



Commonwealth Secretariat

DEVELOPMENT IMPACT OF THE COUNCIL
REGULATION ESTABLISHING A EUROPEAN
COMMUNITY SYSTEM TO PREVENT, DETER AND
ELIMINATE ILLEGAL, UNREPORTED AND
UNREGULATED FISHING ON
COMMONWEALTH ACP MEMBER COUNTRIES

FINAL REPORT

prepared for the Commonwealth Secretariat*

By

Professor Martin Tsamenyi

Dr. Mary Ann Palma, Ben Milligan[†] and Kwame Mfodwo[‡]

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* The views expressed in this paper are those of the authors and do not necessarily reflect the views of the Commonwealth Secretariat or its member states.

[†] The Australian National Centre for Ocean Resources and Security (ANCORS) University of Wollongong, Australia. The very constructive comments provided by Liam Campling and the anonymous review from the Commonwealth Secretariat on the draft of this Report are acknowledged with much appreciation.

[‡] Faculty of Law, Monash University, Australia

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Abbreviations and Acronyms

| | |
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| ACP | African Caribbean and Pacific Group of States |
| ANCORS | Australian National Centre for Ocean Resources and Security |
| CARIFORUM | Caribbean Forum |
| CCAMLR | Commission for the Conservation of Antarctic Marine Living Resources |
| CCSBT | Commission for the Conservation of Southern Bluefin Tuna |
| CEMAC | Communauté Économique et Monétaire de l'Afrique Centrale |
| CPA | Cotonou Economic Partnership Agreement |
| DFQF | Duty Free and Quota Free |
| DSB | Dispute Settlement Body |
| EAC | East African Community |
| EBA | Everything But Arms |
| EC | European Community |
| ECOWAS | Economic Community of West African States |
| EPA | Economic Partnership Agreement |
| ESA | East and Southern Africa Group |
| EU | European Union |
| FAO | Food and Agriculture Organisation |
| GATT | General Agreement on Tariffs and Trade |
| GSP | Generalised System of Preferences |
| HS | Harmonised System (of tariff codes) |
| IATTC | Inter-American Tropical Tuna Commission |
| ICCAT | International Commission for the Conservation of Atlantic Tunas |
| IEPA | Interim Economic Partnership Agreements |
| IOTC | Indian Ocean Tuna Commission |
| IPOA-IUU | International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing |
| IUU | illegal, unreported and unregulated fishing |
| LDC | least developed country |
| LOSC | United Nations Convention on the Law of the Sea |
| MCS | monitoring, control, and surveillance |
| MRAG | Marine Resource Assessment Group Ltd |

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| NAFO | Northwest Atlantic Fisheries Organisation |
| NEAFC | Northeast Atlantic Fisheries Commission |
| OCT | Overseas Countries and Territories of the European Communities |
| PACP | Pacific ACP |
| RFMO | regional fisheries management organisation |
| RoO | Rules of Origin |
| SADC | Southern Africa Development Community |
| SPS | Sanitary and Phytosanitary |
| TBT | Technical Barriers to Trade |
| US | United States of America |
| WCPFC | Western and Central Pacific Fisheries Commission |
| WTO | World Trade Organisation |

Executive Summary

On 29 September 2008, the Council of the European Union adopted EC No 1005/2008 “establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing” (referred to hereafter as the IUU Regulation).⁴ This IUU Regulation, scheduled to enter into force on 1 January 2010, is intended to regulate the highly complex multi-channel fisheries supply system of the European Community (EC) in an effort to improve global fisheries sustainability.⁵ Essentially, the IUU Regulation establishes a system of access conditionality in which access to the EC markets will be partly conditioned by the extent to which the country, area or region of origin of the exported fish product is completely free or increasingly free of IUU fishing. This measure clearly has trade and developmental impacts for Commonwealth members of the African Caribbean and Pacific (ACP) Group of States, hence the need for this Report. The full Terms of Reference for the Report can be found in Appendix 5.

Part A of the Report assesses the IUU Regulation’s general background and context by analysing:

- the globalisation of fisheries markets, including the inter-relationship between the globalised fisheries system and globalised nature of IUU fishing;
- the development of international concerns regarding IUU fishing;
- the framework for ACP-EC fisheries trade; and
- economic trends in ACP fisheries trade in light of applicable trade frameworks.

Part B of the Report focuses more closely on the content of the IUU Regulation, analysing its likely development impacts against an overall background of the EC fisheries policy framework. Part B provides assessment of:

- how the IUU Regulation seeks to address the EC’s objective of combating IUU fishing;
- WTO compatibility issues, particularly the IUU Regulation’s framework of retaliatory measures where non-EC States and vessels breach the IUU Regulation as well as other international rules on fisheries conservation and management;
- the impact of the IUU Regulation on ACP exports potentially benefiting from the Duty Free/Quota Free market access arrangements established by the current round of Economic

⁴ COUNCIL REGULATION (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999. The text of the IUU Regulation is reproduced in Appendix 6 of the Report.

⁵ IUU fishing has been characterised as “one of the most severe problems affecting world fisheries” and the “main obstacle in achieving sustainable fisheries in both areas under national jurisdiction and the high seas.” See: UNGA, Fifty-fourth Session, Agenda Items 40(a) and (c), Oceans the Law of the Sea; Law of the Sea; Results of the Review by the Commission on Sustainable Development of the Sectoral Theme of “Oceans and Seas”, Oceans and the Law of the Sea, Report of the Secretary-General, A/54/429, 30 September 1999, para. 249 and UNGA, Fifty-ninth Session, Item 50(b) of the Provisional Agenda, Oceans and the Law of the Sea, Sustainable Fisheries, Including Through the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Related Instruments, Report of the Secretary-General, A/59/298, 26 August 2004, para. 36.

Partnership Agreements and Interim Economic Partnership Agreements between the EC and various ACP States;

- the interaction between the IUU Regulation and possibilities for utilisation of the trade preferences granted to ACP States by the EC's Generalised System of Preferences (GSP) Regulation and the related Rules of Origin under the GSP rules; and
- policy and implementation issues arising from the IUU Regulation.

Part A: Globalisation of fisheries trade and IUU fishing

Part A of the Report analyses the core features of fisheries globalisation at the present time and shows that these globalised arrangements will significantly determine the IUU Regulation's likely effectiveness as many of these features are structurally facilitative of IUU fishing. This makes enforcement against IUU fishers particularly difficult. Aspects of globalisation which inadvertently give support to IUU fishing include: the high level of demand for fish in key market centres provides high prices for most IUU products; the global character of production operations and product markets facilitates product laundering, whilst ease of transshipment as well as the anonymity of the cold-chain for transportation of fish products also supports such laundering and the non-traceability of IUU products. Finally, the anonymity and vitality of global market in vessel flags, crews and vessels underpin the flexibility with which IUU fleets move from production area to production area, whilst in some parts of the world, IUU fishing now overlaps with other forms of maritime crime such as piracy and drug smuggling. Implementation of the IUU Regulation will thus be conditioned by many aspects of currently globalised fisheries. A key conclusion of the Report is that many developing countries will find it difficult to meet the requirements of the IUU Regulation as they have little control over many of the facets of globalisation which support IUU fishing. Consequently, it is argued that, developing countries will require comprehensive programmes of assistance in order to comply with the Regulation.

Patterns of trade

Trends in fisheries exports for individual ACP States vary significantly, which may be accounted for by a number of varying factors particular to the situation of each country. These factors include the existence of bilateral access agreements, immediate access to fishing grounds, production of fishery goods critical to the EC market, environmental conditions, and socio-political events. In view of the focus of this Report on Commonwealth ACP States, Appendix 4 presents the aggregate trends of the volume of fisheries exports by these States to the EC. These trends may be summarised as follows.

- Stable fisheries exports: Namibia, Nigeria, Mozambique, Ghana, the Bahamas, Seychelles, and South Africa. Among these countries, the Seychelles, South Africa, Nigeria and Namibia are showing declining fisheries exports to the EC.
- High fisheries exports from the late 1990s to early 2000, followed by a significant decrease in fisheries exports: Belize, Cameroon, Malawi, Sierra Leone, St. Vincent and the Grenadines, Trinidad and Tobago and Vanuatu.
- Significant fisheries exports only from 2003: Guyana.

- Overall continuous increase in fishery exports: Kenya, Papua New Guinea, Mauritius, Tanzania and Uganda. Grenada shows increasing fisheries exports from 1997 but has significantly dropped in 2007.
- Significant decrease in fisheries exports, followed by a partial recovery in recent years: Gambia, Jamaica, Fiji, Solomon Islands.
- Erratic increases and decreases in fisheries exports: Antigua and Barbuda, Barbados, Tonga and Zambia.
- Occasional fisheries exports to the EC: Botswana, Dominica, Kiribati, Lesotho, Nauru, St. Kitts and Nevis, St Lucia, Swaziland, and Tuvalu.

The Report has also found that fisheries export patterns to the EC are highly complex, with ACP States generally outstripped by exports from other countries and regions, despite the preferences available. There appears to be scope for alternative markets like the United States and Japan. However, these markets are moving towards establishing IUU control restrictions similar to the EC's IUU Regulation. Options to diversify away from the EC towards other markets therefore appear to be limited.

Part B: The IUU Regulation

Part B of the Report focuses on the IUU Regulation which provides for the imposition of stringent trade measures against fishing vessels and foreign States that support IUU fishing. The control, sanctioning and conditionality elements at the heart of the Regulation include: port State controls over third country fishing vessels, catch certification requirements, establishment of a Community IUU vessel list, and establishment of a list of non-cooperating third countries. The conclusions reached by the Part B analysis can be summarised as follows:

The interaction between the IUU Regulation and other international arrangements

The IUU Regulation needs to be viewed in the wider context of international efforts through international fisheries instruments, the United Nations General Assembly, the Food and Agricultural Organisation (FAO) and regional fisheries management organisations (RFMOs) in general to address IUU fishing. The measures outlined in the IUU Regulation are, on paper, generally consistent with those called for under international fisheries instruments and measures being implemented by RFMOs (see Appendix 1). However, until the measures are actually implemented, it is difficult to draw any definitive conclusions about their practical implications. One area where the IUU Regulation would appear to go further than current international efforts to combat IUU fishing relates the restrictive trade measures against non-cooperating third countries. The reasons for this “global policing” approach are obvious, given the significance of fishery trade for the EC.⁶ Unless the EC adopts similar stringent measures and procedures against its members which fail to comply with the IUU Regulation and other relevant EC regulations on fisheries control

⁶ The EC is the leading importer of fish and has fishing fleets in every ocean in the world. Whilst the EC considers itself as having a major responsibility in taking a lead in preventing, deterring and eliminating IUU fishing, it also certainly has an economic interest in combating IUU fishing. Given the high levels of support (including subsidies to the EU fleet), the EC and EU fishing interests are surely concerned that IUU fish is a source of price competition.

and enforcement, the EC may be seen to be applying unilateral and discriminatory trade measures contrary to WTO rules.

Implications of the IUU Regulation for DFQF market access arrangements and applicable RoO for EPA participants

The Report concludes that the IUU Regulation does not purport to modify the DFQF access granted pursuant to EPAs and IEPAs, or amend any specific EC trade regulation as a result of its future adoption.⁷ However, the implementation of the IUU Regulation may indirectly hinder the ability of ACP States to take advantage of DFQF access. The implementation of the IUU Regulation may also make it difficult for ACP States to take advantage of applicable rules of origin (for example, the 15% value tolerance rule in all current EPAs and the global sourcing provision in the Pacific EPA).

Implications of the IUU Regulation for GSP, GSP+ and EBA beneficiaries

Although the IUU Regulation will not directly modify the terms of the EC's GSP, GSP+ and GSP-EBA schemes, implementation of the Regulation will create additional compliance burdens for the beneficiaries of these arrangements, and as a result may impair their ability to take advantage of preferential access arrangements.

WTO compatibility aspects of proposed retaliatory against non-complying, States and vessels in breach of (1) the EC's IUU regulation, (2) other international rules on fisheries conservation and management

WTO compatibility issues arise with respect to the catch certification requirements; actions that may be taken by EC territories against vessels listed on the EC IUU Vessels list and actions that may be taken against States on the EC List of Non-cooperating States. The Report finds that the Agreement on Technical Barriers to Trade (TBT Agreement) and the exemption contained in Article XX(g) of the General Agreement on Tariffs and Trade (GATT) regarding environmental protection measures would appear to be broad enough to permit imposition of the measures contemplated by the IUU Regulation. While most of the actions proposed against IUU vessels are generally consistent with current international fisheries conservation and trade rules, the measures that may be applied against 'non-cooperating third countries' appear much more restrictive than those provided for in current international agreements and regional fisheries conservation and management measures. On balance, however, it can be argued that the measures contained in the IUU Regulation have achieved a high degree of international acceptance, and are unlikely to give rise to a dispute in WTO fora given the move towards tolerance of measures enacted to more aggressively implement multilateral environmental agreements.

Wider policy and governance issues arising from the IUU Regulation for the ACP States

Measures to combat IUU fishing such as the ones contained in the IUU Regulation will become prevalent and embedded parts of national, regional, sub-regional and international fisheries governance arrangements to ensure sustainable and responsible fishing practices. However, whilst the IUU Regulation is a welcome development, it will need to be implemented in a fair and transparent manner. The EC must acknowledge the vulnerability of developing countries and the

⁷ See IUU Regulation, Article 56.

difficulties that they will face in implementing the requirements of the IUU Regulation. It is essential that developing countries do not, directly or indirectly, bear a disproportionate burden of global efforts to combat IUU fishing.

The fundamental policy issue for the EC and ACP States is one of developing the required capacity to assist the ACP States to implement the requirements under the IUU Regulation. Without the necessary technical and financial resources to implement and enforce these new demands, it is likely that several ACP States will suffer economic hardship as a result of the IUU Regulation's entry into force. Experience with the EC SPS measures are a key example here and are a well known double standard as these rules seem to be less strictly enforced within certain EC Member states.

A detailed strategic approach would need to be developed by the ACP States to obtain the necessary technical and financial assistance to support the implementation of domestic governance measures compliant with the IUU Regulation and international obligations to combat IUU fishing. Such an approach would enable the ACP States to avoid the negative effects of IUU fishing, in addition to the negative effects of trade measures applied in response to failure to comply with the IUU Regulation.

Introduction

On 29 September 2008, the Council of the European Union adopted EC No 1005/2008 “establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing” (referred to hereafter as the IUU Regulation).⁸ This IUU Regulation, scheduled to enter into force on 1 January 2010, is intended to regulate the highly complex multi-channel fisheries supply system of the European Community (EC) in an effort to improve global fisheries sustainability.⁹ Essentially, the EC proposes to establish a system of access conditionality in which access to its markets will be partly conditioned by the extent to which the country, area or region of origin of the exported fish product is completely free or increasingly free of IUU fishing.

The purpose of this Report is to provide analysis of the development impact of the EC’s IUU Regulation on ACP fisheries exports into the territories of EC member States.

Part A assesses the Regulation’s general background and context by analysing:

- the globalisation of fisheries markets, including the inter-relationship between the globalised fisheries system and globalised IUU fishing;
- the development of international concerns regarding IUU fishing;
- the framework for ACP-EC fisheries trade;
- economic trends in ACP fisheries trade in light of applicable trade frameworks; and
- EC policy frameworks applicable to fisheries, including the Common Fisheries Policy and specific responses to IUU fishing.

