it is also integral to providing immediate proximity to the sea to allow the fisher to gauge the level of tide, currents, or winds, in order to make a judgement on the day's course of action. Traditional processing activities, like drying and curing, which are performed as a source of (crucial) supplementary incomes, and nutritional security, are performed on the beach close to the village. Fishers need to access the coast and sea and traditionally keep their boats on the beach. Despite this, fisherfolk face several threats to their free access to the beach, coast and sea.

Increased international trade in goods between India and distant countries require an increase in the shipping and port capacity of the country. Infrastructure development in coastal areas has several consequences for the fishworkers of the area. First, it automatically restricts access to fishing waters in the vicinity of the port. Second and a more urgent concern is the direct displacement of fishing communities. Third, with any intensive industrial venture in a vulnerable coastal zone there is bound to be a strong environmental hazard to the ecosystem, with consequences for the coastal communities that depend on it. Finally, all of these directly contravene the very essence of the Coastal Regulation Zone (CRZ) Notification of 1991, which prevents any form of construction on the coast and highly ecologically sensitive areas near the coast (see section IV.1.c).

Similarly, other lucrative activities require coastal land or the proximity to the sea, notably tourism, sand mining, and salt-water aquaculture. In a context where rights of the fishing communities to coastal lands are not recognized by the State, the expansion of such activities poses a direct threat to fishworkers' livelihoods.

c) Work in fisheries sector

Small-scale fisheries are an unorganised sector. There is a lack of control over the work conditions, whether in pre-harvesting, harvesting or post-harvesting activities. The International Labour Organisation (ILO) has signed a convention on Work in Fishing, but this is most adapted to industrial fishing and is limited to harvesting activities only (see section IV.2.c). Hence, there are no even guidelines for the small-scale fisheries sector, for pre- and post-harvesting activities of industrial fishing, including organised processing.

Any fish export, originating from small-scale or industrial fishing, goes through some processing before being exported. Frozen fish and shrimp account for 83.57% of the volume of India's fisheries exports, the processing and packaging of which is done in fish

processing units. Additionally, a stated aim of the GoI import of fish is to provide raw material for processing and re-export of fish products. As highlighted earlier, it is necessary to qualify the workforce participation in this processing activity. In the structural transfer of labour from small-scale fisheries to export-oriented processing sector, this process is not necessarily free in nature, and, the transfer is to low end, low paid conditions of work. Before any expansion of the work in these processing units takes place, it is crucial that measures are taken to ensure decent work and export patterns that do not base their competitiveness on the violation of the labour rights of a highly vulnerable workforce.

Additionally, traditional employment in small-scale fisheries is threatened by the expansion of industrial or organised forms of the same activity. This was the case with net making, where the entry of industrial nets displaced many fishworkers, proportionally more women who were traditionally in charge of this job. There is a threat from the entry of organised retail in fresh fish, which would displace the small fish vendors, most of them being women. As commented earlier, the options in front of those displaced of their traditional activities are grim. As most of these activities are unorganised, they are not properly accounted within employment statistics, and displacement is not recognised as creation of unemployment, and often ignored in an economic cost and benefit analysis.

d) Gender dynamics and international competition

While the social roles occupied by men and women within small-scale fisheries precede the integration of this sector into the world economy, the interaction between gender dynamics and international competition cannot be denied. Crucial instances are given below. Moreover, it should not be neglected due to the risk that this intense competition would increase and strengthen specific gender disparities.²⁶

Marketing for fish export induces bulk fish transfers, which can only take place between big players [Nayak 2007]. The capacity of women to market fish becomes limited owing to the fact that they are individual buyers and sellers of fish, with limited means to accumulate profit owing to their the subsistence nature of their fish trade. Also large amounts of credit required for such bulk transactions further reduces the opportunities available for women to participate in such transactions, already suffering from the lack of credit facilities, which excludes them from trade between states, without saying anything about their capacity to participate in exports.

The aquaculture sector also gives a comparable scenario, as discussed before. Though no numbers are available, based on observation it is striking that women are involved in traditional forms of aquaculture, but highly excluded from the (capital) intensive aquaculture industry [Nina Koshy, Personal Interview 2009].

In both these cases, one can see that reaching the export market means an increased need for capital, for all the economic actors engaged. Given that there is a gendered distribution

²⁶ While it is accepted that the relation between gender disparities and market competition has multiple facets and directions, we will not look here at how gender disparities can reduce the competitiveness of the sector on the international market.

of resources, which results in restricted access to capital for women, export orientation of production contains a risk of excluding women from sectors where they have traditionally played a central role.

Some researchers argue that since Indian export promotion benefits are available in many sectors in which women have a comparatively higher participation, Indian export policies can be said to be gender sensitive.²⁷ The definition of sectors where the women work force is higher than the national average is based on data that does not include the informal economy - which constitutes more than 90% of all workers. Fisheries, is one such sector. However, beyond a sex-desegregated consideration of the work force data, working conditions need to be considered, and gender dynamics and their interaction within the work sphere need to be understood. In the 'new' division of labour within modern industrial fisheries, men constitute the workforce within industrial fishing fleets, and the women work in export processing units. There is clear job segregation on gender lines in the sector, with a wage disparity between feminine work and masculine work – processing and fishing. There is also a consideration that the skills needed for performing a feminine work are not really skills, but natural features – women by nature have little fingers and hence women are faster at peeling prawns. Hence, patriarchal values do not disintegrate, but recreate themselves within industrial fisheries.

Patriarchy represents a phenomenon of systemic discrimination, i.e., it is a fundamental relationship of power within society. This can be witnessed in indicators such as wage rate, patterns of employment, all of which are due to a naturalized relationship within that society between a kind of work and the sex of the worker. These indicators also represent areas where an entrepreneur pro-actively seeks to establish comparative advantage. Hence, in a fish-processing export unit, exporters build their comparative advantage on the fact that like traditional fisheries, women performed processing activities; hence, they must naturally do so in industrial fisheries. The nature of work within a processing unit, for a single worker is portrayed to be unskilled within the whole global value chain, which 'justifies' the low wages. In fact, the processing unit workers represent the bottom 'invisible' end of the global value chain, with deplorable work conditions.

In such a scenario, gender sensitive export policies need to ensure an alternative source of competitiveness for exporters, as well as impede the use of patriarchal work discrimination as a source of competitiveness on the international market.

²⁷ Gender sensitive: when the state of knowledge of the socially constructed differences between men and women, and their needs, is used to identify and understand the problems arising from these differences and to further act tangibly and in empathy with their problems and needs. For the definition of other related concepts, see Commonwealth Secretariat, Gender and Trade website: <http://www.genderandtrade.org/>

IV INDIAN FISHERIES AND POLICY: AN OVERVIEW

1) Domestic policies impacting small-scale fishworkers

a) Background

The Seventh Schedule of the Indian Constitution demarcates subjects under the Union List, Concurrent List and the State List. Fish production from the 'deep sea'²⁸ as well as major fishing harbours, fishing vessel industry, seafood export trade, and marine and inland research and training are on the Union List, which makes them the responsibility of the Union Government giving the Indian Parliament exclusive power to make laws with respect to any of these matters.

Inland fisheries, aquaculture and marine fisheries in the territorial waters - the marine space up to 12 nautical miles from the baseline - are on the State List, hence under the jurisdiction of the State Governments. The Union Government, however, also advises States on enactment of legislation for fisheries under their jurisdiction. The *State Marine Fisheries Regulation Acts* are based on this advisory role of the Union Government. There are also several Central Government schemes for fish production and fishers' welfare that are implemented by the State Fisheries Departments [ICSF 2005].

However, one specific qualification is needed to be made regarding these distinctions: fish as a living resource are constantly migrating from the contiguous zone – area adjacent to the territorial waters up to 24 nautical miles from the baseline - to the inshore waters, which governs the movement of traditional small-scale fisheries who move beyond the territorial waters to fish. And, due to the historical depletion of resources in the territorial waters, a large amount of fishing activity, both in the traditional sector and modern industrial fishing sector is done outside the territorial waters- creating a condition where traditional communities, seen to be under the jurisdiction of state schemes, are fishing in union waters.

The *Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976* is a legislation that demarcates the role of the Union Government in determining the utilization of the resources within the EEZ. According to this Act, the Union has "Sovereign rights for the purpose of exploration, exploitation, conservation and management of the natural resources, both living and non-living as well as for producing energy from tides, winds and currents". Section 15 (c) of the Constitution further gives powers to the Central Government to make rules, *inter alia*, for conservation and management of the living resources of the EEZ, and Section 15 (e), for the protection of the marine environment.

The *Marine Fisheries (Regulation of Fishing by Foreign Vessels) Act, 1981* regulates the entry of foreign fishing vessels in the EEZ, and requires the licensing of vessels and permits for

²⁸ Also called Exclusive Economic Zone (EEZ), it refers to the marine space beyond the 12-nautical mile territorial waters up to 200 nautical miles from the baseline. This is equivalent to the marine space between 22 and 370 km from the coastal baseline.

the company concerned. The notification of 14th December 2006 of the Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture states: "In case of joint venture with foreign equity collaboration, an Indian company has to produce evidence of at least 51% Indian equity." Foreign Companies are not allowed to hold majority stake in a joint venture and they cannot access the Indian EEZ without entering into a joint venture with an Indian company.

b) Regulation of marine resources utilisation

In light of these qualifications, it is important to review the *Comprehensive Marine Fishing Policy 2004* and the *Marine Fisheries (Regulation and Management) Bill 2009*, both of which are central policy documents, which envisage an active role of the Union Government in determining the utilization of fisheries resources in India.

The Comprehensive Marine Fisheries Policy 2004 states its objectives as follows:

- 1) To augment marine fish production of the country up to the sustainable level in a responsible manner so as to boost export of seafood from the country and also to increase per capita fish protein intake of the masses;
- 2) To ensure socio-economic security of the artisanal fisherman whose livelihood solely depends on this vocation;
- 3) To ensure sustainable development of marine fisheries with due concern for the ecological integrity and bio-diversity.

It is amply clear that the increase in fish production to boost export production is a primary concern, followed by the token mention of increasing fish protein intake for the masses, livelihood and sustainable development concerns. A strong criticism of a purely export-oriented fisheries is hinged on the reality that on setting upon a sea-food export path, the fish production in a country shifts to certain high-value fish which are the need of the hour in a global sea-food supply chain, and don't necessarily cater to the low-value species that constitute the nutritional requirements of most of the fish-eaters in the third world. Additionally, this also creates condition for intensive monoculture focusing on high-value species, which apart from shifting the focus from traditional aquaculture, also, places great pressure on land availability - indirectly affecting agricultural food security.

