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CHAPTER XIV

Fisheries in the South Atlantic: The Negotiation between the European Union & Mercosur

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Fisheries in the South Atlantic: The Negotiation between the European Union & Mercosur

Juan Sola *

ABSTRACT

During negotiations between the European Union and Mercosur with the objective of establishing a free trade zone, the representatives of the European Commission proposed as a term of access of fishing products to the European market conditional on the access of the European fleet to the Exclusive Economic Zone (EEZ) of the countries of Mercosur. Therefore if the South American countries wanted access to the European market of their fishing products they must allow the European fleet access to the South Atlantic. This strong negotiation position is probably due to the fact that European Union countries now face a sixty percent or greater cut in harvest quotas in their own EEZ.

The U.N. Convention rules the access of foreign fishing vessels to the EEZ (U.N. Law of the Sea, UNCLOS, Art. 61.1 and Art. 61.2). UNCLOS establishes a double condition; the coastal state has exclusive rights in the EEZ but also has obligations. The coastal state is under the duty to ensure through the proper conservation and management measures that the living resources are not endangered by over exploitation. The coastal state must maintain or restore populations of harvested fisheries at levels, which produce a maximum sustainable yield.

Access to the EEZ is not at the free disposal of countries as is the case of access to markets. It is conditioned to the existence and protection of living resources. These national programs, however, have not succeeded in reversing the present trends of degradation of the population of species and have failed to restore the health of fisheries and their habitats.

The European Union has established an Agricultural Policy that prevents access to their markets for agricultural products and even competes in other markets with subsidized products. This unilateral policy of the EU has been the tragedy of efficient agricultural economies like the ones of Mercosur. In this way the EU uses the consequences of its own protectionist policies to circumvent the

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international legislation established in the UNCLOS after years of very difficult negotiations. This policy has succeeded in the negotiations with Chile.

We could find a case for the application of the Coase Theorem, if transaction costs are low negotiations between the parties would lead to those arrangements being made which would maximize wealth, and this is irrespective of the initial assignment of rights. The initial inconvenience is the strategic behavior of the strongest party. A condition for the Coase Theorem is existence of legal titles. In this case the hassle is that the legal regime of access to agricultural markets in the EU is determined by the exclusive will of the EU. If one of the parties to the negotiation determines the legislation, negotiation is extremely difficult. There are also differences of income between the parties; Mercosur is a fraction of the EU and at the same time a victim of its protective policies. The opportunistic behaviour of the EU prevents an efficient result.

Even if the agreement existed the possibility of control would be very difficult, as recent experiences in the South Atlantic indicate.