Part B focuses more closely on the content of the Regulation assessing its likely development impact through assessment of:

- how the IUU Regulation seeks to address the EC’s objective of combating IUU fishing;
- WTO compatibility issues, particularly the Regulation’s framework of retaliatory measures where non-EC States and vessels breach the IUU Regulation as well as other international rules on fisheries conservation and management;
- the impact of the proposed Regulation on ACP exports potentially benefiting from the Duty Free/Quota Free market access arrangements established by the current round of Economic

⁸ COUNCIL REGULATION (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999. The text of the IUU Regulation is reproduced in Appendix 6 of the Report.

⁹ IUU fishing has been characterised as “one of the most severe problems affecting world fisheries” and the “main obstacle in achieving sustainable fisheries in both areas under national jurisdiction and the high seas.” See: UNGA, Fifty-fourth Session, Agenda Items 40(a) and (c), Oceans the Law of the Sea; Law of the Sea; Results of the Review by the Commission on Sustainable Development of the Sectoral Theme of “Oceans and Seas”, Oceans and the Law of the Sea, Report of the Secretary-General, A/54/429, 30 September 1999, para. 249 and UNGA, Fifty-ninth Session, Item 50(b) of the Provisional Agenda, Oceans and the Law of the Sea, Sustainable Fisheries, Including Through the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Related Instruments, Report of the Secretary-General, A/59/298, 26 August 2004, para. 36.

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- policy and implementation issues arising from the IUU Regulation.

Part A – Fisheries Context of the IUU Regulation

Given that IUU fishing has become a worldwide phenomenon and the EC is proposing a global conditionality framework to address the problem, it is useful to analyse the IUU Regulation against the wider backdrop of the ongoing globalisation of fisheries production, trade and markets.

The development impact of the IUU Regulation is best understood in light of the following contexts:

- the globalisation of fisheries markets, including the strong inter-relationship between the globalised fisheries system and globalised nature of IUU fishing;
- the development of international concerns regarding IUU fishing;
- the framework for ACP-EC fisheries trade;
- economic trends in ACP fisheries trade in light of applicable trade frameworks;
- EC policy frameworks applicable to fisheries, including the Common Fisheries Policy and specific responses to IUU fishing.

1. Globalisation of fisheries

This section of the Report lays out the key features of the current globalised system of fisheries and relates these to the IUU problem.

Fisheries and fishing activities, including production, trade, and governance have become progressively globalised.¹⁰ The key factors behind the creation of what is now a global fisheries economy are high-speed communication, transportation, refrigeration, and information technology. Other factors include the combined operation of fishing activities which permit previously internationally dispersed activities to be linked through direct enterprise co-ordination or through less direct mechanisms such as markets and prices. In more detail, the drivers fuelling the establishment and consolidation of the global fisheries economy can be highlighted as follows:

- the establishment of a global telecommunications and information technology infrastructure,
 - this allows fish producers and traders to rapidly buy and sell their products, exchange

¹⁰ See generally, Delgado, Christopher (2003) et al, Fish to 2020: Supply and Demand in Changing Global Markets International Food Policy Research Institute.

documentation as well as keep track of their cargoes, thereby overcoming the barrier that fish perishability has always posed to high volumes of global fish trade;

- the establishment of a global vessel chartering, crewing and flagging market,¹¹ - this allows vessels to be available at the least possible cost and with considerable flexibility;
- innovations in the general marine transportation sector, including in particular, containerization with the advantages that containerised shipping offers for targeted delivery of cargo;¹²
- the development of a maritime cold chain, comprising specialised highly-controlled refrigerated carrier vessels for the fishing industry, together with the so-called general purpose reefer or specialised refrigerated vessel carrying perishable goods around the world;¹³
- the deregulation of the global aviation sector with the rapid development of a price-competitive and technologically reliable segment of the air-cargo sector providing the infrastructure for rapid global movement of high value live and fresh products to key global markets in Japan, the EC, the United States (US) and the urban centres of Asia and the Indian sub-continent;
- the establishment by the global petroleum industry of a worldwide network of fuel supply arrangements, the so-called global bunkering system under which bunker vessels rendezvous on the high seas with specifically identified vessels thereby cutting down the need to visit ports for refuelling.¹⁴

1.2 Fisheries production

The whole supply chain in fisheries – from the catching as well as rearing of fish, to the processing of product on land or at sea, the transportation of product, to the final points of consumption – has become globalised. Industrial processing of fish, for example, is increasingly taking place at locations other than the country of origin. As an example, tuna canneries in West Africa source product from the South Pacific and Asia to ensure they can supply full-year products for the Japanese and European markets, whilst Thai processors source their supply globally and provide well over 25 per cent of the world's canned tuna.¹⁵ Aquaculture and mariculture sectors have also become closely integrated with the marine capture sector. Bluefin tuna reared in the Mediterranean through mariculture competes on Japanese markets with bluefin tuna caught in the Southern Oceans. Such is the case for other fisheries as fish farming has supplemented the continuous decrease in marine capture production. These examples illustrate that the component segments of

¹¹ FAO Global fishing fleet statistics <http://www.fao.org/fishery/statistics/global-fleet/en>; FAO, SOFIA 2006, 25-29

¹² BJ Cudahy, (2006) Box boats: How container ships changed the world; Theo Notteboom & Jean-Paul Rodrigue, "Containerisation, Box Logistics and Global Supply Chains: The Integration of Ports and Liner Shipping Networks" Maritime Economics & Logistics 2008, 10 (152–174).

¹³ Annual Reefer Shipping Market Review and Forecast 2007/08 <http://bharatbook.wordpress.com/2008/01/28/annual-reefer-shipping-market-review-and-forecast-200708/>

¹⁴ FAO, 2007 A study into the effect of energy costs in fisheries, FAO Fisheries Circular No. 1022. Rome.

¹⁵ See Mahfuz Ahmed, Market Access and Trade Liberalisation in Fisheries, Natural Resources, International Trade and Sustainable Development, Issue Paper No 4, June 2006.

the global fisheries economy are increasingly integrated through transport networks and intersecting supply chains.

1.3 International fish trade

The FAO estimates that about 45 per cent of the world fish catch enters international trade. In 2006, the total world exports of fish and fish products reached USD85.9 billion, which represents an increase of 55 per cent from 2000.¹⁶ Similarly, the value of imports in the same period reached USD89.6 billion or an increase of 49 per cent.¹⁷ Developed States absorb more than 80 per cent of total world fisheries imports in value terms. The EC is the largest global market for fish, accounting for approximately 40% of global imports. Japan and the US account approximately for an additional 35 per cent of total world imports of fisheries products. The significant contribution of developing States in the international trade of fish is undeniable. The net exports of fish by developing States have shown a continuous increasing trend over the decades, which is estimated at 49 per cent in value and 59 per cent in quantity of the total fishery exports in 2006. This overall trend is primarily driven by China, which has now become the world's largest exporter of fish. Cumulative net exports of fisheries products from developing States far exceed export earnings from major commodities such as coffee, bananas, and rubber.¹⁸

The rising trade values and volumes for all fish commodities reflect the increasing globalisation of fisheries value chains, in which processing is being outsourced to Asia, as well as Central and Eastern Europe and North Africa.¹⁹ Outsourcing of processing takes place both at the regional and global levels, depending on the product form, labour costs and transportation time. Many species, such as salmon, tuna, catfish and tilapia, are increasingly traded in their processed form. In addition, there has been a growth in the internationalisation or globalisation of distribution channels through the demands of large retailers.²⁰

1.4 Fisheries governance

Governance of the global fisheries economy is also globalised, operating through a decentralised but still relatively coherently co-ordinated system of treaties, non-binding international fisheries instruments as well as an emerging layer of private arrangements sponsored by internationally influential non-governmental organisations (NGOs) with significant international public legitimacy. The actors currently involved in this global regulatory framework include: coastal States, flag States, fishing States, port States, inspecting States, market States, RFMOs, fishing fleets and companies, inter-governmental organisations, and NGOs. Multilateral organisations include competent international organisations under the UN framework, while examples of international NGOs are WWF, Greenpeace and IUCN. Treaty rules and non-binding instruments cover the following issues:

¹⁶ UN, FAO, Fact Sheet: The International Fish Trade and World Fisheries, June 2008, www.fao.org.

¹⁷ FAO, The International Fish Trade and World Fisheries, page 1.

¹⁸ UN, FAO, The International Fish Trade and World Fisheries, page 1.

¹⁹ FAO, Committee on Fisheries, Sub-Committee on Fish Trade, Eleventh Session, Bremen, Germany, 2-6 June 2008, "Status and Important Recent Events Concerning International Trade in Fishery Products," COFI:FT/XI/2008/3, Rome: FAO, 2008, para 12.

²⁰ FAO, Status and Important Recent Events Concerning International Trade in Fishery Products, para 12.

- Regulation of harvesting and other activities in the zones in which fish are captured – the exclusive economic zones (EEZs) and the high seas. These rules fall within the domain of the international law of the sea and international environmental law;
- Regulation of trade in fish and fish products under international trade law (including WTO rules); and
- Regulation of the health and consumer safety aspects of fish trade under international trade law and international food safety law; and
- Regulation of other related activities critical to fishing operations such as vessel registration, marine safety, and crewing. These rules fall under international shipping law.

There is a convergence towards global standards under the various FAO instruments and other international treaties. In addition, there is now a regional fisheries organisation in almost every part of the globe.

1.5 The global problem of IUU fishing²¹

IUU fishing is now a worldwide phenomenon with significant environmental, economic and social consequences.²² It contributes to the depletion of fish stocks and also threatens habitats, which has cross-boundary impacts affecting both areas under national jurisdiction and the high seas. Because of the global nature of fisheries and fishing activities any decrease in fish catch in one part of the world, regardless of cause, also threatens the food security of fish importing States and consequently the global food supply. The lack of accurate data further makes it difficult to determine how much of the fish traded internationally are derived from IUU fishing.

Many of the relatively positive features of globalised fish production, trade and market arrangements, especially the flexibility of such arrangements as well as the speed with which they can be re-positioned globally, are also structurally facilitative (as well as supportive) of IUU fishing. This makes enforcement against IUU fishers particularly difficult.

The following drivers of the global fisheries economy may be identified as inadvertently giving support to IUU fishing:

- A high level of demand for fish exists in key market centres, meaning that high prices are fetched for a range of seafood products, including abalone, shark fin, live Napoleon wrasse, and fresh and chilled tuna. While the illicit market for these products is global in scope, the supply comes from specific geographic areas such as Australia and Southeast Asia, resulting in negative impact on such fisheries.

²¹Agnew, D. J. and Barnes, C.T., 2004. Economic Aspects and Drivers of IUU Fishing: Building a Framework (2004) <http://www.oecd.org/dataoecd/17/7/29468002.PDF>. ; MRAG (2005), Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries, report prepared for the High Seas Task Force and the Department for International Development, UK. Available at www.high-seas.org; MRAG (2005), Illegal, Unreported and Unregulated Fishing on the High Seas: Impacts on Ecosystems and Future Science Needs, report prepared for the High Seas Task Force and the Department for International Development, UK. Available at www.high-seas.org; Roheim, Cathy A (2008) Seafood Supply Chain Management: Methods to Prevent Illegally-Caught Product Entry into the Marketplace.

²²MRAG (2005), Illegal, Unreported and Unregulated Fishing on the High Seas: Impacts on Ecosystems and Future Science Needs, report prepared for the High Seas Task Force and the Department for International Development, UK. Available at www.high-seas.org.

- Another factor is the international nature of the fishing business, including vessel chartering, crewing and flagging. The lack of sufficient legal requirements to link beneficial owners to their vessel registry allows such owners to be protected under a corporate veil, and thus more freely conduct and benefit from IUU activities.²³
- The global character of fisheries production operations and product markets facilitates the product laundering that is central to IUU fishing. In particular, the ease of transshipment as well as the anonymity of the cold-chain for transportation of fish products supports non-traceability of IUU products;
- The anonymity, vitality and transactional speed that exists within global markets for vessel flags, crews and vessels underpins the flexibility with which IUU fleets move from production area to production area.

In some parts of the world, particularly in unregulated sea areas, IUU fishing also overlaps with other forms of maritime crime such as piracy and drug smuggling.²⁴ IUU fishing has also recently been linked to organised crime,²⁵ requiring a cooperative response among affected States. Implementation of the IUU Regulation will thus be conditioned by many different aspects of currently globalised fisheries. Many developing countries will find it difficult to meet the requirements of the IUU Regulation as they have little control over many of the facets of globalisation which support IUU fishing. Consequently, developing countries will require comprehensive programmes of assistance to effectively address IUU fishing.

2. International concerns regarding IUU fishing

Successive reports of the UN Food and Agricultural Organisation (FAO) have demonstrated the serious state of decline of most commercially harvested fish stocks.²⁶ In this context, IUU fishing has been identified as “one of the most severe problems affecting world fisheries”²⁷ and as the “main obstacle in achieving sustainable fisheries in both areas under national jurisdiction and the high seas.”²⁸ A study by the Marine Resource Assessment Group Ltd (MRAG) in 2006 estimated that the total loss to IUU fishing in Guinea, Liberia, Sierra Leone, Angola, Namibia, Mozambique, Kenya, Somalia, Seychelles and Papua New Guinea amounted to USD372 million, representing 19

²³Schmidt, Carl-Christian. (2005) “Economic Drivers of Illegal, Unreported, and Unregulated (IUU) Fishing.” 20 The International Journal of Marine and Coastal Law 479-507; Le Gallic, Bertrand and Cox, Anthony (2006) ‘An Economic Analysis of Illegal, Unreported and Unregulated (IUU) Fishing: Key Drivers and Possible Solutions’ 30 Marine Policy 689.

²⁴ Frozen fish narcotics export ring busted in Montevideo port, 17 August 2008, Available at <http://www.mercopress.com/vernorticia.do?id=14270&formato=html>.

²⁵ Australia Links Organised Crime to Illegal Fishing, 26 May 2008. Available at <http://www.iht.com/articles/2008/05/26/asia/fish.php>.

²⁶ See Food and Agriculture Organisation (FAO), The State of World Fisheries and Aquaculture 2006, Rome: FAO, 2006, www.fao.org.

²⁷ UNGA, Fifty-fourth Session, Agenda Items 40(a) and (c), Oceans the Law of the Sea; Law of the Sea; Results of the Review by the Commission on Sustainable Development of the Sectoral Theme of “Oceans and Seas”, Oceans and the Law of the Sea, Report of the Secretary-General, A/54/429, 30 September 1999, para. 249.

²⁸ UNGA, Fifty-ninth Session, Item 50(b) of the Provisional Agenda, Oceans and the Law of the Sea, Sustainable Fisheries, Including Through the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Related Instruments, Report of the Secretary-General, A/59/298, 26 August 2004, para. 36.

per cent of their combined total value of the catches and 23 per cent of the declared value of the catches.²⁹ A follow up study in April 2008 by MRAG and the Fisheries Centre at the University of British Columbia estimated that the global losses from illegal fishing in 17 FAO Statistical areas is between USD10 billion and USD23 billion annually, representing about 11.06 million to 25.91 million tonnes of fish.³⁰ Apart from its economic and environmental repercussions, IUU fishing has also been equated to “stealing food from some of the poorest of the world”³¹ and is known to cause the displacement of legitimate fishing communities.³²

Several international efforts have been made through the FAO, the United Nations General Assembly and Regional Fisheries Management Organisations (RFMOs) to combat IUU fishing. The principal international instrument is the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) adopted under the auspices of the FAO in 2002. The IPOA-IUU is a comprehensive “toolbox”, providing a full range of measures that can be used by flag States, port States, coastal States, and “market States” so as to combat IUU fishing within their jurisdiction and on the high seas.³³ These measures include:

- the implementation of a fishing vessel registration and licensing systems;
- maintenance of records of fishing vessels;
- the implementation of monitoring, control and surveillance (MCS) measures;
- port enforcement actions;
- catch documentation schemes; and
- trade restrictions.