The *Comprehensive Marine Fisheries Policy* also states: "even though substantial assistance was channeled through Central and Centrally Sponsored Schemes in to the States/UTs (Union Territories) for the development of coastal fisheries, non-existence of an integrated policy for this sector was found to hamper fulfillment of the national objectives." It is adequately clear that the notion of national objective is geared towards earning foreign exchange through export-oriented fisheries.

This stress on an integrated fisheries policy is of grave concern. The basis for such an integration of fisheries policy under one national policy framework intends to bring various states to comply with the national objectives of the Union Government. As a political intervention this is misguided, as the Union Government is consistently pursuing objectives, which are in line with increased export-orientation and foreign investment, along with a series of Free Trade Agreement negotiations.

The Marine Fisheries (Regulation and Management) Bill 2009 attempts to harmonize the fisheries regulation in the EEZ, by equally treating smaller vessels with larger vessels,

defining fishing vessels as: “any sailing vessel, whether or not fitted with mechanical means of propulsion, which is capable of undertaking fishing. The term ‘fishing vessel’ includes ‘foreign fishing vessel’ and ‘Indian fishing vessel’”, and does not provide for a *differentiation between the size of the fishing vessel or its fishing history*. It states that any vessel that endeavours to fish in the EEZ must be registered with a nodal agency of the central government. And, if it is not then severe punishment will be enforced. The basis of this act is to regulate the fishing activity in the EEZ and to protect the marine resources available there. In this light, the Bill, in its present form, conveys a message that smaller vessels are meant for territorial waters, and only larger vessels can fish the EEZ [Thomas Kocherry, Personal communications]. And, it fails to include provisions to “ensure access to fisheries by small-scale and artisanal fisher and women fishworkers, as well as indigenous people”, as provided by the 1995 United Nations Fish Stock Agreement, of which India is a signatory (Article 24 (b)). This belies the reality that practices by the traditional small-scale fishworkers are in no way a threat to the marine environment, and, in fact, the condition of extension of traditional small-scale fishing operations in the EEZ has been due to the shortage in supply within the territorial waters, due to sustained indiscriminate fishing by larger vessels in these waters. In fact, the bill merely aims to create greater opportunities for large-scale fishing activities at the expense of small-scale fishing activities. Also, the creation of a proposed Central Government regulating authority, under this bill, seeks to concentrate control in the hands of the Union Government.

In the case of States such as Kerala, whose government has consistently opposed such policy manoeuvres, this leaves lesser space to pursuit an independent fisheries policy that adequately looks into the needs of the traditional small-scale fisheries sector of the state. In fact, the compliance to Central Policies would buttress the consistent argument throughout the paper that the Union Government is legitimising its policy inclinations through a vast number of legislations that seek to erode the basis of a socially determined policy framework.

c) Coastal Regulation Zone Notification

The Coastal Regulation Zone (CRZ) Notification 1991 provides for regulation of all activities within the coastal regions. The demarcation of the CRZ areas are “the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the high tide-line and the land between the low tide-line and the high tide-line”.²⁹

The list of development activities that are prohibited within CRZs have consistently changed since the notification in 1991. The current list of exceptions to development activities in the CRZ include:³⁰

²⁹ The High Tide Line means the line on the land upto which the highest water line reaches during the spring tide.

³⁰ Exceptions are required to meet environmental clearances from the Ministry of Environment and Forests. In the face of these regulations, the area between the low-tide line and the high-tide line shall have not construction, except “facilities for carrying treated effluents and waste water discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification”. In addition, construction of dispensaries, schools etc. shall be permitted, as long as the area does not constitute an ecologically fragile zone. The zone 200 metres beyond the high-tide line shall be a ‘no development zone’ except for repair of authorised structures as mentioned in the regulation. The area between 200 to 500 metres of the high tide line will be permitted for construction of buildings, especially beach resorts and hotels, subject to varying conditions regarding usage of ground water, permission of FSI, height of buildings etc.

- Activities directly related to water front or directly needing foreshore facilities;
- Projects of Department of Atomic Energy;
- Non-polluting industries in the field of information technology and other service industries in Special Economic Zones (SEZ);
- Setting up and expansion of fish processing and warehousing facilities;
- Land reclamation for construction or modernisation or expansion of ports, harbours, jetties, wharves, quays, slipways, bridges and sea-links and for other facilities that are essential for activities permissible under the notification or for control of coastal erosion and maintenance or clearing of water ways, channels and ports or for prevention of sandbars or for tidal regulators, storm water drains or for structures for prevention of salinity ingress and sweet water recharge;
- Extraction of minerals not found outside the CRZ, and oil and natural gas exploration and extraction;
- Drawing of ground water, if no other source of water is available, with certain limits on what can be taken.

**Box 2: The four zones of the
Coastal Regulation Zone Notification**

CRZ-I: (a) Ecologically sensitive areas; (b) Areas falling between the low tide-line and the high tide-line; (c) Areas likely to be inundated due to sea level rise due to global warming and such other areas as may be declared by the concerned authority (Central/State/UT).

CRZ-II: Areas that are already developed up to and close to the shoreline - "developed area" is that which falls within the municipal limits or in other legally designated urban areas

CRZ-III: Relatively undisturbed areas that do not belong to either I or II. This will include coastal zone in rural areas, areas within municipal limits, and in other legally designated urban areas which are not substantially built up.

CRZ-IV: Coastal stretches in Andaman & Nicobar, Lakshadweep and small islands, except those designated as CRZ-I, II, or III.

Source: CRZ Notification 1991

The landward side of the high-tide line is open to construction activities, and the regulation of these activities has been lax. A recent spurt in real-estate activities, along sea fronts, all violate the necessary norms of the coastal regulation zone. In the case of Harvesting of Marine Resources, the Comprehensive Marine policy reads, "The policy advocates protection, consideration and encouragement of subsistence level fishermen and technology transfer to small-scale sector and infrastructure support to industrial sector". The policy also reads, "Deep-Sea Vessels would be provided with infrastructure

support in terms of landing and berthing facilities. The vessels, which are landing quality fish for export would be provided with suitable incentive as in other export oriented agri-ventures.” The basis for infrastructure provision to the Industrial Sector requires large tracts of coastal land being taken, implying possible displacement for fishing communities. Especially as basic roads and transport facilities are already available to these fishing communities, and building larger ports and processing facilities near or over these villages would reduce the cost of basic infrastructure.

The Coastal Regulation zone, especially, with the amendment S.O.550(E) dated 21.5.02 allowing Special Economic Zones to constitute an exception to prohibited activities depicts the widespread spaces available for corporate interests to actively intervene in the fishing sector.³¹ The minimum land that is allocated for SEZs, except IT and handicraft SEZs, is 100 hectares. This represents a direct displacement, especially in the case of coastal land that will be acquired for ports and other economic activities such as processing and tourism. Additionally, there is no provision that prevents purchase of such land, except, the need for an environment clearance and compliance with the CRZ notification. While, protection of fishworkers customary rights to fish is seen as paramount, access to the waters for foreign fleets integrated with a shoreline processing and landing facility would spell doom for the traditional fishworkers.

d) Traditional Coastal and Marine Fisherfolk Bill

The small-scale fishworkers under the aegis of the NFF have stated their demand to the government for a law that would recognise fishing communities’ rights – on the lines of the Forest Rights Act. The core rationale is that natural resources (the forests, the sea) are best taken care of in a sustainable way - collectively and by the communities that depend on them for their livelihoods - as opposed to management and conservation based on a perspective based on profit. For this to be possible, the collective right of the communities over the resource has to be recognised and handed over. A proposed *Traditional Coastal and Marine Fisherfolk (Protection of Rights) Bill* has been in circulation over last few months. It envisages a protection of rights of fisherfolks through “right of ownership and access to (coastal) areas, right to hold and live in the coastal areas under the individual or common occupation for habitation or for fishing for livelihood by a member or members of such family, right to protect, regenerate or conserve or manage any community resource which they have been traditionally protecting and conserving for sustainable use.”³²

However, this seems contradictory to the policy framework in fisheries depicted above, which wishes to ensure foreign currency earnings through export of seafood and entry of foreign investments. A conflict can be seen, for example, with the CRZ Notification, which allows for the construction of ports and SEZs on coastal lands. In such a case, does the right of the fishworkers hold precedence over the respective port authority or SEZ developers’ right to access that coastal land? To a great extent, it will depend on ‘who decides’.

³¹ Special Economic Zones are duty-free zones with a premium given for investment and increase in export-led production.

³² Based on Traditional Coastal and Marine Fisherfolk (Protection of Rights) Bill Chapter II, Section 3(1) 2009, as per the draft communicated by the Ministry.

At the national level, the tension can be felt between the national objective of foreign currency earnings on the one side, and food for the masses, fishworkers livelihoods and sustainable development on the other side. The task of recognising and granting traditional fisherfolk's rights is already difficult in this national context. It is important to ensure that other countries national objectives do not create additional barriers to this task. As an instance, the bill under discussion could be interpreted as violation of a core principle of the international trading system, the non-discrimination principle,³³ as preference is given to specific communities against other economic actors on non-economic grounds, and the effect of which can be an impediment international trade.

2) India's international commitments on fisheries

India is signatory to several international treaties which are relevant for fisheries and trade in fisheries products, the major ones are introduced below. The United Nations (UN) and the World Trade Organisation (WTO) are the main fora that set the international legal and policy frameworks for the same. The WTO provides the institutional structure and legal basis for international trade liberalisation, the UN provides the legal basis for the sustainable development and management of fisheries resources [CFFA, 2006]. This potentially brings the conservation instruments of the UN and the trade liberalisation process of the WTO into conflict, as the Swordfish dispute between the EU and Chile illustrates [CFFA, 2006].