The suite of measures that cut across the responsibilities of flag, coastal, port and market States are categorised under “All State Responsibilities”. These responsibilities relate to:

- the implementation of international instruments;
- development of national plans of action;
- cooperation among States;
- application of sanctions; and

²⁹ Marine Resource Assessment Group Ltd (MRAG), Review of Impacts of IUU Fishing on Developing Countries, 44.

³⁰ MRAG and Fisheries Ecosystems Restoration Research, Fisheries Centre, University of British Columbia, The Global Extent of IUU Fishing, Final Report, www.illegal-fishing.info/uploads/MRAGExtentGlobalIllegalFishing.pdf.

³¹ Environmental Justice Foundation (EJF), Pirates and Profiteers, 3, www.ejfoundation.org/pdf/pirates_and_profiteers.pdf.

³² David J. Agnew and Colin T. Barnes, “Economic Aspects and Drivers of IUU Fishing: Building a Framework,” Workshop on Illegal, Unreported, and Unregulated (IUU) Fishing Activities, Organisation for Economic Co-operation and Development, Tour Europe, La Défense, 19-20 April 2004, AGRI/FI/IUU(2004)2, www.oecd.org.

³³ FAO, Fisheries Department, Implementation of the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing, FAO Technical Guidelines for Responsible Fisheries No. 9, Rome, FAO, 2002, para 16.

- adoption of measures against IUU fishing by vessels without nationality and vessels flying the flags of non-cooperating members of RFMOs.

The measures in the IPOA-IUU supplement provisions in other fisheries-related international instruments such as the 1982 United Nations Convention on the Law of the Sea (LOS), the 1995 UN Fish Stocks Agreement, the FAO Compliance Agreement, and the FAO Code of Conduct for Responsible Fisheries.

A number of RFMOs have also taken up the global fight against IUU fishing. Several RFMOs, whose membership includes ACP member States,³⁴ have in place measures against IUU fishing. The relevant RFMOs include:

- The Commission for the Conservation of Southern Bluefin Tuna (CCSBT);³⁵
- The Northwest Atlantic Fisheries Organisation (NAFO);³⁶
- The Northeast Atlantic Fisheries Commission (NEAFC);³⁷
- The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR);³⁸
- The Indian Ocean Tuna Commission (IOTC);³⁹
- The Inter-American Tropical Tuna Commission (IATTC);⁴⁰
- The Western and Central Pacific Fisheries Commission (WCPFC);⁴¹ and
- the International Commission for the Conservation of Atlantic Tunas (ICCAT).⁴²

The IUU fishing measures adopted by these RFMOs include the establishment of IUU vessel lists, records of fishing vessels, vessel monitoring systems, transshipment regulations, observer programs, boarding and inspection procedures, port inspection schemes, trade documentation schemes, and trade-related measures such as prohibition of fish landings from IUU vessels. RFMOs such as ICCAT, NEAFC, NAFO, IATTC, IOTC, CCAMLR, and WCPFC have all created IUU Vessel lists

³⁴ See Appendix 2.

³⁵ See <http://www.ccsbt.org/>. South Africa, an ACP member, is a 'cooperating non-member' of the CCSBT and as such has agreed to adhere to the management and conservation objects of the Commission.

³⁶ See <http://www.nafo.int/>. Cuba is a member of the ACP and NAFO.

³⁷ See <http://www.neafc.org/>. The Bahamas and Belize are members of the ACP which participate in the NEAFC in the capacity of cooperating non-contracting members.

³⁸ See <http://www.ccamlr.org/>. Namibia and South Africa are members of the ACP and members of CCAMLR. Cook Islands, Mauritius and Vanuatu are ACP members and parties to the CCAMLR Convention, but are not members of the Commission.

³⁹ See <http://www.iotc.org/>. The following ACP members are members of the IOTC: Belize, Comoros, Eritrea, Guinea, Kenya, Madagascar, Seychelles, Sudan, Tanzania and Vanuatu.

⁴⁰ See <http://www.iattc.org/>. Vanuatu is a member of the ACP and IATTC. Belize and Cook Islands are ACP members and cooperating non-parties to the IATTC Convention.

⁴¹ See <http://www.wcpfc.int/>. The following ACP members are members of the WCPFC: Cook Islands, Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

⁴² See <http://www.iccat.int/>. The following ACP members are members of ICCAT: Angola, Barbados, Belize, Cape Verde, Cote d'Ivoire, Equatorial Guinea, Gabon, Ghana, Guinea, Guyana, Namibia, Nigeria, St Vincent and the Grenadines, Sao Tome and Principe, Senegal, South Africa, Trinidad and Tobago and Vanuatu. Guyana is an ACP member and participates in ICCAT in the capacity of a cooperating non-contracting party.

for vessels flying the flags of non-contracting parties, as well as contracting and cooperating non-contracting parties⁴³.

At the regional level outside the RFMO framework, there is now a growing trend towards adoption of regional plans of actions to combat IUU fishing with significant mirroring of many of the requirements under the international instruments noted above. Thus the EC and the Lake Victoria Fisheries Organisation have adopted respective regional plans of action to prevent, deter, and eliminate IUU fishing.⁴⁴ Similarly, in the Asia-Pacific region, the Southeast Asian countries have adopted a regional plan of action to promote responsible fisheries and combat IUU fishing.⁴⁵ More recently, the Southern African Development Community (SADC) adopted a Statement of Commitment to eradicate IUU fishing.⁴⁶

At national level, some States have incorporated IUU control provisions in national law. Notable examples include New Zealand,⁴⁷ Australia,⁴⁸ and the United States.⁴⁹ For example, new amendments to the *Magnuson-Stevens Fishery Conservation and Management Reauthorisation Act* of the United States authorise denial of port access and prohibition of the imports of fishery products from offending countries.⁵⁰

⁴³ The members of the RFMOs are under obligation to give effect to these measures at the domestic level.

⁴⁴ European Commission, Community Action Plan for the Eradication of Illegal, Unreported and Unregulated Fishing, Brussels, 28.5.2002, COM(2002) 180 final; Lake Victoria Fisheries Organisation, Regional Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing on Lake Victoria and Its Basin, Bagamoyo, Tanzania, 27 May 2004.

⁴⁵ Regional Plan of Action (RPOA) to Promote Responsible Fishing Practices including Combating IUU Fishing in the Region, Bali, Indonesia, 05 May 2007. The RPOA members are: Republic of Indonesia, Australia, Brunei Darussalam, Cambodia, Malaysia, Papua New Guinea, The Philippines, Singapore, Thailand, Timor-Leste and Vietnam.

⁴⁶ The SADC IUU Statement of Commitment will become a SADC Declaration when endorsed by its Council of Ministers. SADC aims to finalise a regional action plan by June 2009 and a review of progress on implementation of the Statement of Commitment is set for the end of 2011. See TRAFFIC News, "Southern African states move to eradicate "pirate" fishing," <http://www.traffic.org/home/2008/7/11/southern-african-states-move-to-eradicate-pirate-fishing.html>. At this early stage of implementation, Mozambique has already signified its commitment under the SADC IUU Statement by undertaking immediate enforcement actions against a Namibian-flagged vessel *Antillas Reefer* and taking further investigation on its two sister vessels *Paloma V* and *Aoster* believed to have conducted IUU fishing in Mozambique waters. See Agencia de Informacao de Mocambique (Maputo), Mozambique: Country Seizes Namibian Pirate Fishing Ship "Antillas Reefer", 18 July 2008. Available at <http://allafrica.com/stories/200807180938.html>.

⁴⁷ New Zealand, Fisheries Act 1996 Amendment Act (No. 2) 1999, Article 113A.

⁴⁸ Australia, Fisheries Management Act 1991, Division 5A, Subdivision AA.

⁴⁹ 16 USC 1826k HSDFMFA §609(d)(1) and §610(a).

⁵⁰ 16 USC 1826(a), (b)(3), and (b)(4).

3. An overview of the ACP-EC fisheries trade system

The current framework for ACP-EC fisheries relations sits within a multi-channel system of fish supply to the EC. Analysis of the ACP-EC fish sector needs to bear this multi-channel system in mind. We do not however describe this multi-channel system in systematic detail in this Report and have not attempted to disaggregate the fisheries product flow statistics provided in the Report on this basis.

This multi-channel system has the following elements:

- An ‘open to all’ non-preferential channel in which fish products – processed and unprocessed – are sent to the EC by commercial actors from all over the world taking advantage of the fisheries cold-chain. Normally these products are subject to the EC customs, tariff and quota system with no preferences granted and reference prices used to control exports so as not to disrupt the market position of EC producers. However, tariffs may be reduced or quota quantities expanded from time to time to provide fuller access to the EC market to meet shortages of supply. Products from the Asian region, for example, which are rapidly competing with ACP products, fall into this category.
- An ACP preferential channel under which – principally through the Lomé/Cotonou and post-Cotonou arrangements – preferential access is granted to processed or unprocessed fish provided such products are sourced: (1) from ACP waters as defined in the rules of origin under the Lomé/Cotonou trade arrangements; (2) from EC-ACP vessels, joint-ventures and similar arrangements.
- An access agreements framework in which fleets owned by EC commercial actors are granted access to fish resources in the EEZs of selected States around the world. Fish caught under these arrangements are automatically classified as originating in the EC, although the vessels which catch this fish are not always flagged to EC countries. Many are flagged to non-EC flag States, including those flying the flags of open register States. Such fish may be processed in ACP States such as for example the Seychelles, Mauritius or Cote d’Ivoire before export to the EC.⁵¹
- High seas production by EC vessels – here again, such product is immediately an EC origin product.

3.1 Preferential fisheries trade

Preferential trade relations between the EC and the African Caribbean and Pacific Group of States (ACP) States date back to the 1957 Treaty of Rome establishing the European Economic

⁵¹ See generally, on the EU’s access agreements regime: Mfodwo, K., *Negotiating Equitable Fisheries Access Agreements – A Capacity-Building and Reference Manual for Developing Coastal States* IUCN Project, Capacity Building for Negotiating Fisheries and Fisheries Partnership Agreements in SRFC Member Countries, (December 2006) 420 pp. <http://www.csrps.org/documents/doctechique/CSRP%20manuel%20en%20smv.pdf> ; Mfodwo, K and M. Tsamenyi, *Responsible Fishing and Access Agreements in the Western Central Pacific– a report commissioned by the Forum Fisheries Agency, Honiara, Solomon Islands, May 2002*, 130 pp; Mfodwo, K and Tsamenyi, M. *The bilateral fisheries agreements of the African Atlantic Region: an analysis of opportunities for intervention by WWF(US) - a report to WWF(US) July 1999*, 65pp.

Community (EEC). Article 131 of the Treaty established an obligation to cooperate with dependant countries and territories of several European States with a view to promoting their economic and social development.⁵² In the 1960s the first and second Yaoundé Conventions were negotiated with 18 newly independent African states.⁵³ These agreements set out a framework regarding financial, technical and trade cooperation, relating primarily to the development of economic and social infrastructure.⁵⁴ A more comprehensive framework of trade relations between the EC and 46 ACP States was established in 1975 by the first Lomé Convention, which was negotiated following the accession of the United Kingdom to the EEC. Three subsequent Lomé Conventions, signed in 1979, 1984 and 1989 respectively, extended preferential trade access to a total of 70 ACP States.⁵⁵

A key element of this treaty-based framework for ACP-EC fisheries relations has always been varied Rules of Origin (RoO) that determine whether preferential treatment is extended to products or services on the basis that they originate from a preference-receiving country.⁵⁶ These preferences were maintained increasingly as a waiver from World Trade Organisation (WTO) rules on non-discriminatory trade arrangements.

By the late 1990s, it was increasingly argued by the Asian and Latin American States that the trade preference component of the Lomé Conventions⁵⁷ was incompatible with WTO rules in that it offered preferential access to EC markets to ACP States, but discriminated against non-ACP States in such fundamental ways that a waiver was not appropriate and the system had to be fundamentally reformed.⁵⁸ In response to this pressure, in 2001, the EC and its ACP partners started the process of negotiating trade arrangements between them which would be compatible with WTO rules. The intention was to negotiate a set of regional Economic Partnership Agreements (EPAs) between a number of regions and the EC before the end of 2007 – the end-date for the WTO waiver. The framework for doing this was the Cotonou Partnership Agreement (CPA or Cotonou Agreement), which was signed on 23rd June 2000 and entered into force in April 2003.⁵⁹ The regions that had emerged by the end of 2007 to negotiate Economic Partnership Agreements with the EU under the remit of the CPA were:

- ESA – East and Southern Africa Group;
- EAC – East African Community;
- SADC – Southern Africa Development Community;
- PACP – Pacific ACP;
- CEMAC – Communauté Économique et Monétaire de l'Afrique Centrale;

⁵² See http://ec.europa.eu/trade/issues/bilateral/regions/acp/index_en.htm.

⁵³ See http://www.acpsec.org/en/about_us.htm.

⁵⁴ See http://www.acpsec.org/en/about_us.htm.

⁵⁵ See http://ec.europa.eu/development/geographical/cotonou/lomegen/lomeitoiv_en.cfm.

⁵⁶ See International Trade Centre, Rules of Origin in the Context of International Trade, 2 at <http://www.intracen.org/tfs/docs/publications/ruleori2.pdf>.

⁵⁷ The first Lomé Convention, concluded in 1975 following the accession of the United Kingdom into the European Economic Community, established a comprehensive framework of trade relations between EC Members and 46 ACP States. Three subsequent Lomé Conventions, concluded in 1979, 1984 and 1989, extended preferential trade access to a total of 70 ACP States. See http://ec.europa.eu/development/geographical/cotonou/lomegen/lomeitoiv_en.cfm.

⁵⁸ UK Kleih and SF Walmsley, The Impact of EU Commercial Fisheries Policies and Practice on International Trade in Fisheries Products (2007) 20-21.

⁵⁹ See http://ec.europa.eu/development/geographical/cotonou/cotonou2005_en.cfm.

- ECOWAS – Economic Community of West African States; and
- CARIFORUM – Caribbean Forum.

By mid-2007, negotiations had faltered leading to a rush to sign a variety of agreements, called generically Interim Economic Partnership Agreements (IEPAs) which are WTO-compatible arrangements covering only trade in goods. They contain clauses committing both sides to continue negotiations towards full EPAs by the end of 2008 but current IEPAs could become the permanent agreement should these negotiations not be concluded successfully.

One solitary comprehensive EPA between the EC and CARIFORUM has been concluded to date. Under this agreement, the CARIFORUM States immediately secured Duty Free and Quota Free (DFQF) access for all exports except rice and sugar in return for removing barriers to 82.7 percent of imports from the EC over the next 15 years. Other ACP States sought access into the EC market under variants of the EC Generalised System of Preferences scheme. Appendix 2 identifies which ACP States are party to IEPA/EPAs.