Box 3: The Swordfish dispute

In November 2000, the EU brought a complaint to the WTO against Chile for closing its ports to EU vessels fishing in international waters. Chile responded by challenging the EU under the conservation provision of the UN Convention on the Law of the Sea. This created the possibility of contradictory conclusions being reached by the WTO Dispute settlement panel and the International Tribunal of the Law of the Sea. This could have made evident incompatibilities between both frameworks, and between their trust areas: trade liberalisation and sea resources conservation. Conveniently, after intense negotiations, an amicable arrangement was achieved between the EU and Chile on 25th January 2001, which was highly welcomed by the EU, despite the limited gains for the economic giant.³⁴

³³ According to the WTO website, the basic principles of the WTO are: 1. Trade without discrimination - Most-favoured-nation (MFN): treating economic actors from other countries equally, and National treatment: Treating foreign and locals' economic actors equally; 2. Freer trade: as gradually opening market; 3. Predictability: through binding commitments and transparency; 4. Promoting competition - through a system of rules dedicated to open, fair and undistorted competition; 5. Encouraging development and neo-liberal economic reform (the Doha Development Agenda was an intent to bring development in the WTO Agenda, as it was nowhere to be seen). For more on the WTO and fisheries, see section IV. 2.d

³⁴ While the EU complaint was based on Chile closing its ports to the EU vessels, only one of the three pillars of the arrangement address this issue. The arrangement provides for Chile opening the access to 3 of its ports to the EU, with a limitation on the amount of vessels able to access and a cap on the volume of fish to be landed. See EU and Chile reach an amicable settlement to end WTO/ITLOS swordfish dispute, Brussels, January 25th, 2001 (IP/01/116).

a) The United Nations Convention on the Law of the Sea

In 1982, the third United Nations (UN) Conference on the Law of the Sea concluded the United Nations Convention on the Law of the Sea (UNCLOS), which came into force on 16 November 1994.³⁵ It defines the rights and responsibilities of nations in their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources. UNCLOS established coastal states sovereignty over their territorial sea, which they can establish up to a limit of 12 nautical miles, and their sovereign rights in a 200-nautical-mile Exclusive Economic Zone (EEZ) with respect to natural resources and certain economic activities. This new legal regime gave coastal States rights and responsibilities for the management and use of fishery resources within their EEZs, which includes about 90% of the world's marine fisheries [FAO website, CCRF].

The Exclusive Economic Zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention (Article 55, Part V, UNCLOS)

UNCLOS requires coastal States to ensure, through proper conservation and management measures, that the maintenance of the living resources in the EEZ is not endangered by overexploitation. It also asks States to take into account relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, while taking measures to conserve and manage the living resources of the EEZ (Article 61).

It further provides that, where there is a surplus of marine living resources, i.e. a State does not have the capacity to harvest the entire allowable catch; it shall give access to other States to the surplus of allowable catch in its EEZ (Article 62 (2)) through agreements or arrangements. However, the concerned State shall, in this process, take into account all relevant factors, including the significance of the living resources of the area to the local economy, and the need to minimize economic dislocation in places where locals have habitually fished in the zone (Article 62 (3)).

Article 62 (4) obliges foreign nationals fishing in the EEZ of a State to comply with conservation measures and with the other terms and conditions established in the laws and regulations of the concerned State. Conditions placed may include, among other things, licensing of fishermen, fishing vessels and equipment; determining the species and fixing quotas; regulating harvesting seasons, areas and methods; laying down the terms and conditions for joint ventures; requiring the catch to be landed in the ports of the coastal State; and specifying the information to be submitted.

The coming into force of UNCLOS meant that all unauthorized vessels fishing in other countries' EEZs were doing so illegally. Several of the Distant water fishing Nations

³⁵ India signed and ratified the Convention on 29th June 1995. According to groups working on fisheries, UNCLOS is now regarded as a codification of the Customary International Law on the issue (The Fisheries Secretariat, www.fishsec.org).

(especially Japan, the EU and the US) sought to sign fisheries agreements with coastal and island countries where their fleets had already been operating, or in waters considered to have high potential for capture of target fish species. Under the United Nations Convention on the Law of the Sea (UNCLOS), there are provisions for a country to share surplus resources (total allowable catch) they do not have the means to exploit. India has not declared surplus in its resources, and has not signed fishing agreements with distant water fishing Nations. In fact, even if not required by the UNCLOS provisions, India allows foreign fishing vessels in its EEZ through joint ventures with Indian companies, based on a Letter of Permission system, under the supervision of the Ministry of Agriculture.

b) Food and Agriculture Organisation Code of Conduct for Responsible Fisheries

The end of the 80s saw the realization that fisheries resources are finite and hence cannot sustain rapid and uncontrolled exploitation and development. Also, there were signs of overexploitation of fish stocks, ecosystem modifications, significant economic losses, conflicts on management and fish trade threatening long-term sustainability of fisheries and contribution of fisheries to food supply. At the same time, there was an agreement on the need to maintain fisheries and aquaculture as a vital source of food, employment, recreation, trade and economic well being of people, including future generations [FAO CCRF, 1995]. As a result, the beginning of the 90s saw several conferences and initiatives towards responsible and sustainable fisheries.³⁶ The Code of Conduct for Responsible Fisheries (here after, the Code) was unanimously adopted on 31 October 1995 by the Food and Agriculture Organization (FAO) Conference.

World fisheries have become a market-driven, dynamically developing sector of the food industry and coastal States have striven to take advantage of their new opportunities by investing in modern fishing fleets and processing factories in response to growing international demand for fish and fishery products. By the late 1980s it became clear, however, that fisheries resources could no longer sustain such rapid and often uncontrolled exploitation and development, and that new approaches to fisheries management embracing conservation and environmental considerations were urgently needed (Preface, CCRF).

The Code is voluntary (there is no system to force its implementation) and provides principles and standards applicable to the conservation, management and development of all fisheries.³⁷ It covers the capture, processing and trade of fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management (Article 1.3). This comprehensive document describes how fisheries should be managed responsibly, and how fishing operations themselves should be conducted. Technical guidelines have then been developed in support of its

³⁶ In March 1991, the Committee on Fisheries (COFI), in 1992, the International Conference on Responsible Fishing, in Cancun (Mexico), in November 1993, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas was adopted by the FAO.

³⁷ Governments, in cooperation with their industries and fishing communities, have the responsibility to implement the Code, but this is not mandatory [FAO 2001]. For more information on the functioning of the Code, see: <http://www.apfic.org/modules/xfsection/index.php?category=2>

implementation.³⁸ It also provides for International Plans of Action (IPOAs) to be developed within its framework.³⁹

The Code has a section on Post harvest practices and trade, including Responsible International Trade. It is stated that “International trade in fish and fishery products should not compromise the sustainable development of fisheries and responsible utilization of living aquatic resources” (11.2.2). It adds that relevant international organizations should ensure that “...their policies and practices related to the promotion of international fish trade and export production do not result in environmental degradation or adversely impact the nutritional rights and needs of people for whom fish is critical to their health and well being...” (11.2.15).

The Code states that “the provisions of this Code should be interpreted and applied in accordance with the principles, rights and obligations established in the [WTO] Agreement” (11.2.1). This is regarding “trade in fish and fishery products” and trade liberalization through the elimination of “barriers and distortions to trade such as duties, quotas and non-tariff barriers” (11.2.5). There is no mention of fisheries or fishing related services or investments. This is worth noting as the WTO also includes an agreement on services, which includes fisheries, trade related investments alongwith an ongoing discussion on fisheries subsidies in the WTO (see below).

The Code also provides that “States should encourage the use of fish for human consumption” (11.1.9) and “cooperate in order to facilitate the production of value-added products by developing countries” (11.1.10).

While this Code provides a comprehensive framework towards responsible fisheries, its implementation depends on the Indian Government, as it has to incorporate its principles and goals into domestic policies and legislations. The onus to ensure that existing domestic policies, laws and regulations are compatible with the Code and that new ones are consistent with it, is on the Government. And, as per the Code, to ensure that there is support for these policies and legislative changes, the Government has to consult with small-scale fishworkers and other groups to promote their support and voluntary compliance.

Despite the Code being 15 years old, the Government of India does not refer to it during fisheries related policy making. A 2006 paper, estimating the compliance of India’s fisheries with Article 7 (Fisheries Management) of the Code shows an overall low level of compliance [Varkey et al, 2006]. This, in effect, shows the reticence of the Indian Government to comply with legal principles that locate ‘human consumption and nutritional needs’, ‘livelihood protection’ and ‘environmental impact’ as necessary conditions forming the basis of any seafood trade. In contrast, instruments that promote further accumulation of profit at the expense of low-end consumers, traditional fishing communities and the coastal ecosystem are seen as legitimate necessary conditions.

³⁸ The technical guidelines provide more specific technical detail and guidance on the articles of the Code. For details on technical guidelines, see: <http://www.apfic.org/modules/xfsection/article.php?articleid=18>

³⁹ Four IPOAs have been created under the Code: IPOA for the conservation & management of sharks, IPOA to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing, International Plan of Action for the Management of Fishing Capacity, IPOA reducing incidental catch of seabirds in longline fisheries. For details on IPOA, see: <http://www.apfic.org/modules/xfsection/article.php?articleid=6>

c) International Labour Organisation Work in Fishing Convention

The conditions of fishworkers in sea-based fishing operations are protected under the ILO Work in Fishing Convention, 2007. It seeks for countries to provide national legislations that ensure comprehensive social security to fishworkers (health care, employment benefits, leave etc.), safe working conditions, non-employment of underage persons, and non-discrimination in terms of these social security measures vis-à-vis other sectors [NFF 2008].

However, it has been noted that the condition for all provisions of the work convention is a vessel that is 24 metres in length or over, fishing operations that last at least seven days, and vessels traversing beyond national waters [Mathew 2007]. In such cases, it excludes both traditional fishworkers, and fishworkers who work in onshore processing facilities. The NFF demands clearly ask the Government of India to enhance the spirit of this convention by ensuring “that all categories of fishers, including shore-based fishers, are covered by provisions of occupational health and safety, and social security [NFF 2008].

In light of this, a very important aspect of nomenclature and definitional bias is revealed. A Work in Fishing Convention of the International Labour Organization clearly perceives the fishing operations – exclusively operated by men - as constitutive of fishwork, while ignoring in shore-based traditional activities, traditional processing activities, modern processing industries and marketing activities – mainly operated by women. The conditions for women in these spheres are deplorable, and yet, male-centred fishwork being used as the basis for fishworkers rights reflects the constituent bias in recognizing women’s work as legitimate and worthy of social and economic security by respective Governments.

d) Fisheries in the World Trade Organisation

The World Trade Organisation agreements set the rules for international trade, including fisheries.⁴⁰ The WTO includes agreements on the modalities to reduce or eliminate tariffs in order to increase market access for imports. Fish and fish products are considered as part of non-agricultural product, which are under the NAMA agreement (Non-Agricultural Market Access).⁴¹ Within NAMA, Fisheries is also one of the 14 sectors proposed for the so-called “sectoral discussions”. “Sectorals” are initiatives (proposed by a member country) under which participating countries would enforce major tariff cuts on entire industrial sectors. Norway has made a proposal for the fisheries sector, aiming at a final tariff rate of zero for Fish and fish products, for 90% of world trade. Under the mandate for the Doha talks, participation in sectoral deals is voluntary, but industrialized countries, including USA, Canada and Japan, are strongly encouraging major markets, including India, to take part in at least two out of the 14 discussions. India has objected to this condition, as it erodes the voluntary nature of the deals. The exact terms of tariff reduction

⁴⁰ For more information on India’s accession to the WTO, see J. M. (1992).

⁴¹ During the Uruguay Round of negotiations, which lead to the formation of the WTO, fish and fish products were first included in the Negotiation Group of Natural Resources-based Products (together with wood, coal, among others) and then became part of the Agriculture Negotiation Group. However, this group was not able to achieve an agreement on the issues of tariffication, non-tariff barriers and access to resources / trade in fishing services, and in consequence fish and fish products were excluded from the Agreement on Agriculture, which is an outcome of this group, and is part of the Non-Agricultural Market Access Agreement [Kurien 2006].

have not been finalised as yet, but proposals on the table imply massive cuts for the fisheries sector.

According to the WTO, member countries have the right to take measures necessary for the protection of human, animal or plant life or health (Agreement on the Application of Sanitary and Phytosanitary Measures, SPS). This is the section of the WTO that is in charge of regulating the human health standards imposed on imports, including import of fish, as well as the protection of sea animals, including fishes themselves. The WTO has been clear in its recognition of importing countries right to set high health standards on food imports, and defend this right. But it is not clear that the WTO can offer a suitable forum to protect animal life from excessive trade.

Since 2001, the WTO is working to “clarify and improve WTO disciplines on fisheries subsidies”, as part of the Negotiating Group on Rules.⁴² The proposed rules seek to stop all forms of government support for development of fisheries, including creating infrastructure facilities, offshore and onshore, modernisation, and expansion of processing systems. This includes stopping specific state support to artisan and small-scale fishermen [Anonymous, 2008]. The discussion on subsidies also impact government payments of compensation for companies fishing access, as part of Fishing Agreements between Distant water fleet nations and Coastal States. These have been considered as subsidies and distant water fleet Nations might need to change their approach to fishing agreements to avoid being challenged at the WTO (see section V.2.b). In February 2010, India, along with Brazil, China and Mexico, submitted a proposal on WTO rules on fisheries subsidies (TN/RL/GEN/163). While the submission focuses on issues related to special and differential treatment for developing countries and traditional fisheries, the submitting parties have made clear that this does not mean an acceptance of the other articles of the proposed rules.

⁴² For a discussion on the discussion on subsidies in the WTO and its implications for the fisheries sector, see [Kurien 2006]. For more details on the negotiations, see ICSF website, under Fisheries legal Instruments: <http://legal.icsf.net/icsflegal/ControllerServlet?handler=theme&code=viewTheme&id=20#>

V EU-INDIA FTA AND FISHERIES

1) India's Free Trade Agreements

Traditional fisheries have survived the challenges of a predominantly export-oriented modern fisheries sector on two counts first, by virtue of their flexibility and ability to cope with larger transformations second, the fishworkers movements and their constant engagement with the state. The state has acted as a good check on the policy regime, however, with the advent of the structural adjustment programs, a constant feature has been pressure from international institutions to facilitate the liberalisation of the economy. A concurrent feature in fisheries has been the need to create a favourable policy environment, through changes in state legislation and policy, for the entry and sustenance of these very corporate interests in the developing world. One instrument of this process has been the WTO and its international agreements.

Autonomous liberalisation implies that a Government decides to implement policies aiming for a greater integration in global trade based on its internal decision making process. In contrast, liberalisation through international agreements – multilateral as in the WTO, bilateral or plurilateral when engaging two or a group of countries – means that the decision making process is beyond domestic policy. Trade policy through international trade agreements implies that the decision made in negotiation with other countries or institutions becomes a binding commitment that needs to be fulfilled in the domestic sphere. In addition, WTO, as an institution, considers liberalisation – or “open trade” – as its “primary purpose”.⁴³ This means that while autonomous policy making allows for protectionist as well as liberal trade policies, the WTO aims to establish a framework for trade policies, which are exclusively neo-liberal.

However, the WTO has faced some limitations in providing a completely conducive environment for the expansion of the exploitative interests of corporate capital. Hence, an alternative instrument has become the fashion of the day, the Free Trade Agreements (FTAs).⁴⁴ Like the WTO agreements, FTAs shape local policy from an exclusively neo-liberal perspective and have a definite orientation towards corporate access to the resources of a country, as well as access to the markets within that country. FTAs are legally binding agreements between two trading partners (between a regional bloc like the European Union and India for example, or between two countries like Japan and India). They can be between developed and developing countries (N-S FTAs) and between developing countries themselves (S-S FTAs). Today's FTAs differ from the older preferential trade agreements in terms of demands:⁴⁵

⁴³ See WTO website: http://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm

⁴⁴ These have been given several names, from Comprehensive Economic Partnership Agreement (CEPA), Regional Trade and Investment Agreement (RTIA) or, as we will use it here, Free Trade Agreements or FTAs.

⁴⁵ Delhi has signed Preferential Trade Agreements (PTAs) - which provide for the reduction of tariffs of an agreed (short) list of items to a lower rate - with countries/blocs including Afghanistan (signed in 2003), Bangladesh (1980), Bhutan (1972), Maldives (1981), Nepal (1992), Chile (2005), and Mercosur (2004). We do not count PTAs as FTAs as they have a different impact on the trade policy framework of a country. This is as they are restricted in their scope and sector or goods specific - this results in a lower level of commitment.

- Massive reductions in customs duties on a large number of products in a relatively short amount of time, and include agriculture. This is known as “trade in goods;”
- S-S FTAs, cover trade in goods, but also trade in services and investments;
- N-S FTAs, go beyond trade in goods to areas that significantly impact domestic laws and policies;
- These areas that are not strictly trade-related include: intellectual property, trade in services, rules on investment, government procurement (purchase of goods and services by the government), and competition policy. Many of these rules are not even part of the WTO;⁴⁶
- FTAs rules are designed from the perspective of large and powerful company’s economic interest, and not from a small producer, worker and micro, small and medium enterprise perspective. Hence, they fail to address their issues in relation to trade;
- Rather than providing “preferential” treatment between unequal economic partners, FTAs are usually negotiated on the basis of “reciprocity”, meaning that each party has to make more or less (time frame for implementation and exceptions are often different) equal concessions to each other.

Since close to a decade, the Government of India (GoI) has been pursuing the conclusion of FTAs with various economic partners around the world. By August 2009 India had signed 6 FTAs and was at various stages of talk for at least 17 more.⁴⁷ India’s Foreign Trade Policy (FTP) 2009-2011 mentions FTAs as a key tool. The core idea is removing poverty through greater economic activity with a long-standing commitment to a strategy of export promotion. In the wake of the economic crisis, the document stresses the need to diversify its market, especially towards Southern countries, and FTAs are a key component of this market expansion policy.

Interestingly, the GoI is still actively negotiating various FTAs with Northern countries, including with the EU. Representatives of Indian businesses and research community, especially those that see the multilateral arena as a much better forum to ensure market access, argue that FTAs are also a geopolitical tool for the GoI foreign affairs policy. It might well be that India’s interest in the EU-India FTA is motivated by strong geopolitical interests.

⁴⁶ For a systematic study of areas covered by EU and USA FTAs in comparison with WTO coverage, see Horn, H., Mavroidis, P.C. and Sapir, A. (2009).

⁴⁷ The GoI has signed limited FTAs - limited to goods and which are to be expanded to services and investments - with Sri Lanka (1998), Thailand (2003) and ASEAN (August 2009). In June 2005, the government signed a FTA with Singapore and in August 2009 with South Korea, both full-fledged FTAs. Currently, bilateral FTA negotiations are ongoing with the GCC (Gulf Cooperation Council), and in the last two years India started FTA talks with industrialised powerhouses Japan, European Free Trade Association (EFTA) and the European Union (EU). The Commerce Ministry is also in various stages of considering talks with Australia, Chile, China, Colombia, Egypt, Hong Kong, Israel, New Zealand, Russia, SACU (Southern African Customs Union), Uruguay, and Venezuela. India is also part of two very different regional agreements: the South Asia FTA, SAFTA, signed in 2004, but whose implementation has largely been a failure, and the Asia Pacific Trade Agreement signed in 1975, APTA, which is based on exchange of specific trade preferences and is under UN supervision. India’s business community is lobbying for an India-US FTA.

On the EU side, the European Commission economic strategy document, Global Europe, sets FTAs as part of the EU economic policy for global competitiveness enhancement. This paper sets three criteria for the EC to choose partner countries for FTAs, which puts in perspective India's relevance for the EU as an economic partner:

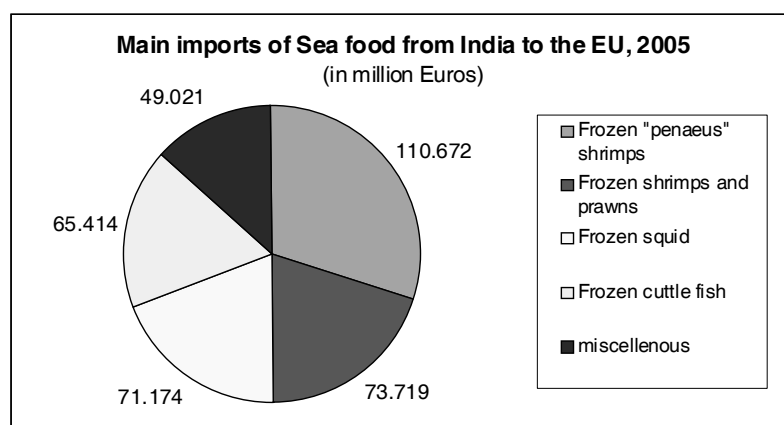
- Market size and growth rate;
- Level of protection against the EU;
- Potential partner's negotiations with EU competitors.

India ranks high by all criteria. It is clear that the EU interests in these negotiations are mainly economic interests. The difference in the perspective both partners have when entering in these negotiations is to be kept in mind.