As noted in further detail below, the EC has offered, with limited exception, duty-free and quota-free access to its markets to all States party to EPAs and IEPAs.

3.2 The Generalised System of Preferences

The Generalised System of Preferences (GSP) is a system of exemption from WTO rules aimed at promoting the exports of developing countries by allowing their products preferential access to the markets of developed countries. As noted in further detail below, the EC has established a GSP scheme containing three systems of tariff preferences. These schemes are referred to as GSP Standard, GSP Everything but Arms for least developed countries (the EBA), and GSP+. Appendix 2 identifies which ACP States are currently granted market access under these schemes.

3.3 Rules of Origin

The figure below outlines the variety of Rules of Origin (RoO) currently applicable to trade between the EC and ACP States in fisheries products. Although the Cotonou Agreement is no longer in force, Cotonou RoO are still utilised, for example in the Ghana and Ivory Coast IEPAs, which lack a Protocol setting out RoO.

Figure 1: RoO applicable to ACP-EC trade in fisheries products⁶⁰

| Trade Framework | Outline of Rules of Origin |
|------------------------------|---|
| Cotonou fisheries RoO | <p>Origin: The fish must be ‘wholly obtained’. This applies if fish is caught anywhere by ‘qualifying vessels’. The origin of fish caught in ‘territorial waters’ (12 mile zone) is automatic, regardless of which vessel caught it.</p> <p>Qualifying Vessels: Vessels must be registered (or recorded) in and flagged by an EC, ACP or OCT (Overseas Countries and Territories of the European Communities) State. Minimum vessel ownership criteria apply.</p> <p>Leased or Chartered Vessels: The EC is required to recognise, upon request of an ACP State, that vessels chartered or leased by the ACP State be treated as “their vessels” to undertake fisheries activities in the EEZ provided that:</p> <ul style="list-style-type: none"> • the ACP State offered the Community the opportunity to negotiate a fisheries agreement and the Community did not accept this offer; • that at least 50% of the crew, master and officers included are nationals of States party to the Agreement, or of an OCT; • it has been accepted by the ACP-EC Customs Cooperation Committee as providing adequate opportunities for developing the capacity of the ACP State to fish on its own account and in particular as conferring on the ACP State the responsibility for the nautical and commercial management of the vessel placed as its disposal for a significant period of time. <p>Crew requirements: At least 50% of crew (including Master and officers) must be nationals of EC, ACP and/or Overseas Countries and Territories of the European Communities (OCT).</p> <p>Transformation: Products must be wholly obtained.</p> <p>Derogation:⁶¹ An automatic annual derogation of 8,000mt for canned tuna and 2,000mt for tuna loins is allocated to the ACP group as a whole</p> |

⁶⁰ For a detailed outline of relevant RoO, see: Liam Campling, Elizabeth Havice and Vina Ram-Bidesi, Pacific Island Countries, The Global Tuna Industry and the International Trade Regime - A Guidebook (2007) 56-70; Campling, Liam Fisheries Aspects of ACP-EU Interim Economic Partnership Agreements and their Implications for Future Negotiations: Market access and sustainable development issues (May 2008 mimeo – copy with authors) 22-39.

| | |
|---|---|
| | <p>for negotiated distribution among all ACP States.⁶² A request-based specific derogation process also applies. Such requests are granted by the EC only in situations where the promotion of “the development of existing industries or the creation of new industries justifies them.”⁶³</p> <p>Value tolerance rule: The total value of non-originating fish cannot exceed 15% of the ex-works price of the product. Value tolerance is determined on a single-species, single-consignment and single-consignee basis. This provision has been rarely used and is administratively difficult to satisfy.⁶⁴</p> |
| The Basic Template for Post-Cotonou Rules of Origin⁶⁵ | <p>EC Council Regulation No 1528/2007 of 20 December 2007 establishes a RoO template to be incorporated into agreements establishing, or leading to the establishment of, Economic Partnership Agreements with ACP States. The template is not followed strictly in current EPAs and IEPAs.</p> <p>Definition of wholly obtained products – Article 3:⁶⁶ Primary and manufactured products are considered as wholly obtained in the ACP States or in the Community in accordance with the following conditions:</p> <p>For Primary products:</p> <ul style="list-style-type: none"> • The products must come from aquaculture, including mariculture, and the fish in question must be born and raised in that ACP territory;⁶⁷ • the products must come from sea fishing and other products taken from the sea outside the territorial waters of that ACP State by vessels which fall into the permitted categories set out by Article 3;⁶⁸ or • the products must be made aboard factory ships as defined by Article 3 and additionally must also be made exclusively from products as defined by Article 3.⁶⁹ <p>Manufactured goods will also qualify where such goods are produced exclusively in the territory of the ACP State from primary products as</p> |

⁶¹ Campling, 2008, 38.

⁶² CPA, Annex V, Protocol 1, Title V, Article 38(8).

⁶³ CPA, Annex X, Protocol 1, Title V, Article 38(1).

⁶⁴ Campling, 2008, 7; Oceanic Development/Megapesca, Specific Convention N°3: Rules of Origin in Preferential Trade Arrangements New Rules for the Fishery Sector Final Report CONTRAT CADRE FISH/2006/20 27 June 2007, (mimeo - copy with authors) 3.

⁶⁵ COUNCIL REGULATION (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements.

⁶⁶ EC Regulation 1528/2007, Article 3(1).

⁶⁷ EC Regulation 1528/2007, Article 3(1)(e)(ii).

⁶⁸ EC Regulation 1528/2007, Article 3(1)(f).

⁶⁹ EC Regulation 1528/2007, Article 3(1)(g).

specified in Article 3(1)(a) to 3(1)(j).⁷⁰

Qualifying vessels or companies for the purposes of Article 3:⁷¹

Vessels or factory ships must: be registered in an EC Member State or in an ACP State; sail under the flag of an EC Member State or any ACP State; in addition be at least 50 % owned by nationals of the ACP State claiming origin privileges or 50% owned by nationals of an EC Member State.

Vessels or factory ships must be owned by a qualifying company, which must have a head office and main place of business in the specific ACP State claiming origin privileges or the head office and main place of business must be an EC Member State. Minimum local ownership levels apply.

Recognition of chartered or leased fishing vessels as qualifying vessels in some circumstances:⁷² Article 3(3) requires the Community to recognise chartered or leased fishing vessels as falling within the category of qualifying vessels even though they are not owned by the ACP State. The ACP State seeking this extension must specifically request it, presumably in advance. The following conditions must be met before the Commission will recognise such a request:

- that the ACP State offered the Community the opportunity to negotiate a fisheries agreement and the Community did not accept that offer;
- that the charter or lease contract has been accepted by the Commission as providing adequate opportunities for the development of the capacity of the ACP State to fish on its own account and in particular as conferring on the ACP State the responsibility for the nautical and commercial management of the vessel placed at its disposal for a significant period of time.

It should be noted that leased factory ships are not specifically mentioned and thus presumably would not qualify.

Rules for tolerance of non-originating fish: In cases where insufficient wholly obtained fish is available, *all* IEPAs and the Caribbean EPA allow a certain level of non-originating inputs (fresh or frozen fish) to be incorporated into originating manufactured fish products. The level is up

⁷⁰ EC Regulation 1528/2007, Article 3(1)(k).

⁷¹ EC Regulation 1528/2007, Article 3(2).

⁷² EC Regulation 1528/2007.

⁷³ For further details, see Campling, 2008, 38.

⁷⁴ See Declaration of the CARIFORUM States Relating to Protocol I on the Origin of Fishery Products from the Exclusive Economic Zone; Joint Declaration Relating to Protocol I on the Origin of Fishery Products.

| | |
|---|--|
| | <p>to 15% of the ex-works price.</p> <p>Automatic derogations from the RoO: Under current EPA and IEPA arrangements, a variety of derogation frameworks now exist.⁷³</p> <p>Removal of references to OCT and to crew requirements: Cotonou references to the Overseas Countries and Territories of the European Communities and to crew requirements are removed.</p> <p>Status of products caught in EEZ: To date, the issue of whether products caught in the EEZ should have automatic originating status has not been resolved in EPAs and IEPAs.⁷⁴</p> |
| Rules of Origin in Caribbean EPA⁷⁵ | Application of tolerance rule: The 15% tolerance rule does not apply to certain prepared or preserved fisheries products (categorised under Harmonised System (HS) tariff codes HS1604 and HS1605). ⁷⁶ |
| Rules of Origin in Post-Cotonou IEPAs⁷⁷ | <p>Application of tolerance rule: In contrast to the Caribbean EPA, the 15% tolerance rule in African IEPAs also applies to certain prepared or preserved fisheries products.⁷⁸</p> <p>Global sourcing in Pacific IEPA: Compared to the African and Caribbean States, Pacific ACP States have been granted significant freedom to use non-originating material in their processed products. The result is that, regardless of where fish is caught and irrespective of the status of the vessel's flag, registration or ownership, the fish is deemed originating as long as it is transformed from being fresh or frozen (and thus categorised under HS chapter 3) into being a pre-cooked, packaged, canned, etc, product (categorised HS tariff codes HS1604 and HS1605).⁷⁹ However EC regulations on SPS and IUU fishing still apply. This new PACP right is set out in Protocol 1 to the PACP IEPA.</p> |
| RoO for GSP, GSP+ and GSP EBA beneficiaries⁸⁰ | <p>Value tolerance rule: Total value of non-originating fish cannot exceed 10% of the ex-works price of the product.</p> <p>Crew requirements: At least 75% of crew (including Master and officers) are nationals of beneficiary or EC country.</p> <p>Ownership requirements: Contrary to the position under Cotonou, IEPA</p> |

⁷⁵ See CARIFORUM-EC EPA (Annex II to Protocol 1); ESA-EC IEPA (Annex II to Protocol 1); PACP-EC IEPA (Annex II to Protocol 1).and SADC-EC IEPA (Annex II to Protocol 1). See also Stevens, et al (2008).

⁷⁶ Annex II Protocol I Cariforum-EC EPA

http://www.crn.org/documents/ACP_EU_EPA/epa_agreement/EPA_Text_Protocols_Annexes_Joint_Declarations_060308.pdf.

⁷⁷ See Stevens, et al (2008).

⁷⁸ See ESA-EC IEPA (Annex II to Protocol 1) and SADC-EC IEPA (Annex II to Protocol 1). See also Campling, 34.

⁷⁹ Campling, 2008, 35-36

⁸⁰ Liam Campling, Economic Partnership Agreements (EPAs) and Pacific Fisheries, Revised paper prepared for the Joint Pacific ACP Trade and Fisheries Officials Meeting (PACPTOM / PACPFOM) and the Joint Pacific ACP Trade and Fisheries Ministers Meeting (PACPTMM / PACPFMM) Port Vila, Vanuatu, 13-14 November 2006 (May 2008 mimeo – copy with authors) 10, 12. See also FFA Fisheries Trade Briefing (January) on EC proposed reform of GSP RoO at <http://www.ffa.int/node/1059>.

| | |
|--|--|
| | <p>and EPA RoO, ownership of a vessel by another ACP State does not contribute to meeting 50% ownership thresholds.</p> <p>Leased or chartered vessels: Access not granted.</p> <p>Derogations: No provision for automatic derogations. Specific derogations can only be applied for by State beneficiaries.</p> |
|--|--|

4. Economic trends in ACP-EC fisheries trade

This Section of the Report identifies trends in ACP-EC fisheries trade, analysed in light of the multi-channel EC system as well as the evolution of the trade frameworks discussed in Section 3.

4.1 Analysis of the EC fisheries market

The EC is the largest global market for fish, accounting for 40% of global imports. The EC finds itself increasingly dependent on imports of fish and fishery products to meet both its consumer needs and the production needs of its fisheries industry. In 2004, the EC⁸¹ imported about €13 billion worth of fish and fishery products with exports amounting to €2.3 billion.⁸² The ten countries which account for more than half of all the fishery imports into the EC are Norway, Iceland, China, US, Morocco, Chile, Thailand, Ecuador, Argentina, and India.⁸³

The most significant imported products into the EC in value terms are fish fillets, crustaceans and prepared/preserved fish.⁸⁴ In term of type of fish, the three most important fish products for the EC are shrimps, tuna, and salmon.

4.1.1 Shrimps

Shrimps account for almost 18% of the total value of EC imported fishery products. In 2005, the EC imported about 541,397 tonnes of shrimps worth €2.5 billion. The EC maintains a relatively high MFN duty (20%) for cooked and peeled shrimp to protect its industry for these products, situated mainly in Denmark. However, in order to satisfy the needs of the processing industry for supplies of raw material, the EC has opened a reduced tariff rate quota of 7,000 tonnes at 6% for cooked and peeled shrimp as part of a series of autonomous tariff quotas.⁸⁵

⁸¹ This term refers collectively to the 25 members of the EU who acceded to the Union on or before 1 May 2004.

⁸² EC, Trade Issues, Trade in agricultural goods and fishery products, Fisheries: Trade-partners, http://ec.europa.eu/trade/issues/sectoral/agri_fish/fish/tp_en.htm.

⁸³ EC, Trade Issues, Trade in agricultural goods and fishery products, Fisheries: Trade-partners, http://ec.europa.eu/trade/issues/sectoral/agri_fish/fish/tp_en.htm.

⁸⁴ EC, Trade Issues, Trade in agricultural goods and fishery products, Fisheries, http://ec.europa.eu/trade/issues/sectoral/agri_fish/fish/tp_en.htm.

⁸⁵ See Council Regulation (EC) No 2505/96 of 20 December 1996 opening and providing for the administration of Community tariff quotas for certain agricultural and industrial products and amending Regulation (EC) No 3059/95 opening and providing for the administration of Community tariff quotas for certain agricultural and industrial products (first series 1996).

Figure 2: Main EC suppliers of Shrimps⁸⁶

| | Period | 2004 | | 2005 | | Change | |
|-----------|------------|--------------|------------|--------------|------------|--------|--------|
| | Country | 1000 € | MT | 1000 € | MT | Value | Change |
| | Extra-EC | 2,353,819.08 | 505,801.00 | 2,518,174.56 | 541,396.90 | 7 | 7 |
| 1 | Greenland | 155,369.05 | 74,679.30 | 179,726.74 | 81,671.00 | 16 | 9 |
| 2 | Ecuador | 127,865.16 | 31,107.80 | 189,695.20 | 43,764.80 | 48 | 41 |
| 3 | India | 174,798.20 | 38,278.20 | 194,773.68 | 41,740.20 | 11 | 9 |
| 4 | Brazil | 140,620.00 | 43,022.80 | 140,917.30 | 40,109.40 | 0 | -7 |
| 5 | Canada | 102,210.83 | 32,659.30 | 107,959.85 | 37,636.10 | 6 | 15 |
| 6 | China | 17,451.34 | 3,520.00 | 121,646.95 | 34,305.40 | 597 | 875 |
| 7 | Indonesia | 147,193.86 | 31,005.60 | 146,503.56 | 26,460.80 | 0 | -15 |
| 8 | Bangladesh | 148,751.53 | 21,444.30 | 161,864.02 | 24,744.30 | 9 | 15 |
| 9 | Iceland | 123,291.13 | 25,426.40 | 91,416.97 | 19,130.30 | -26 | -25 |
| 10 | Norway | 85,396.49 | 18,895.00 | 84,364.96 | 18,352.90 | -1 | -3 |

4.1.2 Tuna

The products of most significance for the Community industry are canned tuna and tuna loins, a semi-processed product for use in canning. Since the mid-1990s the French and Italian processing industries have increasingly used loins as the raw material for canned tuna. The Spanish canning industry is also increasing its use of imported tuna loins. The MFN import duty rate for these products is 24%. However, as part of its efforts to ensure an adequate supply of raw material to the Community processing industry, the EC has suspended tariffs on imports of unprocessed tuna destined for the sector as well as opening an *erga omnes* quota of 10,000 tonnes for tuna loins at 6% duty for the period 2007-2009.⁸⁷

⁸⁶ EC Trade Issues, Trade in agricultural goods and fishery products, accessed at http://ec.europa.eu/trade/issues/sectoral/agri_fish/fish/pq_en.htm.