2) The European Union and fisheries

a) Overview

With over 500 million citizens, the EU combined 27 member states generates an estimated 22% of the world's total economic output [Wikipedia: European Union].⁴⁸ It is also the largest exporter and importer of goods and services in the world, and India's biggest trading partner for fisheries products. The EU maintains common policies (i.e. common to all EU members) on trade, agriculture and fisheries, and regional development. In 2009, for the EU, "the most significant imported fish and fishery products in value terms were Pacific salmon, followed by frozen shrimps and canned tuna" [Directorate-General 2009].



Source: European Commissions 2007

In 2007, *Frozen shrimp and prawns* accounted for 21% of all EU imports of fish and fishery products. India was the second country of origin and accounts for 15% of frozen shrimp imported into the EU [European Commission website, Fisheries trade products].

⁴⁸ In 2008, EU GDP was estimated to US\$15.2 trillion, in purchasing power parity terms. The purchasing power rate equalizes the purchasing power of different currencies in their home countries for a given basket of goods. Using a PPP basis is arguably more useful when comparing differences in living standards on the whole between nations because PPP takes into account the relative cost of living and the inflation rates of different countries, rather than just a nominal gross domestic product (GDP) comparison.

According to its commitment at the WTO, the highest import duty rate that the EU can apply (also called most favoured nation - MFN duty rate) to frozen shrimp is 12%, and 20% for cooked and peeled shrimp (this is explained by the existence of a domestic industry for these products, mainly in Denmark). However, in 2004, in order to satisfy the need in raw material of the processing industry, the EU introduced a quota at 6% import duty rate for cooked and peeled shrimp, as part of a series of autonomous reduction of import duties. This quota is coupled with the proviso that the imported product must be destined for processing (the so-called “end-use requirement”) [European Commission website, Fisheries trade products]. The quota was subsequently increased.

The EU *tuna sector* includes a large fishing fleet (88 vessels, comprising 20% of the world fleet) as well as a significant canning industry.⁴⁹ Hence, tuna is a very sensitive commodity for the EU, essentially canned tuna and tuna loins (a semi-processed product for use in canning). To ensure an adequate supply of raw material to the Community processing industry, the Community has a) suspended tariffs on imports of unprocessed tuna destined for the sector, b) autonomously opened a quota at reduced import duty for tuna loins [European Commission website, Fisheries trade products]. This quota was increased every year since then. At the same time principal exporting countries of these products enjoy unlimited duty-free access to the Community market.

Salmon's share of total EU fish imports was almost 20% in 2007. The main EU supplier for Pacific salmon is Norway, and European markets are the main destination for Norwegian salmon exports [European Commission website, Fisheries trade products].

EU countries have a long history of subsidies, which also include changes in the nature of those subsidies. Subsidies resulted in capacity enhancement of the fishing fleet, as well as the development of fishing communities [Kurien 2006]. When enacted subsidies did lead to excessive capacity, strategies were evolved as part of the Common Fisheries Policy to reduce fishing effort in EU waters, resulting in new subsidies for decommissioning of vessels and access to fishing grounds in non-EU countries. These Fishing agreements helped boat owners get respite by obtaining licenses to fish in the other waters (this was in addition to access fees paid by the fleet operators). We will now briefly highlight possible EU interest in fisheries in the context of the negotiation of a FTA.

b) Access to foreign waters

The EU fishing fleet ranks amongst the largest of the world with 90,000 decked vessels (world total is 1.3 million). Around 80% of all species in EU territorial waters are overfished, which means that domestic waters do not have the capacity to absorb the EU distant water fleets [Kurien 1998]. As said earlier, with the entry into force of the UNCLOS, access to EEZs became regulated, restricting the access of the distant water fleets. Developed countries with established distant water fleets could not dismantle their fleet without significant economic and social consequences. In addition, government subsidies that are estimated at 15 to 20 billion US\$ per year, account for nearly 20% of revenues to the fishing industry worldwide, promoting excess fishing capacity and

⁴⁹ The sector is important, not only because of its long-standing tradition, but because it is a major source of employment and revenue, particularly in coastal communities where other employment opportunities may be limited.

encouraging overfishing. Part of this subsidy goes as financial compensation for fishing access [World Ocean Network 2009].

In the EU, Fishing agreements were driven by (1) the need to ensure continuity of fishing activities by EU vessels that were already in these distant waters at the time of enactment of UNCLOS (2) the desire to export overcapacity from EU waters to other regions with surplus stocks, especially after collapse of some fisheries in northern European waters [Mbithi Mwikya 2006]. Therefore, fishing agreements form an important means by which EU markets and processing plants are supplied with fish [Mbithi Mwikya 2006]. The discussion on subsidies at the WTO have questioned the legitimacy of the cash-for-access agreements, and forced the EU to revise its agreements.

“As a result of the fisheries subsidies negotiations at the WTO, there is a considerable risk that distant water fishing nation fiscal support for (...) access fees will be attacked by several important WTO members, on the grounds that it distorts the economics of fishing and leads to overcapacity and overfishing. As a result, there is a need to redesign access fee arrangements so that they become WTO compatible. The basic principle being that the access fee should be based upon the direct contribution of the fishing vessels themselves (and not from the government).” Roman Grynberg, Commonwealth Secretariat, cited in Gorez, 2003:11-12

Box 4: EU fishing agreements

Agreements with Financial Compensation: Grant fishing access into the partner EEZ to EU vessels against payment of financial compensation by the EU, and by private owners, but without receiving reciprocal access rights. Compensation amounts to about 2 to 17 % of the market value of the catch [IFREMER 1999]. These are also called cash-for-access agreements.

Second Generation Agreements: based on incentives for setting up joint ventures, which allow quota access to EU vessels in the EEZ of another country (only signed with Argentina). The weaknesses lie in the heavy subsidies in favour of EU distant water fleets. The agreement caused serious overcapacity issues, which led to the near collapse of lake fisheries in Argentina and the non-renewal of the deal.

Fisheries Partnership Agreements (FPAs): as components of the broader Economic Partnership Agreements, they intend to (1) Maintain European presence in distant EEZ and protect European fisheries sector interests. This seems to be necessitated mainly by the increasing competition between fleets from the Far East, the US and the EU in most major fishing grounds, and (2) Ensure EU fleets share of "sustainable" exploitation of fisheries resources.

Source: Mbithi Mwikya 2006

In consequence, the EU is now including Fishing Agreements in its Economic Partnership Agreements, under the name of Fisheries Partnership Agreements. However, the compatibility of EU FPAs with the WTO rules under negotiations might also be challenged, as there is still a financial compensation from the EU involved in the agreement [Gorez 2003]. FTAs are WTO compatible and offer a framework in which fishing access can be granted without financial compensation (see section V.3.a).

c) Access to raw materials

Around 60% of fish landed in the EU comes from outside its territorial waters. Fish caught outside EU waters is mainly destined for the fish processing industry in the EU. As the EU is dependent on imports of fish to supply its market and industries, it regularly reduces its import duties rate on major fish commodities autonomously, i.e. without it being part of any binding commitment with other countries. Also the EU is engaged in FTA negotiations with several countries, including ASEAN, which ensures diverse fish suppliers to its market. This diversity in suppliers and autonomous liberalisation erodes the advantages given by the EU to any one partner in the context of a FTA, while aiming at ensuring enough supply of raw material at a stable price.

In recent years, EU imports of semi-processed raw material, like tuna loins or peeled shrimp, have been increasing. This probably reflects an important cost saving, by importing raw material free of duty combined with decreased labour costs due to use of semi-processed raw material [European Commission website, Fisheries trade products]. It is also worth noting that, in some cases, a duty free access is provided for imports originating in a country in which EU companies have made significant investment, like for tuna [European Commission website, Fisheries trade products]. Investments in a fish resource-rich country are a way to ensure not only access to the resource, but also control over the production process. This becomes even more the case with highly integrated companies.

Fishmeal constitutes the single highest component of aquaculture fish production, including for salmon. Most of it is made out of small fish, which live in the surface water (pelagic fish), like sardine, mackerel, tuna, etc.

Both these fish varieties - pelagic and tuna fish - have been overfished in the EU waters, hence necessitating continued access to this raw material for the EU industry and market. This can be done through lowering quotas for imports, as is the case now, with the disadvantage that imports depend on the originating country's will to export these products. EU's own fleet accessing waters which are relatively less overfished, or EU's companies establishing themselves in other countries through the framework provided by an FTA, are possible options to ensure a constant access to raw material.

d) Favourable environment for EU companies' investments

Over the last 20 years there has been considerable consolidation in operations in the EU and northern fishing industry, leading to companies' covering the entire range of fish-related activities across the supply chain, from fishing, processing to retailing. The essence of these consolidated operations is an integration of all the allied activities within the fishing industry. This is practiced in India by seafood exporters, who sub-contract fishing

operations to certain vessels, and conduct the processing and packaging operations by themselves. European companies follow a similar practice, but on a larger scale, as they also own large fishing fleets, in addition to several shore-based processing, packaging and retail units. For instance, while Salmon's share in world trade has increased strongly over recent decades, there has been consolidation in the sector. In 2006, a merger in the Norwegian salmon industry created the world's largest salmon producer, Marin Harvest [IntraFish 2007]. Similarly, the aquaculture industry is dominated by a few vertically integrated companies, those from the EU being among the biggest [GRAIN 2009]. Pescanova, a Spanish firm, is one of the biggest players in aquaculture, expanding its activities world wide, including in India where it has for now, only set up a shipping company.

Consolidated foreign firms operating in the Indian fishing industry deal with several sectors (for instance, fishing, packaging, processing, exporting, or retailing), each of which have their own respective guidelines and regulations related to foreign investments. In such cases, the company would find it less lucrative to maintain integrated fishing operations. However, a condition where foreign investment regulations are relaxed and harmonized to facilitate foreign companies operations proves to be more suitable to the functioning of consolidated fishing companies.

Ensuring the deregulated entry and operation for its companies in other countries has been a long-standing effort of the EU. Within the WTO framework, despite the strong push by the EU and other developed nations, most countries of the Global South did not sign the limited agreement on trade related investments, also called TRIMS agreement. FTAs provide new opportunity of setting corporate friendly rules for the operations of foreign investments into lucrative markets.

3) EU-India FTA: Concerns from a Small-Scale Fisheries Perspective

In June 2007, the EU-appointed European Commission and the Government of India started negotiating a FTA.⁵⁰ Since then, nine rounds of negotiation have been held; the last one took place in Brussels, from April 28th to 30th, 2010, in secrecy, and was announced to be the last one before the signing of the FTA, in October 2010. More than two years after the start of negotiations, no negotiation document or official position has been made public. Civil society groups in Europe and India, including fishworkers unions, have raised concerns over the possible impacts of the expected terms of the deal, as well as the negotiating process itself.⁵¹

Since FTA negotiations are carried out under the garb of secrecy, one way for civil society groups to understand possible implications of the deal is to refer to previous FTAs, and look for a 'template'. As highlighted earlier, EU FTAs are relatively consistent in their

⁵⁰ During 6th India - EU Summit held in New Delhi, leaders decided to launch India EU Joint Action Plan for Strategic Partnership. Within the Joint Action Plan, a High Level Trade Group (HLTG) was set up and it was mandated to explore ways and means to deepen and widen bilateral trade and investment relationships. The HLTG was also tasked with examining the possibility of launching negotiations on a broad based Trade and Investment Agreement. In October, 2006, at the 7th India-EU Summit at Helsinki endorsed the report of the HLTG and decided to start negotiations for a comprehensive FTA. the report can be found on: http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_130306.pdf

⁵¹ For more information on Indian concerns, see: forumonftas.org and fta.icrindia.org

content, and a study shows that the EC-Chile Association Agreement (AA) is a fairly representative agreement in several sectors [Horn et al 2009], The observations that follow are based on the EC-Chile AA, also owing to the similarity in the relation between the EU on the one side and Chile and India on the other side:

- Relatively strong economies from the Global South;
- Long Distances between the two countries, hence, preventing the threat of possible uncontrolled migration into EU member countries;
- Large Coastlines and relatively rich fishing grounds.

The EU-Chile AA includes regulatory provisions on trade in goods at the border like tariff measures. Apart from these, they also have domestic regulations related to trade, also called non-tariff measures, regulations on trade in services, investment regulations (often under the name of “establishment”) including trans-border movement of capital, regulations on government activities, be it procedures for public purchases (government procurement), state trading companies activities (competition policies) and state aid, intellectual property rights regulations that impact medicines production, traditional knowledge and patenting of life forms, including seeds, among the most controversial provisions (see appendix for more details on content).

a) Foreign Vessels in Indian EEZs

The United Nations Convention on the Law of the Sea (UNCLOS) gives coastal States rights and responsibilities for the management and use of marine living resources within the areas under national jurisdiction, up to the EEZ. According to a 2006 public notice issued by the Ministry of Agriculture, Government of India (No. 21004/1/2006-Fy (Ind)), foreign equity collaboration for fishing in the Indian EEZ can be through holding up to 49% share capital in an Indian company, provided the foreign national or company is in joint venture with an Indian citizen or company.⁵² Letter of Permission (LOP) to fish in the Indian EEZ is issued to vessels under this notice. Fishworkers under the aegis of the National Fishworkers Federation are opposing the current LOP scheme, as the monitoring of operations of LOP vessels have not been effective and small-scale fisheries are competing with trawlers and foreign vessels for fishing grounds.⁵³

The EU-Chile AA has a section on establishment foreign direct investments and commercial presence of companies from the other party. This includes an article that provides for national treatment, e.g. EU investors and their companies having the same or better rights than Chilean investors and companies in Chile - and vice versa. The national treatment clause would prohibit limitation in equity share, number of economic operations, as well as a specific legal form of economic partnership (like joint ventures). This applies to all economic activities, including fishing. The exceptions to ‘national treatment’ are listed in a schedule of exceptions, which has a specific section on Fishing. The structure of the agreement between EU and India is similar, but the GoI has not made public what they are listing or not as exceptions to national treatment on establishment.

⁵² Only fishing vessels above 20 metres overall length would be considered. Permitted categories of fishing operations are: long lining for tuna, jigging for squid, and purse seining.

⁵³ According to a response to an application filled by NFF under the Right to Information Act, they are currently more than 700 applications for LOP pending with the government.

In the case of the Chile-EU FTA, Chile has mentioned as exception to national treatment on establishment that “only Chilean vessels are permitted to fish in interior waters, territorial sea and EEZ.” It also mentions the regime for “access to extractive industrial fishing activities”, “access to industrial fisheries activities” and mentions that “Chile retains the right to control the activities of foreign fishing, including fish landings, the first landing of fish processed at sea and access to Chilean ports.” If these would not be explicitly mentioned, EU companies would have free access to Chilean waters and ports for all the above-mentioned activities.⁵⁴

If the current restriction to foreign fishing vessels to access Indian EEZ and Indian ports are not explicitly included in the agreement (as exceptions to the national treatment clause), they will be invalidated for EU vessels. It is worth mentioning that the agreement provides for revision of the exceptions and promotes further liberalisation after signing the agreement. Hence, even these exceptions can be challenged over time. If this were the case, EU vessels would be allowed to operate in Indian waters, as well as land their catch in India, at par with Indian vessels. EU fishing companies have depleted the EU waters, and it can be expected that the entry of EU vessels into Indian water would create intense competition for fish stock and fishing ground.

b) Displacement of local fish vendors

The basis of a FTA is mutual market access, i.e., lower or no tariffs. This means an increase in imports of certain fish species, impacting local markets in terms of prices. In the case of the EU-India FTA, it has been mentioned that the EU made special requests to access duty-free import of fish, which are found in the Indian waters, and not in the European waters e.g.:- like *dara*, *hilsa* and *pomfret*. This presents a very strange situation- as in how can local fish found in Indian waters be exported by the EU to India! A possible explanation can be that the EU seeks to access the large market for fresh local species, including those mentioned above. They could capture these species either in the Exclusive Economic Zones of other countries to which they have access or the open seas. The present technological capacity of the EU vessels allows them to capture fish and prepare it for direct export to a recipient market. Hence, this would allow the EU fishing companies’ duty-free access to the Indian fresh fish markets, leading to direct competition with the local small-scale fishworkers. As discussed earlier, with the integration of processes within fisheries under one corporate banner,⁵⁵ there is a greater possibility that EU fleet captured fish will directly be sold to retail chains-, which currently are not in a

⁵⁴ In the case of EU-Chile FTA, there is also a ‘protocol on fishing enterprises’ - which would invalidate all the exceptions mentioned in the Chilean and EU schedule if it enters into force. The main trust areas of the EU-Chile protocol on fisheries enterprises are: (a) Ownership and control of fishing enterprises: authorizes EU companies to own a major stake in, and to control and manage, new or existing fishery enterprises in Chile, and authorize reciprocal rights for Chilean companies in EU member States; (b) Registration and operation of fishing vessels: entitle EU companies owning Chilean companies to apply for, register and operate fishing vessels in Chile under the same conditions as Chilean companies. Reciprocal rights apply to Chilean companies owning companies registered in EU member States; (c) Fishing permits: entitle EU companies to obtain fishing permits and their corresponding individual quotas (with reciprocal rights for Chilean companies); (d) Transfer of licenses and vessels: entitle EU companies to receive, by means of transfer, fishing authorizations and vessels under the same conditions as Chilean companies (with reciprocal rights for Chilean companies); (e) Reciprocity: establish the provisions for ensuring the fulfilment of the reciprocal aspects of the agreement.

⁵⁵ The case of *Pescanova*, as mentioned earlier.

position to sell fresh fish on a large scale. This situation will directly impact the small-scale woman fish vendors, whose sustenance is intrinsically linked to their ability to provide good-quality fresh fish to the consumer.

c) **Illegal, unreported and unregulated fishing**

In 2001, the FAO created a legal instrument on illegal, unreported and unregulated (IUU) fishing (FAO IPOA-IUU) designed to be a toolbox of measures to prevent illegal fishing activities.⁵⁶ The issue of illegal fishing is of serious and increasing concern, as it undermines efforts to conserve and manage fish stocks in all capture fisheries. According to ICSF, "IUU fishing, within and outside the EEZ, is known to have negative social and economic consequences for small-scale fishworkers, particularly in developing countries. Apart from the reduction in catches of the artisanal fleet as a result of activities of IUU fishing vessels, there are safety implications for the artisanal fleet as well."⁵⁷

In 2002 the European Commission adopted an Action Plan against IUU fishing said to be inspired by the FAO instrument, called the EC IUU Regulation,⁵⁸ but there are serious divergences between both instruments. The FAO instrument has a strong emphasis on national plans of action (Article 9.2.) and considers that these should "address all economic, social and environmental impacts of IUU fishing (Article 9.3.)," as well as the fact that "the full participation of stakeholders in combating IUU fishing, including industry, fishing communities, and non-governmental organizations, should be encouraged" (Article 9.1.). The EC instrument misses the central guidelines by sidelining the importance of national plans of action and the stakeholders' participation in elaborating and implementing the same. Instead it puts all its emphasis on imports control. While the FAO instrument provides that states should "prevent fish caught by vessels identified (...) to have been engaged in IUU fishing being traded or imported into their territories (Article 66)," the EC instrument provides to prohibit trade or import of fish which is not certified from verified origin through a system of catch or traceability certificate.

The EC is insisting on making the compliance to the EC instrument compulsory to Indian fish exports through the EU-India FTA. Interestingly, it was not ready to negotiate to this point, which was problematic for the Indian side. This is even when the website *illegal-fishing.info* (funded by UK Department for Environment, Food and Rural Affairs) states that "illegal fishing has not been identified as a major problem in Indian waters [...]." So, the stated aim of this standard does not seem to justify such insistence from the EC. While India had raised objections in a first stage, it seems that it is now considering this option.

⁵⁶ International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA - IUU), is a non-binding instrument adopted on 2nd March 2001 in Rome, Italy, at the 24th session of the Committee on Fisheries of the Food and Agriculture Organization of the United Nations. The IPOA highlights four main areas of action: flag State responsibilities; coastal State measures; port State measures; and internationally agreed market-related measures. Additionally, there are sections dealing with general obligations on all States, the role of regional fisheries organizations, the position of developing States, research, and the role of FAO.

⁵⁷ For more details, see ICSF website: <http://legal.icsf.net/icsflegal/viewInstrumentDetailsFromSearch.jsp>

⁵⁸ An EC Proposal to prevent, deter and eliminate IUU fishing was adopted in October 2007 and a Regulation to prevent, deter and eliminate illegal, unreported and unregulated fishing was adopted on 29 September 2008 (EC IUU Regulation). The Implementing regulation to the EC IUU Regulation was adopted on 22 October 2009. For more information see the EC website.