⁸⁷ See EC COM(2007) 289 final, 'Proposal for a Council Regulation opening and providing for the management of autonomous Community tariff quotas for certain fishery products for the period 2007 to 2009', Brussels, 4 June 2007.

Figure 3: Main EC suppliers of Canned Tuna: imports of canned tuna 2002-2005⁸⁸

| | 2003 | 2004 | 2005 | 2003 | 2004 | 2005 |
|----------------------------------|-----------------|---------|---------|---------------|---------|---------|
| | Volume (tonnes) | | | Value (000 €) | | |
| Total imports | 369,639 | 372,647 | 395,916 | 816,364 | 780,314 | 870,678 |
| Major exporters | | | | | | |
| <i>Total MFN Suppliers</i> | 115,861 | 93,714 | 117,373 | 190,612 | 160,201 | 217,208 |
| Thailand | 61,011 | 49,507 | 61,964 | 107,704 | 93,149 | 126,112 |
| Philippines | 42,181 | 33,983 | 39,732 | 64,599 | 52,837 | 67,351 |
| Indonesia | 9,575 | 8,240 | 12,078 | 13,236 | 11,260 | 17,806 |
| <i>Total duty-free suppliers</i> | 253,690 | 278,854 | 278,452 | 625,435 | 619,901 | 653,126 |
| <i>Total ACP suppliers</i> | 198,726 | 210,708 | 191,784 | 504,440 | 478,341 | 453,896 |
| Seychelles | 52,342 | 54,297 | 57,297 | 163,540 | 141,487 | 145,812 |
| Ivory Coast | 42,714 | 49,530 | 30,820 | 115,691 | 123,608 | 82,472 |
| Ghana | 30,948 | 28,987 | 29,298 | 69,614 | 56,622 | 60,915 |
| Mauritius | 28,513 | 35,066 | 31,004 | 59,910 | 67,924 | 70,670 |
| <i>Total GSP+ beneficiaries</i> | 46,735 | 59,946 | 77,382 | 101,854 | 125,350 | 178,799 |
| Ecuador | 37,047 | 45,743 | 62,452 | 78,890 | 92,259 | 138,636 |
| Colombia | 7,811 | 10,449 | 11,553 | 18,426 | 25,000 | 30,965 |
| Costa Rica | 751 | 2,378 | 1,905 | 1,834 | 5,317 | 5,635 |

4.1.3 Salmon

Salmon's share of total EC fish imports was 12% in 2005. The EC imported mainly fresh or chilled salmon under HS0302 (fresh or chilled fish), followed by salmon fillets. The biggest supplier for salmon in 2005 was Norway with 348,950 tonnes worth €1,268,937, which accounts for 73% of all EC imports of salmon in terms of value.⁸⁹

⁸⁸ Source: EC Trade Issues, Trade in agricultural goods and fishery products, accessed at http://ec.europa.eu/trade/issues/sectoral/agri_fish/fish/pq_en.htm. Statistics are for canned tuna only and do not include imports of tuna loins.

⁸⁹ EC, Trade Issues, Trade in agricultural goods and fishery products, Fisheries: Product questions, http://ec.europa.eu/trade/issues/sectoral/agri_fish/fish/tp_en.htm.

Figure 4: Main suppliers of Salmon⁹⁰

| | Period | 2004 | | 2005 | | Change | |
|-----------|---------------|-----------|---------|-----------|---------|--------|--------|
| | Country | 1000 € | MT | 1000 € | MT | Value | Change |
| | | 1,343,200 | 428,782 | 1,721,615 | 464,312 | 28 | 8 |
| 1 | Norway | 992,163 | 322,024 | 1,268,936 | 348,950 | 28 | 8 |
| 2 | Chile | 91,785 | 20,546 | 193,981 | 43,543 | 111 | 112 |
| 3 | USA | 82,160 | 28,267 | 81,465 | 24,544 | -1 | -13 |
| 4 | China | 36,653 | 14,704 | 54,305 | 17,220 | 48 | 17 |
| 5 | Faroe Islands | 85,165 | 27,438 | 51,023 | 12,819 | -40 | -53 |
| 6 | Canada | 37,852 | 10,425 | 44,886 | 10,271 | 19 | -1 |
| 7 | Iceland | 6,796 | 2,204 | 11,972 | 3,444 | 76 | 56 |
| 8 | Thailand | 7,326 | 2,352 | 12,479 | 3,098 | 70 | 32 |
| 9 | Vietnam | 777 | 220 | 1,009 | 180 | 30 | -18 |
| 10 | Bulgaria | 53 | 18 | 184 | 43.30 | 246 | 139 |

The preceding tables of the main suppliers of shrimp, tuna, and salmon products to the EC suggest that EC is becoming less self-sufficient in catches in its own waters and becoming more dependent on fisheries imports. However, the list of trading partners for these fishery products reveals that the EC is not significantly dependent on ACP States. This is illustrated more clearly in the succeeding sections of the Report where ACP exports to the EC are compared with those of other regional suppliers.

4.2 Analysis of ACP fisheries exports to the EC⁹¹

This section analyses trends in fisheries exports from ACP States to the EC.⁹² Consistent with the Terms of Reference for this Report, particular attention is devoted to comparing trends occurring prior to the signing of the Cotonou Agreement in 2001 (pre-Cotonou period) and trends occurring subsequent to entry into force of the Cotonou Agreement in 2003 (post-Cotonou period).

4.2.1 Background information

The EC is the major trading partner for most of the ACP States, particularly African ACP States. In 2007, the ACP trade with the EC totalled €80 billion, with the EC importing goods to the value of

⁹⁰ EC Trade Issues, Trade in agricultural goods and fishery products, accessed at http://ec.europa.eu/trade/issues/sectoral/agri_fish/fish/pq_en.htm.

⁹¹ The comments provided by Evelina Medin (Faculty of Health and Behavioural Sciences, University of Wollongong) in relation to this Section of the Report are gratefully acknowledged.

⁹² Due to data limitations presented in EuroStat External Trade Database, the analysis in this Section is limited to the type of fishery products according to nomenclature and does not identify the source of the fishery (e.g. marine, inland, and aquaculture sectors).

€40.2 billion and exporting goods worth €39.7 billion.⁹³ In addition, EC investment flows to the ACP have also increased from €1,922 million in 1996 to €4,319 million in 2002.⁹⁴ However, while trade between the ACP and EC has remained important for the ACP, it is only marginal for the EC.

The ACP States represent an important fish trading partner for the EC. In 2006, the value of the EC fish imports from ACP States was around €1.4 billion, or about 12% of the total value of extra-EC fish imports.

About 15% of the total fisheries imports of EC come from ACP States. The main exports to the EC of ACP are canned/processed tuna, fish fillets, shrimp, chilled whole fish, frozen whole fish, and octopus. In general, the main ACP suppliers to EC of unprocessed fisheries imports are Namibia, Senegal, Tanzania, Mauritania, and Seychelles, amounting to about €1.21 billion in total value. The main ACP suppliers for processed fish are Seychelles, Cote d'Ivoire, Ghana, Mauritius, and Madagascar with a total value of €0.53 billion.⁹⁵

More specifically, the main fish exports from ACP States are:

- Fresh/chilled fish and shellfish: South Africa (16%), Tanzania (15%), Senegal (12%), the Fiji Islands (8%), Namibia (7.5%), and Papua New Guinea (5%);
- Frozen shrimps: Mozambique (30%), Senegal (21%), Guyana (18%) and Belize (7%);
- Canned tuna: Seychelles, Ghana and Cote d'Ivoire; and
- Fresh-water fish, e.g. Nile perch and tilapia: the three countries bordering Lake Victoria (Kenya, Tanzania and Uganda).⁹⁶

4.2.2 Aggregate trends

The aggregate trends analysed in this Report incorporate fisheries products from the following Harmonised System (HS) product categories:

- HS0301 – Live fish;
- HS0302 – Fish, fresh or chilled (excluding fish fillets and other fish meat of Heading 0304);
- HS0303 – Frozen fish (excluding fish fillets and other fish meat of Heading 0304);
- HS0304 – Fish fillets and other fish meat, whether or not minced, fresh, chilled or frozen;
- HS0305 – Fish, fit for human consumption, dried, salted or in brine; Smoked fish, fit for human consumption, whether or not cooked before or during the smoking process; Flours, meals and pellets of fish, fit for human consumption;

⁹³ EC, Trade Issues, Africa, Caribbean, Pacific. Economic Partnership Agreements: A New Approach in EU-ACP Trade Relations. http://ec.europa.eu/trade/issues/bilateral/regions/acp/index_en.htm.

⁹⁴ EC, Trade Issues, Africa, Caribbean, Pacific. Economic Partnership Agreements: A New Approach in EU-ACP Trade Relations. http://ec.europa.eu/trade/issues/bilateral/regions/acp/index_en.htm.

⁹⁵ Ulrich Kleih, Colin Barnes, Ian Payne, Peter Greenhalgh, Suzannah Walmsley, and Charlotte Howard, The Impact of EU Commercial Fisheries Policies and Practice on International Trade in Fisheries Products, ACP Consultative Process on a Trade and Sustainable Development Approach to Negotiation of Fisheries under the EPA, 22-24 January 2007.

⁹⁶ Ibid.

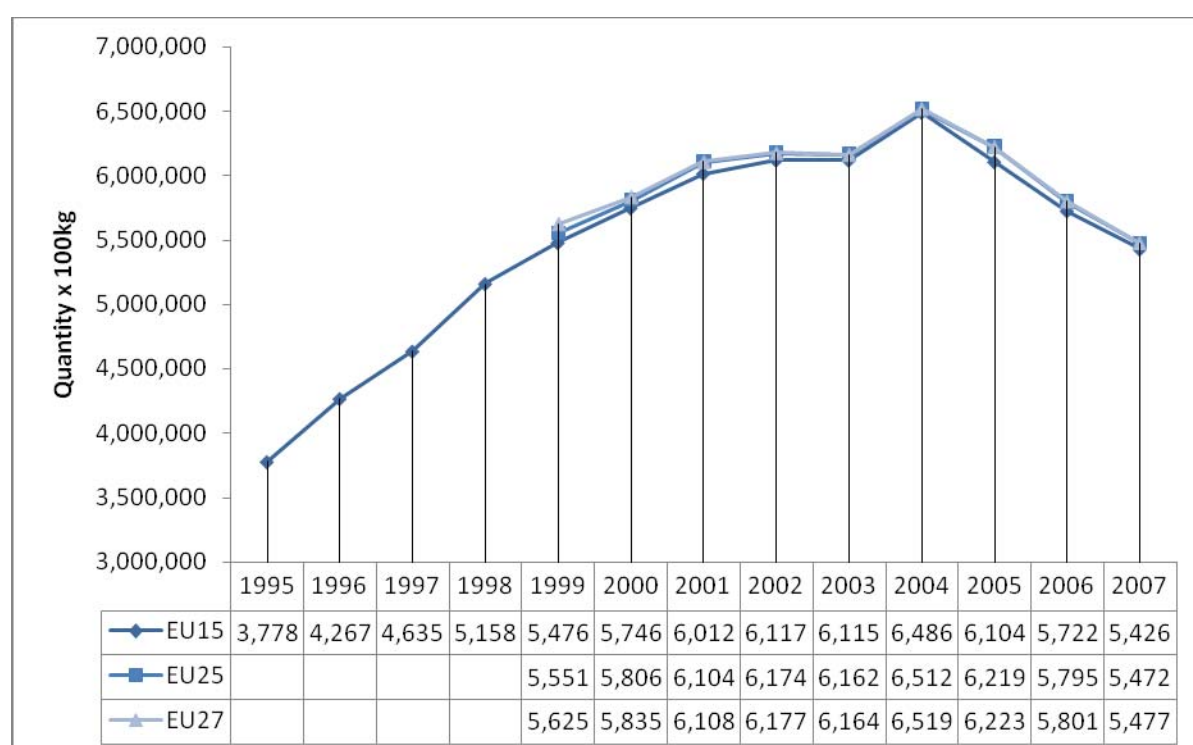
- HS0306 – Crustaceans, fit for human consumption, whether in shell or not, live fresh, chilled, frozen, dried, salted or in brine, including crustaceans in shell cooked beforehand by steaming or by boiling in water; Flours, meals and pellets of crustaceans, fit for human consumption;
- HS0307 – Molluscs, fit for human consumption, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine, including aquatic invertebrates (other than crustaceans and molluscs); Flours, meals and pellets of aquatic invertebrates, other than crustaceans, fit for human consumption;
- HS1604 – Prepared or preserved fish; Caviar and Caviar substitutes prepared from fish eggs;
- HS1605 – Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved.

Export data is provided in relation to the following sub-groups of EU member states:

- EU15 – the 15 members of the EU who acceded to the Union on or before 1 January 1995;
- EU25 – the 25 members of the EU who acceded to the Union on or before 1 May 2004;
- EU27 – the EU25 in addition to Bulgaria and Romania, who acceded to the Union on 1 January 2007.

Figures 5 and 6 present aggregate trends of exports by ACP States of fisheries products to the EC for the period between 1995 and 2007.