Box 5: The European Commission Traceability certificates

The EC IUU Regulation applies to fishing vessels, in the event of trade with the EC or involvement of EC nationals. Non-EU countries fishing vessels shall be granted authorisation to land or tranship only in ports where prior notice have been given, and the fishery products are accompanied by a validated catch certificate. Non-EU countries fishing vessels shall submit to the EU Member State port authority, prior to landing or transhipment, a declaration indicating amongst others, the quantity of fishery products by species to be landed or transhipped, and the date and place of each catch [Directorate-General 2009]. Imports will have to present a catch certificate validated by the flag state of the vessel, which carried out the catch.

It is expected that the EC instrument will have a negative impact on developing countries that are trading fisheries products with the EU. The certification process itself is elaborate, without the certainty that the price for the certified fish will more than offset the costs of certification. The high investment and costs involved in a certification mechanism, as well as their 'impracticability' excludes small fishworkers, thus acting as barriers to trade [ICSF 2001:22-25]. In the case of India, where exports are made of parts of catch from multiple vessels going to different places with variable crews from one day to another, tracing the "origin" of a consignment sounds highly 'impracticable'. In order to avoid this, central or state fisheries authorities, together with fishworker organisations and the scientific community should develop sustainability criteria and a management mechanism that is realistic and practical, instead of complying to trade partners mechanisms which are de facto exclusive of small producers.

Indeed, the EC instrument provides that the specific situation of small-scale fisheries in export trade will be taken into account in the catch certification scheme. While the regulation is under implementation since January 2010, and the FTA between India and the EU is to be signed by October 2010, no process has yet been started on this issue with the National Federation of Fishworkers, which is the largest organised entity of small-scale fishworkers in the country.

d) Imports and livelihoods

Elimination of import duties is one of the central tools of the chapter on trade in goods. It provides for all import duties eventually being eliminated, barring a list of exceptions, called the sensitive or exclusion list.⁵⁹ According to a study commissioned by the EC, from an average of 29.6%, import duty on seafood products from the EU into India will be

⁵⁹ Overall imports from the EU to India are expected to increase more than Indian exports to the EU, creating a trade deficit for India. Consequently, this will result in a depreciated real exchange rate [Francois et al 2008]. The Study finds that "more than EU tariff reductions", it is this condition of depreciated real exchange rate that allows for Indian exports to be more competitive in the EU market. Hence, the source of competitiveness is an adverse economic relation with the larger block, as opposed to new economic opportunities. The report continues by saying that "European exports increase also, but the reason is different: this is the simple consequence of better access to the Indian market".

reduced to 16% by the time of full implementation of the FTA [Decreux et al 2007].⁶⁰ In contrast, on the EU side, the complete elimination of all tariffs on seafood products will be equivalent to a 4.5% cut, which is the level of the current average import duty.⁶¹ This is while India is estimated to provide for a cut of 13.6%, which means a substantially higher commitment from India than the EU. It has to be kept in mind that fisheries are a sensitive sector in India, representing means of livelihood for many. Fishworkers have made clear in several occasions that even a minor reduction in import tariffs would result in a level of possible imports, which would be harmful for small-scale fishworkers [NFF, 2008].

Following the implementation of the FTA, EU seafood exports to India are expected to increase [Francois et al 2008].⁶² But, the study is silent on the details of the products, which are expected to be exported more intensively. A list of sensitive products has been under preparation in India, but its tentative content has not been made public. Civil society groups have only accessed the list of products for which the EU has made a special demand to be removed from the list under discussion. The list includes croaker, dara, ghole, hilsa, pomfret, ribbon fish, seerfish, most of which are very common on the local market, as well as octopus, squid, cuttle fish and jelly fish, which are an integral part of Indian small-scale fishworkers livelihoods.⁶³ The fact that the EU has made specific demands to have duty free access for these products shows a specific interest from the EU to export those fish species to India, threatening small-scale fishworkers livelihoods. This substantiates the concerns expressed by the small-scale fishworkers community [NFF 2008].

Additionally, in the case of the ASEAN-India FTA, fishworkers organisations, including the KFCC and research groups have discussed and questioned the efficiency of a sensitive list in case of import surges [KFCC, 2009; TWN, ICR 2009]. India's experience of the FTA with Sri Lanka shows that crops which were not anticipated from Sri Lanka started entering the market in large quantity, causing a sharp fall in the domestic pricing of goods and loss of livelihood to domestic producers, now unprotected with the reduction of import duties. In the case of the fisheries sector, cheap substitutes, which are not on the sensitive list, can enter the market and displace local fish. Additionally, there is an in-built agenda to reduce the items on the sensitive list, and the prohibition to increase import duties from the level that has been committed to in the agreement, or introduce new tariffs after the signature of the agreement (stand still clause). These adding more insecurity over small producers' livelihoods, including small-scale fishworkers.

⁶⁰ The study is based on a phased reduction of import duties based on a time line of 6 years. EU would liberalise 90% of its import duties at the entry into force of the agreement and 5% remaining commitments after three years. India would have three steps, from the entry into force of the agreement, till 6 years later. These time lines were fictional and the negotiations seem to be considering a longer time frame of 10 years. It is important to note that this number is arrived at even while taking into account that 5% of India's tariff lines are not reduced, as they are part of sensitive list.

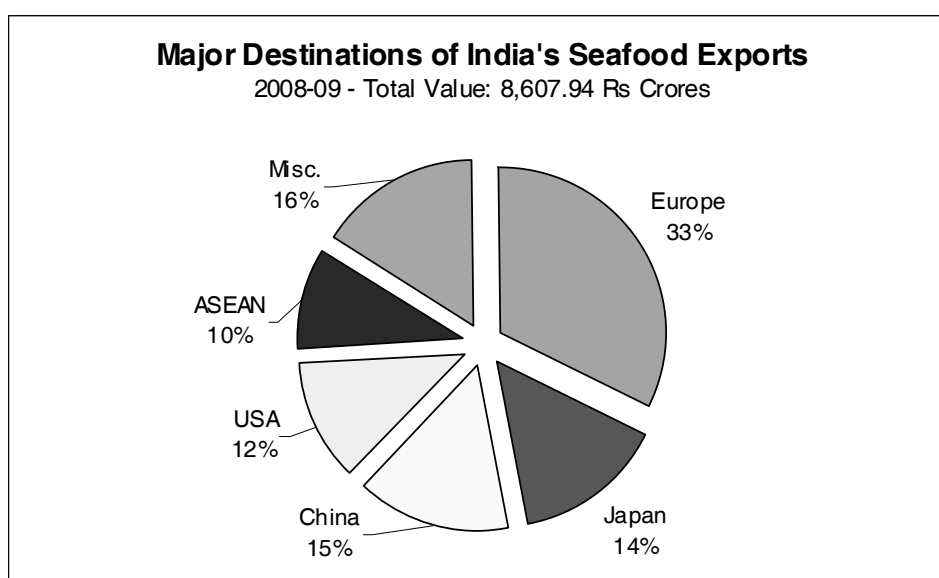
⁶¹ The relevant EU website page shows 10.6% as the average import duty on import of seafood. The difference between these estimates, 10.6% and 4.5% can be explained by the preferential rate given by the EU to India through the General System of Preferences and other such preferences in place.

⁶² The increase is expected to be between 9.1 to 10.8 % in the short run and between 28.2% and 71% in the long run.

⁶³ Other varieties include frozen crustaceans (crabs, lobster, shrimp, among others), frozen tuna, salmon, sole, among others.

e) What to expect from exports?

India already has access to the EU fish market. The European Union is the major destination and accounted for 29% of Indian fisheries exports. Nevertheless, exports of fisheries products from India to the EU are expected to increase after the implementation of the FTA [Francois et al 2008: 26, 29].⁶⁴ As seen earlier, the management of fish to be exported and fish to be used for the local market is a concern. In the context where fish catch landings are already low, individual fish sellers, mainly women, already compete with each other. Additionally, they have to compete with traders, who resell on the wholesale, local or export market. The capacity of individual fish sellers' to absorb price variation and buy large amounts is lower than that of the traders'.⁶⁵ A diversion of good fish from the local to the export market will create harder conditions for local fish sellers, affecting livelihoods and food security.



Source: MPEDA website

The biggest challenge faced by developing countries, including India, in the EU market is food safety standards [ICSF 2001: 25]. There is a widespread apprehension that these technical standards may act as barriers to trade [World Fish Centre 2002]. Even so, it does not seem that the EU-India FTA will take such challenges on board, but rather restate countries' right to use high food safety and technical standards, following the WTO line. There are costs in meeting standards for exports. This adds to other investments required, makes it particularly unviable for small-scale producers and results in the export-sector being dominated by larger players, not necessarily from the fishing community⁶⁶ The

⁶⁴ The increase is expected to be between 11.6% and 18.1% in the short run, and 19 to 30.4% in the long run.

⁶⁵ In a context where women's access to capital is subordinate to that of men, the possibility of women individual fish sellers becoming fish traders is low. As an instance, the list of export traders shows a low representation of women owners of fish trading companies.

⁶⁶ They represent a group of absentee owners, who have no link to production process within fisheries, but by virtue of their investment in exports, they have great control over prices and production patterns within fisheries.

introduction of new costs such as IUU certification costs will mean the further consolidation of this position by these dominant exporters, the eventual exclusion of new entrants into the export sector - especially those from the fishing community,⁶⁷ while leaving a space for new investors with large-investment capacities, which could possibly be to the advantage of EU companies.⁶⁸

f) Who's Coastal Land?

Under the EU-India FTA, rules regarding the purchase or rental of real property are considered as part of the framework of commercial presence or establishment. If not otherwise specified, the national treatment provision of the establishment chapter would allow EU investors and companies to access land, including coastal land, at the same or better conditions than Indian investors or companies (pre-establishment rights). This means that application to and approbation by the Government will not be required, as it would be considered that EU investors and companies have a right to access Indian coastal land.

It was discussed earlier that the Coastal Zone Regulation regime (CRZ) has gradually been eroded, favouring big-business investments in ports, tourism and other lucrative activities affecting coastal land-use patterns (see section IV.1.c). This shows the Government's intent to opening access to coastal land for industrial activity and real estate development. Any surge in investments oriented towards modern industrial marine fisheries will compete with fishworkers for coastal land use.

Coastal Land is of vital importance for traditional fishworkers. Coastal land serves as the backbone for any marine fisheries, in providing a beach for landing fish, land for traditional processing activities, and housing for fishworkers.⁶⁹ In a context, where the traditional fishworkers rights over coastal areas are not properly recognized, creating a legally binding framework recognizing EU investors and companies' pre-establishment rights into coastal areas is of concern. This will strengthen the shift in land-use to the detriment of the fishworker.