Figure 5: ACP Fisheries Exports to the EC, in quantity x100 kg, 1995-2007⁹⁷



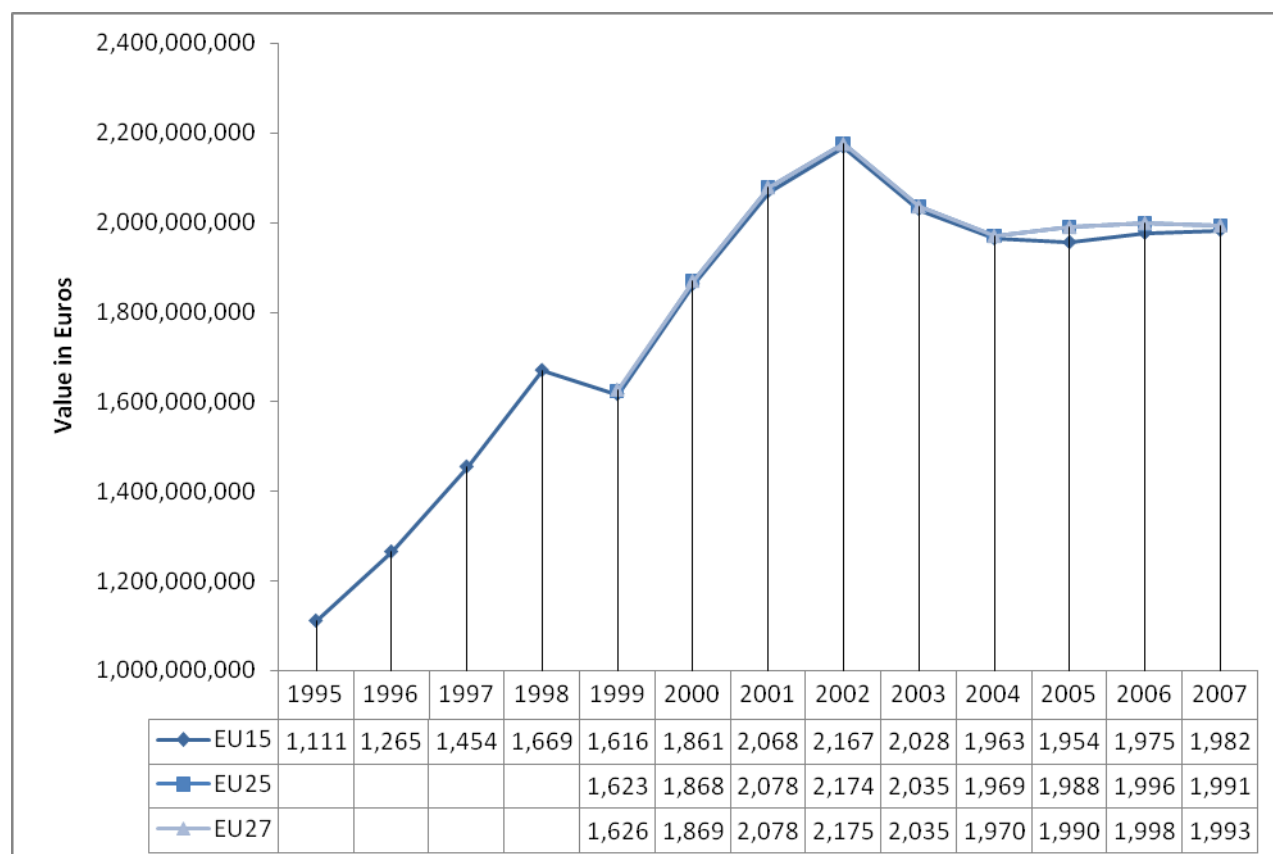
⁹⁷ Source: Data generated using web-based query of EuroStat External Trade Dataset (EU27 Trade Since 1995 By HS2-HS4). The query interface can be accessed at <http://epp.eurostat.ec.europa.eu/newxtweb/>.

The general trends evident in Figure 5 can be summarised as follows:

- In terms of volume, the vast majority of ACP fisheries exports to the EC are imported by the EU15.
- The annual volume of ACP fisheries exports to the EC increased significantly between 1995 and 2004.
- The rate of increase in annual volume plateaued between 2001 and 2002 – the period following signature of the Cotonou Agreement in 2000.
- The annual volume of ACP fisheries exports to the EC increased most sharply between 2003 and 2004 – the period immediately following entry into force of the Cotonou Agreement.
- In the post-Cotonou period between 2005 and 2007, the annual volume of ACP fisheries exports to the EC decreased sharply, returning to pre-1999 levels.

Contrasting trends are evident in Figure 6, which presents aggregate trends of ACP fisheries exports to the EC in terms of their annual value in Euros.

Figure 6: ACP Fisheries Exports to the EC, value in Euros, 1995-2007⁹⁸



⁹⁸ Ibid.

The trends evident in Figure 6 can be summarised as follows:

- In terms of value, the vast majority of ACP fisheries exports to the EC are imported by the EU15.
- The annual value of ACP fisheries exports to the EC increased significantly between 1995 and 2002, dropping briefly in 1999.
- The highest annual value of ACP fisheries exports occurred in 2002 – a period between the signing and entry into force of the Cotonou Agreement.
- The highest annual value of ACP fisheries exports occurred two years earlier than the highest annual volume of ACP-EC fisheries exports, which occurred in 2004.
- In the post-Cotonou period between 2004 and 2007, the value of ACP fisheries exports to the EC remained stable despite sharp decreases in export volumes.

It is likely that supply and demand relationships have influenced the discrepancy between trends in volume of fisheries exports and trends in economic value of those exports.

The trends identified in Figures 5 and 6 raise the question of whether adoption and entry into force of the Cotonou Agreement and associated trade frameworks has placed downward pressure on ACP fisheries exports to the EC. As mentioned in Section 3.1, ACP fisheries exports during the pre-Cotonou period enjoyed favourable discrimination under the trade preference component of the Lomé Conventions. As fisheries trade arrangements between the ACP States and the EC move towards consistency with the non-discriminatory and multilateral WTO framework, ACP States are arguably more exposed to market competition from other fisheries exporters. As identified in Section 4.3 of this Report, downward trends in the volume of ACP fisheries exports to the EC have been accompanied by significant increases in the volume of exports of regional competitors, in particular Southeast Asia.

However, in the absence of detailed economic analysis, it is difficult to draw definitive conclusions that attribute any downward trends in ACP fisheries exports to changes in the ACP-EC trade framework. Indeed, there are a wide variety of political, legal, socio-economic and environmental factors that may have contributed to the above trends. The factor of particular relevance to this Report is the emergence of serious threats to the sustainability of fish stocks, particularly as a result of IUU fishing.

4.2.3 Trends for individual ACP States

Trends in fisheries exports for individual ACP States vary significantly, which may be accounted for by a number of varying factors particular to the situation of each country. These factors include the existence of bilateral access agreements, immediate access to fishing grounds, production of fishery goods critical to the EC market, environmental conditions, and socio-political events. In view of the focus of this Report on Commonwealth ACP States, Appendix 4 presents the aggregate trends of the volume of fisheries exports by these States to the EC. These trends may be summarised as follows.

- Stable fisheries exports: The Commonwealth ACP member States which are the main suppliers of fish and fishery products to the EC, such as Namibia, Nigeria, Mozambique, Ghana, the Bahamas, Seychelles, and South Africa. Among these countries, the Seychelles, South Africa, Nigeria and Namibia are showing declining fisheries exports to the EC.
- High fisheries exports from the late 1990s to early 2000, followed by a significant decrease in fisheries exports: Belize, Cameroon, Malawi, Sierra Leone, St. Vincent and the Grenadines, Trinidad and Tobago and Vanuatu.
- Significant fisheries exports only from 2003: Guyana.
- Overall continuous increase in fishery exports: Kenya, Papua New Guinea, Mauritius, Tanzania and Uganda. Grenada shows increasing fisheries exports from 1997 but has significantly dropped in 2007.
- Significant decrease in fisheries exports, followed by a partial recovery in recent years: Gambia, Jamaica, Fiji, Solomon Islands.
- Erratic increases and decreases in fisheries exports: Antigua and Barbuda, Barbados, Tonga and Zambia.
- Occasional fisheries exports to the EC: Botswana, Dominica, Kiribati, Lesotho, Nauru, St. Kitts and Nevis, St Lucia, Swaziland, and Tuvalu.

4.2.4 Product-specific trends

Figures 7 and 8 below compare trends in the export of specific fisheries products⁹⁹ by ACP States to the EC. This comparison shows that the most exported fisheries products by volume are HS1604 (prepared or preserved fish), HS0303 (frozen fish) and HS0304 (fish fillets) respectively. In terms of annual economic value, the most exported fisheries products are HS1604 (prepared or preserved fish), HS0306 (crustaceans) and HS0304 (fish fillets).

The export trends by volume identified in Figure 7 are generally consistent with the aggregate trend by volume identified in Figure 5 above. Export volumes have generally increased in the years leading up to the signing or entry into force of the Cotonou Agreement then decreased or plateaued in the post-Cotonou period. The exceptions are:

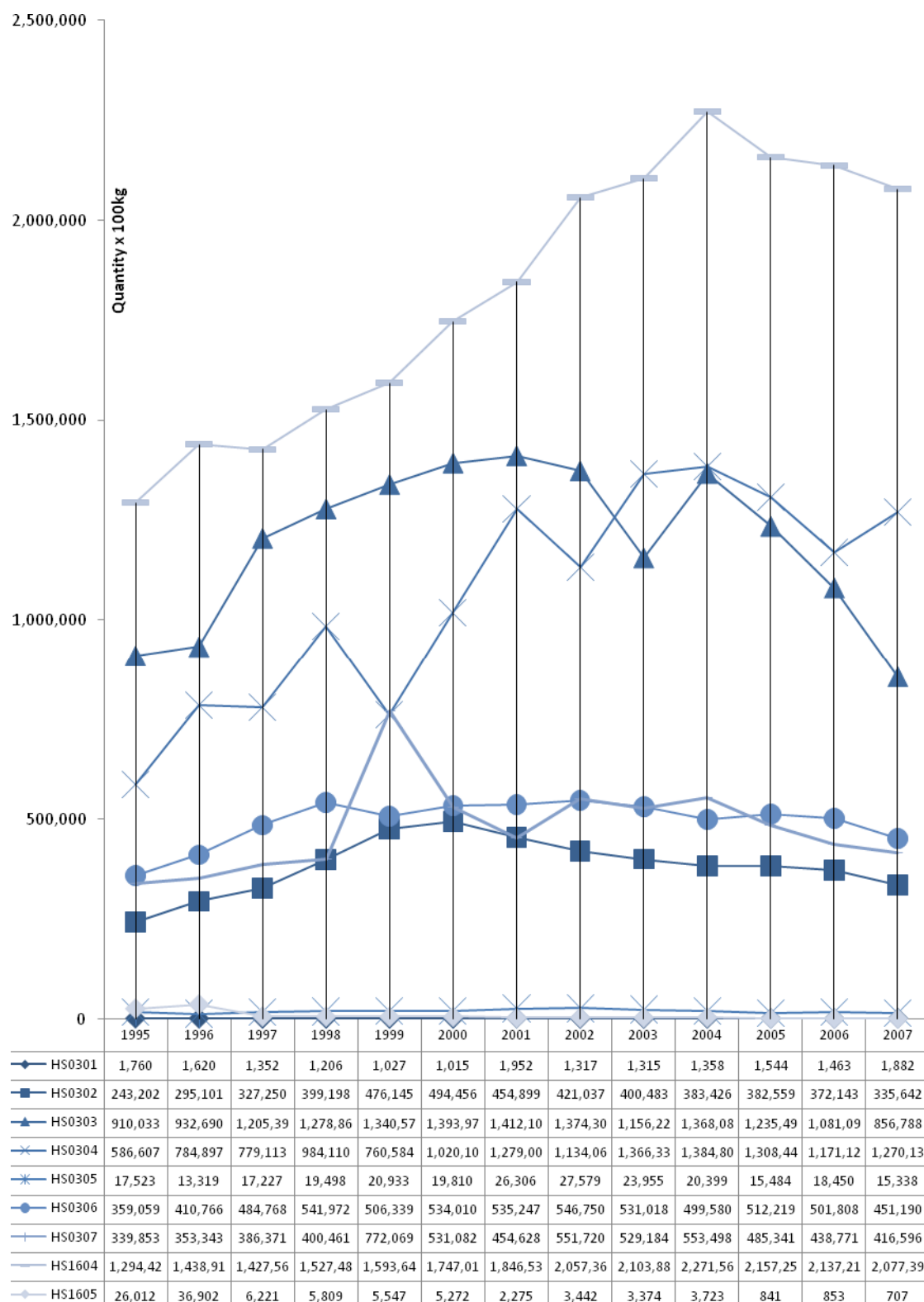
- HS0301 (live fish), which decreased during the pre-Cotonou period and increased in the years following the signing of the Agreement;
- HS1605 (prepared or preserved molluscs or crustaceans), which decreased precipitously between 1996 and 1997 and plateaued thereafter.

The trends in annual economic value identified in Figure 8 are varied, and in some cases inconsistent with the aggregate trend in annual economic value identified in Figure 6 above. The following specific trends are evident:

⁹⁹ The following HS product categories are analysed: HS0301 live fish, HS0302 fresh or chilled fish, HS0303 frozen fish, HS0304 fish fillets, HS0305 preserved fish, HS0306 crustaceans, HS0307 molluscs, HS1604 prepared or preserved fish, HS1605 prepared or preserved molluscs or crustaceans.

- The annual economic value of exports falling under categories HS1604 (prepared or preserved fish) and HS0304 (fish fillets) increased during the post-Cotonou period. In some periods there is evidence of an inverse relationship between trends by volume and trends in the economic value of these products. For example, between 2005 and 2007 the annual economic value of HS1604 (prepared or preserved fish) exports increased approximately from €23 million to €97 million. During the same period, the annual volume of HS1604 (prepared or preserved fish) exports decreased approximately from 216 million tonnes to 208 million tonnes.
- The annual economic value of exports falling under categories HS0302 (fresh or chilled fish) HS0303 (frozen fish) HS0305 (preserved fish), HS0306 (crustaceans), HS0307 (molluscs) have generally increased in the years leading up to the signing or entry into force of the Cotonou Agreement, then decreased or plateaued in the post-Cotonou period.
- The annual economic value of HS0301 (live fish) has varied dramatically, peaking in 2001 and 2005. The annual economic value of HS1605 (prepared or preserved molluscs or crustaceans) decreased precipitously between 1996 and 1997 and plateaued thereafter. These trends in annual economic value coincide generally with equivalent variations in annual export volume.

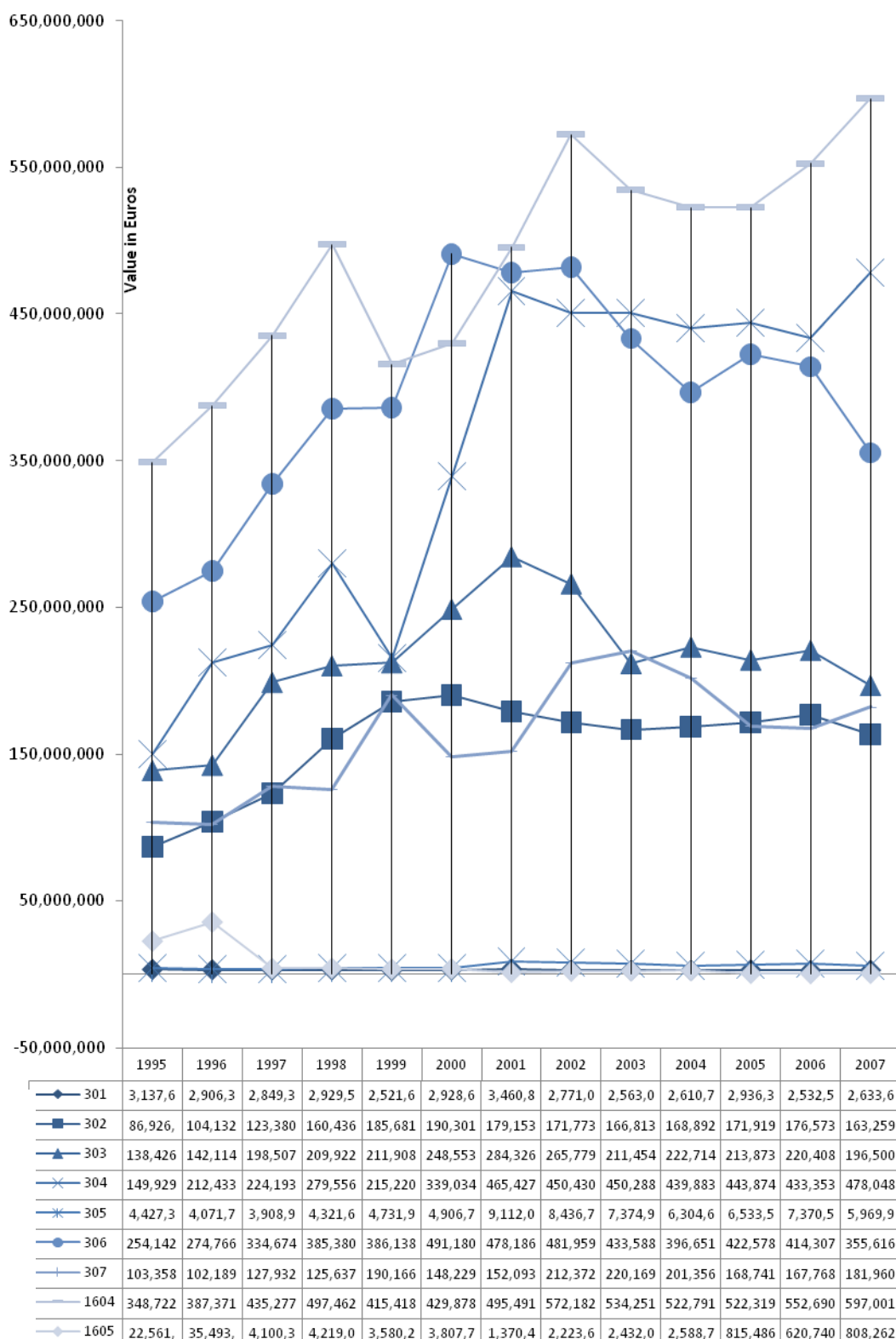
Figure 7: ACP Fisheries Exports to the EC, by HS product category,¹⁰⁰ quantity x 100kg, 1995-2007¹⁰¹



¹⁰⁰ HS0301 live fish, HS0302 fresh or chilled fish, HS0303 frozen fish, HS0304 fish fillets, HS0305 preserved fish, HS0306 crustaceans, HS0307 molluscs, HS1604 prepared or preserved fish, HS1605 prepared or preserved molluscs or crustaceans.

¹⁰¹ Data generated using web-based query of EuroStat External Trade Dataset (EU27 Trade Since 1995 By HS2-HS4). The query interface can be accessed at <http://epp.eurostat.ec.europa.eu/newxtweb/>.

Figure 8: ACP Fisheries Exports to the EC, by HS product category,¹⁰² value in Euros, 1995-2007¹⁰³



¹⁰² HS0301 live fish, HS0302 fresh or chilled fish, HS0303 frozen fish, HS0304 fish fillets, HS0305 preserved fish, HS0306 crustaceans, HS0307 molluscs, HS1604 prepared or preserved fish, HS1605 prepared or preserved molluscs or crustaceans.

¹⁰³ Data generated using web-based query of EuroStat External Trade Dataset (EU27 Trade Since 1995 By HS2-HS4). The query interface can be accessed at <http://epp.eurostat.ec.europa.eu/newxtweb/>.

4.2.5 Trends for tuna and tuna products

According to Campling, the value of EC markets for canned market and tuna loins to several ACP member States illustrates shifts in production within the ACP.¹⁰⁴ Whilst historic sites of canned tuna production in West Africa have declined substantially, production in the western Indian Ocean has shown consistent growth. Similarly, there is a clear shift in EC-orientated sites of production in the South Pacific.¹⁰⁵ These trends are illustrated in Figures 9 and 10.

Figure 9: EU15 Imports of Canned Tuna (incl. Skipjack) from the ACP, value in Euros¹⁰⁶

| | 1996 | 2001 | 2006 |
|---------------------|---------------------|---------------------|---------------------|
| Cote d'Ivoire | 171,538,897 | 97,183,297 | 88,739,224 |
| Fiji | 10,972,945 | 613,431 | - |
| Ghana | 27,691,074 | 76,732,448 | 59,917,767 |
| Kenya | - | 145,759 | 2,674,962 |
| Madagascar | 36,433,070 | 24,862,855 | 37,534,347 |
| Mauritius | 26,856,632 | 67,689,755 | 89,409,000 |
| Papua New Guinea | - | 6,296,288 | 25,883,077 |
| Senegal | 38,186,901 | 26,992,540 | 6,504,633 |
| Seychelles | 21,312,087 | 144,788,295 | 161,475,140 |
| Solomon Islands | 13,061,132 | - | - |
| Annual Total | €346,052,738 | €445,304,668 | €472,138,150 |

Figure 10: EU15 Imports of Tuna loins (incl. Skipjack) from the ACP, value in Euros¹⁰⁷

| | 1996 | 2001 | 2006 |
|---------------|------------|------------|------------|
| Cote d'Ivoire | 23,240,793 | 8,162,952 | 722,134 |
| Fiji | 144,704 | - | 27,474 |
| Ghana | 5,280,162 | 345,824 | 5,019,288 |
| Kenya | 1,466,624 | 23,658,339 | 25,287,514 |
| Madagascar | 273,651 | - | - |

¹⁰⁴ See Liam Campling, 'Direct and Indirect preference Erosion and the Competitiveness of the ACP Tuna Processing Sector', in Veniana Qalo (2008) (eds.) *Bilateralism and Development: Emerging Trade Patterns*, London: Cameroon May.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

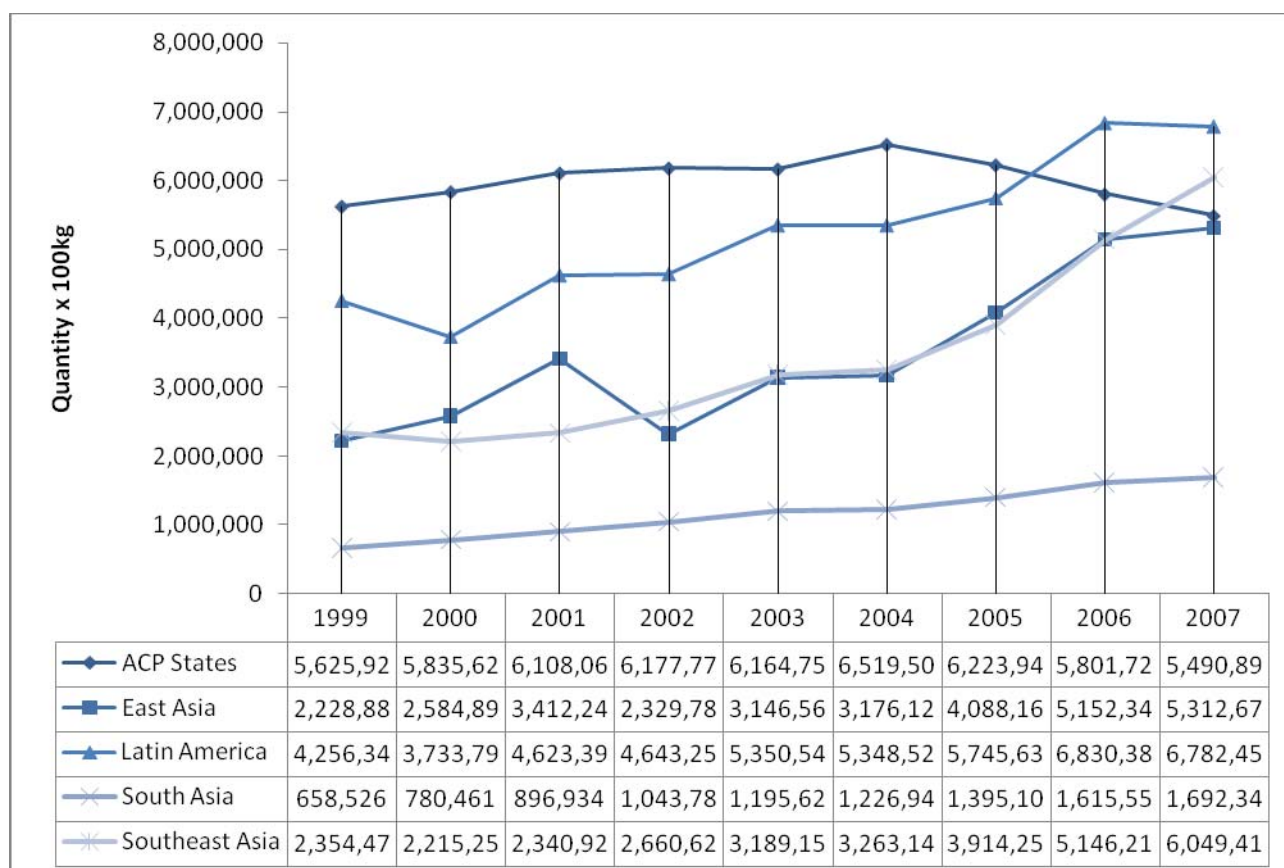
¹⁰⁷ Ibid.

| | | | |
|---------------------|--------------------|--------------------|-------------------|
| Mauritius | 825,601 | 60,582 | 24,942,113 |
| Papua New Guinea | - | - | 4,549,333 |
| Senegal | 419,494 | 214,960 | - |
| Seychelles | 1,878,309 | 6,659,813 | - |
| Solomon Islands | - | - | 6,644,965 |
| Annual Total | €33,519,338 | €39,129,470 | 67,192,821 |

4.3 Trends in the market share of regions exporting fisheries products to the EC

This section provides a comparison of the market share between ACP member States and other regional suppliers of fisheries products to the EC. Four competing regions are considered: South Asia (India, Sri Lanka and the Maldives), Southeast Asia (Thailand, Indonesia, the Philippines and Vietnam), East Asia (China, Taiwan, South Korea and Japan), and Latin America (Brazil, Ecuador, Argentina, Chile and Peru). Figure 11 illustrates trends in market share of each of these regions. Figure 11 shows a marked trend of a continuous decrease in exports by ACP member States to the EC from 2004 compared to increasing export volumes from other regions.

Figure 11: Market Share of Fisheries Exports into EU27, by region, in quantity x100kg, 1995-2007¹⁰⁸

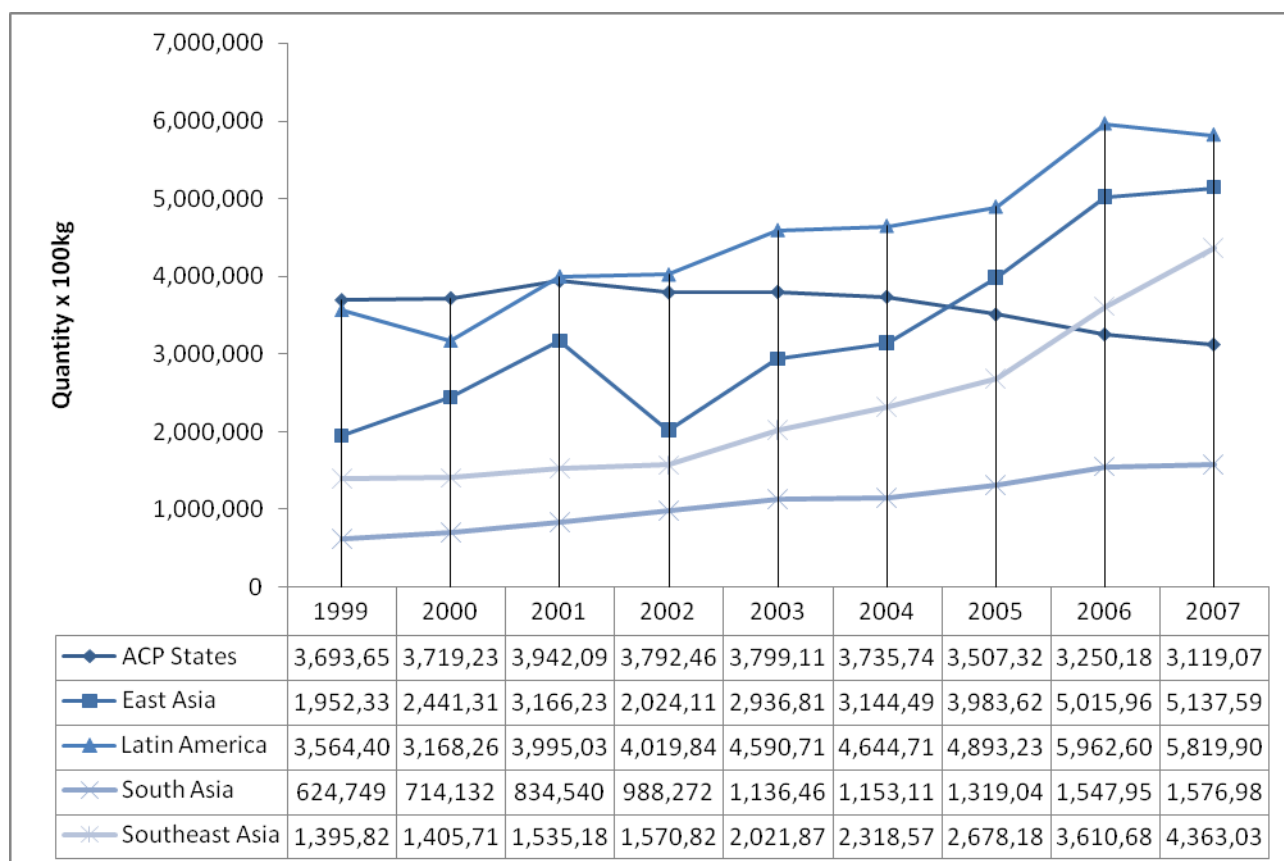


¹⁰⁸ Data generated using web-based query of EuroStat External Trade Dataset (EU27 Trade Since 1995 By HS6). The query interface can be accessed at <http://epp.eurostat.ec.europa.eu/newxtweb/>.

Despite the fact that ACP member States are larger in number and have more diversified fishery products being exported to the EC, Southeast Asian and East Asian fish suppliers have now managed to close the significant gap in fisheries exports that the ACP has enjoyed from 1999.

The above trends are more pronounced when tuna products are factored out, as shown in Figure 12.

Figure 12: Market Share of Non-Tuna Exports to EU27, by region, in quantity x100kg, 1995-2007¹⁰⁹



In the short term, the collapse of the Doha Round of trade talks¹¹⁰ and accompanying multilateral tariff reductions are likely to provide the ACP States with a competitive advantage over other regional suppliers, given the existence of regional ACP preference frameworks that are not depended on the progress of multilateral trade negotiations. This preferential advantage is unlikely, however, to be maintained in the long term, given movements toward the negotiation of non-ACP bilateral and regional preference arrangements as an alternative to progress in multilateral negotiations.¹¹¹

4.3.1 South Asia

The fisheries export of South Asia to the EC shows a steady increase, primarily due to the increasing catch and fish processing capabilities of India and the Maldives. Fisheries exports to the EC from India have increased at an annual average rate of more than 8% since 2000 to reach a value of €370 million in 2005. India is the top exporter to the EC of HS0307 (molluscs) products, which mainly comprise shrimps and squid exports. Although there is no bilateral preferential trade

¹⁰⁹ Ibid.

¹¹⁰ See, Liam Campling, FFA Fisheries Trade Briefing, Volume 1: Issue 8 & 9 (July and August 2008).