⁶⁷ Under national treatment clauses in the establishment chapter, foreign companies will get the same exemptions and concessions as their Indian counterparts, which would also include the large benefits provided to seafood exporters in India.

⁶⁸ The investment chapter provides for free repatriation of capital, i.e., no regulation on the amount of returns that can be repatriated to the home country. Consequently, there is no incentive for re-investment in the sector, meaning, minimal investment in enhancing fixed capital, facilitating the mobility of invested capital.

⁶⁹ Important not only in that it provides land for their houses, but also, is an integral part of traditional fisheries, where the fishworker requires immediate proximity to the sea to gauge the level of tide, currents, or winds, in order to make a judgement on the days course of action.

VI CONCLUSION

Over the last few decades, Kerala Fisheries has undergone a rapid transformation:

- Technology-centred export-orientation within marine capture fisheries;
- Introduction of modern industrial fishing crafts and gear technologies;
- Shift from community-oriented fisheries to individual players within a market mechanism;
- Entry of non-fishing mercantile players;
- Indiscriminate exploitation of the marine resources resulting in decreasing fish landings;
- Gradual transition in catches from local-consumed species to those that are part of the global seafood supply chain affecting food security;
- Introduction of capital intensive aquaculture;
- Receding traditional fisheries occupations and the reduced scope of livelihood options for fishworkers;
- Migration to low-end, low-paying insecure employment within modern industrial fisheries;
- Extensive utilization of coastal lands for high-profit activities;
- Entry of foreign capital in the form joint-ventures in the early 90s.

The push in exports in the 70s was followed by a radical decline in fishing output due to an indiscriminate exploitation within an export oriented fisheries. The attractiveness of a lucrative export market and the consequential surge in fishing through measures such as bottom trawling brought about a reduction in the levels of prawn stocks (caught for export) and brought about a significant decline in the fish that was caught by the traditional communities for local consumption by the masses. Women are often the first affected when the nutritional intake of a household falls and are hence more vulnerable to nutritional deficiency. In the fisherfolk community, the fish mainly ensures nutritional security, and the responsibility to procure it is on women's shoulders. Its scarcity increases the burden on women in the community disproportionately.

The condition of overfishing waters caused the output per fishermen to plunge. This directly affected traditional fishing communities, which bore the impact in terms of shrinking livelihoods. The traditional fishermen adapted, but the investment needed for such adaptation was large and took a toll on the sustainability of traditional fishing activities, in term of investment needed and technologies used. The reduced landing of fish also impacts fish vendors, mainly women, as their final income is dependent on the quality of the fish they access at the landing centre. Ensuring this access for them will demand a higher initial investment, further increasing their dependence to credit and undermining their livelihood.

The EU-India FTA promotes an export-led model for the fisheries sector. While there are evidences of the adverse impacts of such a model, there was no impact assessment made public regarding fishing communities' livelihoods, environmental sustainability or food security. The agreement also does not provide for efficient and accessible check and balances systems to handle the same. In this context, the adverse impacts of such fishing practices are going to worsen.

On Fisheries Policy matters, there exists a fundamental tension between the Union and Kerala Government, owing to a difference in the interests that inform policymaking. While the Union Government has pursued export orientation, the Kerala Government has more often than not taken a different stand, considering the needs and challenges faced by traditional small-scale fisheries in the face of globalisation. While one may locate the debate within centre-state relations and the balance of power between them, it is also important to realize that underlying this conflict is the deeper clash between neo-liberal policies, on the one hand, and small-scale producers' livelihoods and systemic ecosystem management, on the other. This conflict can also emerge at the international policy level, such as between the UNCLOS and the WTO, as has been mentioned in the 'swordfish dispute'. In the face of these conflicts and challenges on the realm of policy and the pro-neoliberal tendencies of the Central Government, any further international commitment or national legislation that marginalizes small-scale fishworkers will constrain the scope for policy that seeks to recognize, protect and enhance the rights and livelihoods of these small-scale fishworkers.

In the face of these transformations in the sector and the policy environment, certain challenges emerge. Industrial Fisheries has gradually marginalised traditional fishworkers' activities by introducing industrial fishing and processing units that compete with these activities. In the bargain, the displacement of these traditional activities has led to loss of employment. Alongside, the surplus labour, especially women, have moved to modern fish processing units where work conditions are deplorable and wages paltry. In such conditions, the challenge one faces is the prospect of decent work.

EU involvement in the marine fisheries sector in India, under the FTA, could further hasten the loss of livelihood for small-scale fishworkers, and is made possible through several provisions in the agreement. The rules for investment of the EU-India FTA can invalidate the present policy that regulates the operation of foreign fishing vessels in Indian waters. This would provide EU fishing vessels landing rights and access to Indian waters. Alongside, EU has requested preferential access to the Indian market for fish found in Indian waters. The EU-India FTA, also, requires for drastic cuts in import duties. In such a situation where potential access to Indian waters is unrestricted, it would amount to EU vessels landing duty-free fish that would compete in the local markets, thereby threatening the livelihoods of fisherman (who will face competition in the sea) and fish vendors (who will face competition in the market). The EU-India FTA would also facilitate the activity of organised retail companies. This would mean a serious competition to women fish vendors, by displacing them from the place they occupy now as the only sellers able to bring good quality fresh fish to the consumer on a day to day basis.

Women have played a specific role in traditional fisheries; however, owing to the export economy in fisheries and the gendered distribution of resources, they face the risk of exclusion from these very sectors, leaving them without decent livelihood alternative and

furthering already existing gender disparities. Within industrial fisheries, patriarchal distinctions do not go away but redefine themselves, resulting in distinctions between masculine and feminine labour, justifying workers being underpaid by firms who in turn are better able to compete on the international market. Women constitute the majority workforce in marine processing firms. Processed products comprise the majority of the exports to EU. Hence, it can be expected that there will be an increase in these products due to the preferential access provided in the FTA

The EU-India FTA is expected to increase marine exports from India, due to the preferential access to the EU market; however, the foreseeable beneficiaries would be larger fishing conglomerates and exporters owing to the systemic marginalization of small-scale fishworkers in the export market because of the investment required. The intensification of export-based fishing operations has resulted in a condition of overfishing, with greater effort and investment required to land similar amounts of fish. Such a situation has brought the question of fisheries management to the fore, with reduced returns to traditional fishworkers and women involved in marketing. It has increased their dependence on credit, placed constraints on their food security and threatens the very basis of their livelihoods.

Exports to the EU would have to comply with the EC IUU regulation, which entails a series of details on the origin of the consignment, which are designed for large-scale industrial fishing, and 'impracticable' in the case of small-scale fisheries- as consignments originating from small-scale vessels include a diverse range of sources and crew. In order to ensure the success of the negotiations, the Union government is agreeing to such regulations; however, it still remains unclear as to what agency will facilitate such a mammoth task and how will small-scale fishworkers be part of this process.

The provisions on trade in goods, barring certain exceptions, prohibit increase in import duty or introduction of new duties at any given point of time. At this point, EU marine exports to India may not be seen as a potential threat for local producers; however, this does not justify complete abdication of your rights to apply import duties as a protective mechanism for your producers because unforeseen competitive EU products could threaten local producers in the future.

Infrastructure development activity on coastal land is another challenge that affects not only livelihoods, but interferes with the functioning of fishing communities by encroaching upon village lands and housing spaces. Also, these activities cause high levels of pollution and disturb the ecological balance in coastal areas. The EU-India FTA provides for facilitation of investments, which could include access to coastal land for setting up any kind of economic operation. Thus, intensifying pressure on access to coastal land.

In consolidating the debate on the EU-India FTA it is important to look at the overt dominance of the Union Government in international treaty making. This has prevented any agency for State governments, even though constitutionally mandated, to dissent with a trade agreement. For instance, the Kerala Governments staunch opposition against

assent to the ASEAN-India FTA, and the blind eye shown to this opposition.⁷⁰ Parliamentary scrutiny of trade agreements is not mandatory under the constitution, owing to their limited scope.⁷¹ However, the new generation of trade agreements, which originated in the WTO, are far more invasive in nature. It can be argued that they influence the whole policy framework from subsidies to producers, rules on investments, capacity to protect specific industries, ability to regulate imports, rules on intellectual property and other legislative changes. Hence, the prerogative of the executive in such matters cannot hold, as these agreements are no more limited in scope, and must be placed under scrutiny of elected representatives in the parliament- who represent the constituencies that will be affected. The principled approach of the government must be to consult not only commercial interests, but also all affected constituencies including fishworkers. Other sectors include health, agriculture, gender, retail, banking, seed access, labour rights, and micro, small and medium enterprises. These represent a plethora of sectors that will be potentially impacted by the EU-India FTA. Instead of evolving a democratic space where these issues can be raised, the Government of India has decided to hasten the process of negotiations- placing the deadline by October 2010, during the EU-India Summit.⁷²

Therefore, It is paramount to one's understanding to acknowledge that the further penetration of a neo-liberal agenda into Indian fisheries threatens the very existence of traditional fishworkers and their livelihoods, and, its disavowal of traditional fisheries is detrimental to the prospects for curbing further damage to the coastal ecosystem. Any such measure, in the form a free trade agreement intensifies the exclusion of fishworkers, both male and female from the very sphere of production.

⁷⁰ The concerns were based on potential ramifications on the farming, fisheries and plantation sector- and in spite of agriculture being on the concurrent list, and fisheries on the state list- the union government did not consult the state government.

⁷¹ Traditionally, trade agreements were specific, i.e., they covered limited varieties of traded goods-, and the level of commitments was limited to the realm of exchange of goods (e.g.: - port of import, quota and import duty).

⁷² Forum Against FTAs, March 2010.

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Based on field work in the southern Indian state of Kerala, this paper explores the dynamics within traditional small scale fisheries in the context of the controversial negotiations for a Free Trade Agreement between the European Union and India. The initial sections underscore that the bias in fisheries policies towards an export led model has been at the cost of the environment and fishing communities, especially women.

The authors then argue, by scrutinising key provisions, that the EU-India FTA further deepens this export led model and therefore is unlikely to ameliorate their condition. On the other hand deregulating rules on imports and foreign investment is likely to increase the pressure on fish resources, fishing grounds and coastal land. Further there is a deep democratic and developmental deficit, with talks being held only between trade bureaucrats, with no meaningful participation either by the Kerala Government or representative bodies of fishing communities. By examining current national and international policies on fisheries and then juxtaposing these policies with current realities on the ground the paper puts forward the case for a re-look at the premises of the FTA, itself.



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