¹¹¹ Ibid.

agreement between the EC and India, imports from India benefit from the EC GSP scheme which offers tariff reductions for many of India's main fishery exports.¹¹²

Maldives exports about 30% of its fish to the EC, composed mainly of processed canned tuna. It is currently exempt from the 24% import duty levied on fish by the EC based on the GSP-EBA scheme. More recently, the EC has agreed to extend its duty free treatment of on Maldivian fish imports until the start of 2014, several years after the country graduated from the LDC status in 2004, due to the perceived vulnerability of the Maldivian fishing industry.¹¹³

Sri Lanka is granted preferential market access under the EC GSP+ scheme and is one of the top suppliers of HS 1902 (pasta or couscous), among other fishery products. Sri Lanka has been working at improving its levy charges to encourage more foreign fishing vessels to land their catch in Sri Lankan ports and use its facilities for value addition and re-export.¹¹⁴ Both catch and exports of Sri Lanka and Maldives were affected by the tsunami in 2005.¹¹⁵ Even though there has been a drop in fish catch due to environmental factors, Maldives has been able to maintain its level of exports to EC.

4.3.2 Southeast Asia

Thailand is the world's largest exporter of shrimp and canned tuna. It is the seventh largest exporter of fish and fishery products to EU25, and accounts for 11% of all prepared fishery products. In particular, Thailand is one of EC's top suppliers of HS0307 (molluscs), 1604 (prepared or preserved fish), 1605 (prepared or preserved molluscs or crustaceans), and 1902 (pasta or couscous). In 2005, Thailand's exports amounted to €429 million or approximately 3% of all fish imports. The main Thai export products to the EU25 are canned tuna and tuna loins (€130 million) and frozen squid (€63 million). As at 01 January 2006, Thailand benefited from preferential market access for shrimps under the new GSP regulation as follows: 4.2% vs 12% MFN for frozen shrimps and 7% vs 20% for prepared shrimps and prawns.¹¹⁶ Thailand also benefits from a preferential tariff rate quota at 12% duty for some of its exports of canned tuna to the EC. With the introduction of the EC's new GSP in January 2006, imports of canned tuna from Thailand outside the quota described above can, subject to meeting RoO, benefit from a reduction in duty of 3.5 percentage points thereby making the duty payable 20.5% instead of the MFN rate of 24%.¹¹⁷

Similar to Thailand, Indonesia and the Philippines benefit from a preferential tariff rate quota at 12% duty for some of canned tuna exports to the EC.¹¹⁸ Indonesia is a top importer into the EC of HS0306 (crustaceans), 1605 (prepared or preserved molluscs or crustaceans), and 1902 (pasta or

¹¹² EC Trade issues, India, <http://trade.ec.europa.eu/doclib/html/120352.htm>.

¹¹³ Judith Evans, EU Extends Maldives Trade Concessions To 2014 Malé, 10 June 2008. <http://www.minivannews.com/news/news.php?id=4577>.

¹¹⁴ Elmo Leonard, Unrealistic rates hit seafood exports, Sunday Observer, 25 September 2005, <http://www.lankabusinessonline.com/fullstory.php?nid=1314392935>.

¹¹⁵ See FAO, An Overview of the Impact of the Tsunami on Selected Coastal Fisheries Resources in Sri Lanka and Indonesia, RAP Publication 2007/19 at <ftp://ftp.fao.org/docrep/fao/010/ai000e/ai000e00.pdf>.

¹¹⁶ Council Regulation N° 1436/2005 has advanced these preferential duties by some months for Thailand and other countries

¹¹⁷ EC Trade issues, Thailand, <http://trade.ec.europa.eu/doclib/html/120352.htm>.

¹¹⁸ The reduced tariff quota for canned tuna was a result of a WTO mediation between the EC and Thailand and the Philippines. The mediation resulted in the Community opening a quota of 25,000 tonnes at 12% duty, which is a 50% reduction from the MFN rate. The volume of the quota was subsequently increased on 1 July 2004 to 25,750 tonnes.

couscous), while the Philippines is a top importer to the EC of HS 1604 and 1902. Other Southeast Asian countries such as Singapore and Malaysia also capture the EC market for live fish while Vietnam is one of EC's top suppliers of HS 0511 (dead or inedible animal products), 1605 (prepared or preserved molluscs or crustaceans), and 1902 (pasta or couscous).

4.3.3 East Asia

China is the largest producer of fish in the world and one of the top exporters of fish to the EC. China accounts for 16% of all fish fillets imported into the EC. In 2005, China's exports to EU25 amounted to €70 million or approximately 6% of all fish imports. Since 2000, the annual volume of China's exports to the EC has grown by an average of 14.7%.¹¹⁹ The main fisheries export products of China to the EU25 are frozen fish fillets of cod and Alaska Pollack (€190 million), frozen fillets of cod (€129 million) and frozen shrimps and prawns (€80 million). China's success in penetrating the EC market is in part due to the availability of cheap labour which gives it a competitive advantage in labour intensive processes such as fish filleting.¹²⁰ China's exports of fish and fishery products to the EC benefit from the GSP scheme.

Other fish trading partners of the EC from East Asia are Korea, Japan and Taiwan, which also comprise the largest distant water fishing nations in the world. In terms of tariff application, these East Asian countries are afforded only MFN access to the EC market, and unlike the other fish supplying regions discussed do not enjoy access under preferential arrangements.

4.3.4 Latin America

The Latin American regional suppliers of fisheries products to the EC are Brazil, Ecuador, Argentina, Chile, and Peru. The principal exporters of tuna loins to the EC include Latin American countries which enjoy unlimited duty-free access to the EC market through the GSP+ regime.

The following exports of Argentina benefit from reduced preferential market access under the EC GSP Scheme as follows:

- Ilex - 4.5% tariff treatment, compared to 8% for MFN access;
- Hake - 4% tariff treatment, compared to 7.5% for MFN access;
- Shrimps/prawns - 4.2% tariff treatment, compared to 12% for MFN access.

Notwithstanding these preferences, Argentinean exports of fish and fishery products to the EC have fallen by an average of 2.8% per year since 2000 to just over €400 million in 2005.¹²¹

EC imports of fish and fishery products from Brazil have shown a dramatic increase in recent years (23% annual average growth in the period 2000-2005). Frozen shrimps and prawns, which benefit from a reduced duty rate of 4.2% under the GSP rather than 12% MFN account for over 70% of trade.¹²²

¹¹⁹ EC Trade issues, China, http://trade.ec.europa.eu/doclib/docs/2006/may/tradoc_120346.pdf.

¹²⁰ Ibid.

¹²¹ EC Trade issues, Argentina, <http://trade.ec.europa.eu/doclib/html/120352.htm>.

¹²² EC Trade issues, Brazil, <http://trade.ec.europa.eu/doclib/html/120352.htm>.

The exports of fish and fishery products from Chile to the EC have increased substantially at an annual average growth rate of nearly 20%.¹²³ Trade in fish and fishery products between the EC and Chile is governed by arrangements providing for duty free access with a maximum tariff dismantling period of 10 years. There are tariff rate quotas in place for certain hake and salmon products (5,000 and 40 tonnes respectively) and canned tuna (150 tonnes at one-third of the MFN duty).¹²⁴

In 2005, Ecuador became one of the top 10 of suppliers of fish and fishery products to the EC, a position that it last held in 1999. The value of Ecuadorian exports to the EC increased by more than 40% in comparison to 2004 figure. Two categories of products accounted for almost all of Ecuador's exports, namely prepared fish (€207 million) and crustaceans (€186 million).¹²⁵

¹²³ EC Trade issues, Chile, <http://trade.ec.europa.eu/doclib/html/120352.htm>.

¹²⁴ Ibid.

¹²⁵ EC Trade issues, Ecuador, <http://trade.ec.europa.eu/doclib/html/120352.htm>.

5. ACP trade with other markets

This section of the Report analyses trends in ACP exports of fisheries products to the US and Japan, and has been included in the Report to identify the potential of the US and Japanese markets to compensate for downward trends in the export by ACP States of fisheries products to the EC.

Together with the EC, the US and Japan represent the three major export markets for fisheries products worldwide. The importance of these markets relative to other destinations of ACP exports is illustrated in Figures 13 and 14. Figure 13 presents the value of ACP fisheries exports to the EC, US and Japan relative to the total value of ACP fisheries exports worldwide in 1995.

Figure 13: Destination of ACP fisheries exports, value in US Dollars, 1995¹²⁶

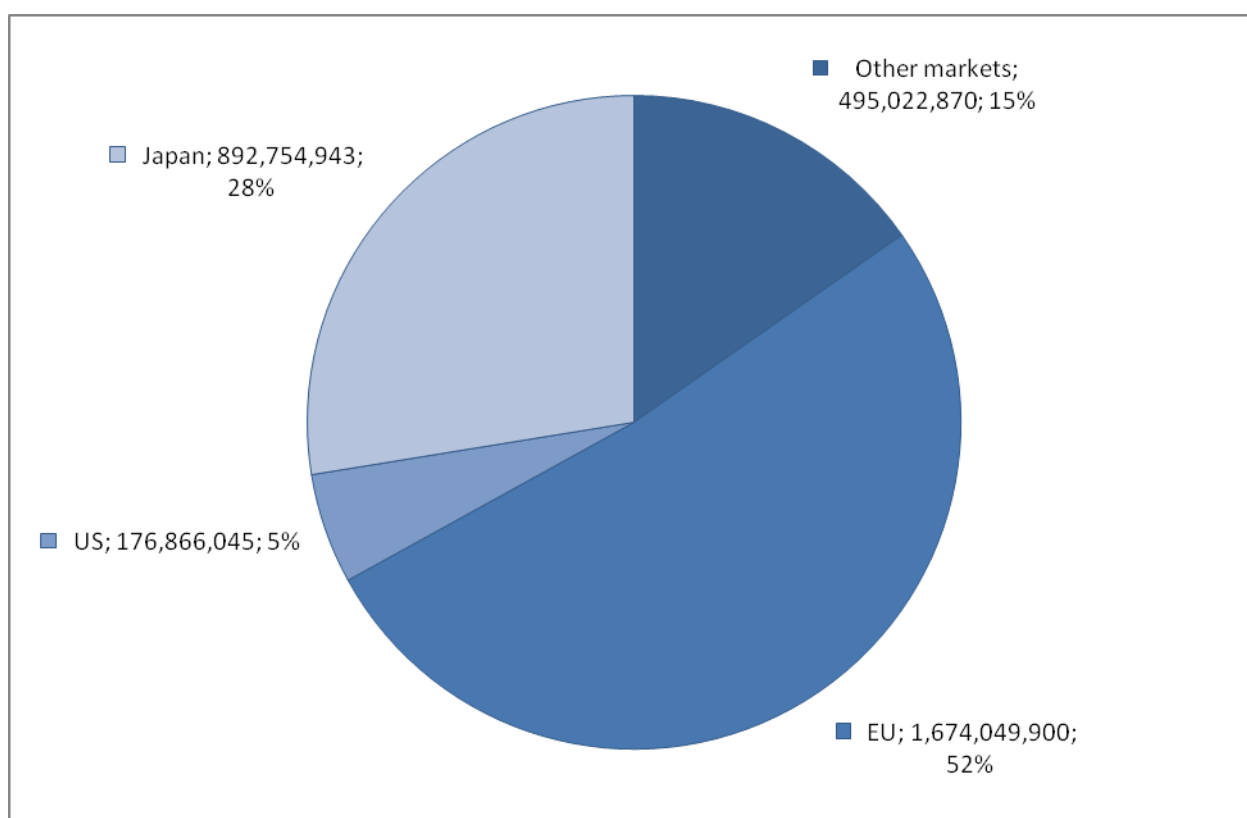
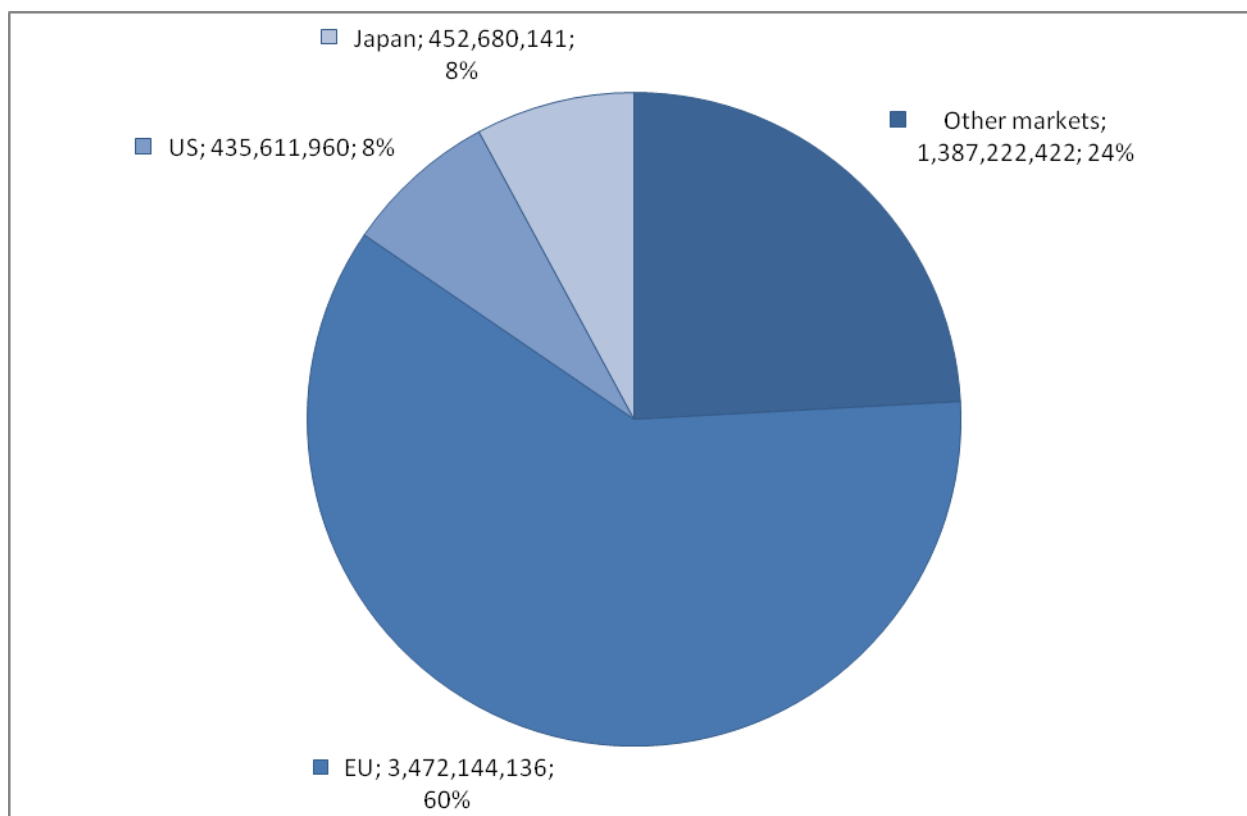


Figure 14 presents the value of ACP fisheries exports to the EC, US and Japan relative to the total value of ACP fisheries exports worldwide in 2006.

¹²⁶ Source: UN Commodity Trade Statistics Database, available at <http://comtrade.un.org>. Data relates to the same HS product categories used in relation to the ACP-EC export data discussed in Section 4 of this Report: HS0301 live fish, HS0302 fresh or chilled fish, HS0303 frozen fish, HS0304 fish fillets, HS0305 preserved fish, HS0306 crustaceans, HS0307 molluscs, HS1604 prepared or preserved fish, HS1605 prepared or preserved molluscs or crustaceans.

Figure 14: Destination of ACP fisheries exports, value in US Dollars, 2006¹²⁷



As shown in Figure 13, approximately 85% of ACP fisheries exports in 1995 were imported by either the EC, US or Japan. This combined share of ACP fisheries exports decreased to approximately 76% in 2006, although the market share of exports to both the EC and US increased in relative terms.

5.1 Market composition

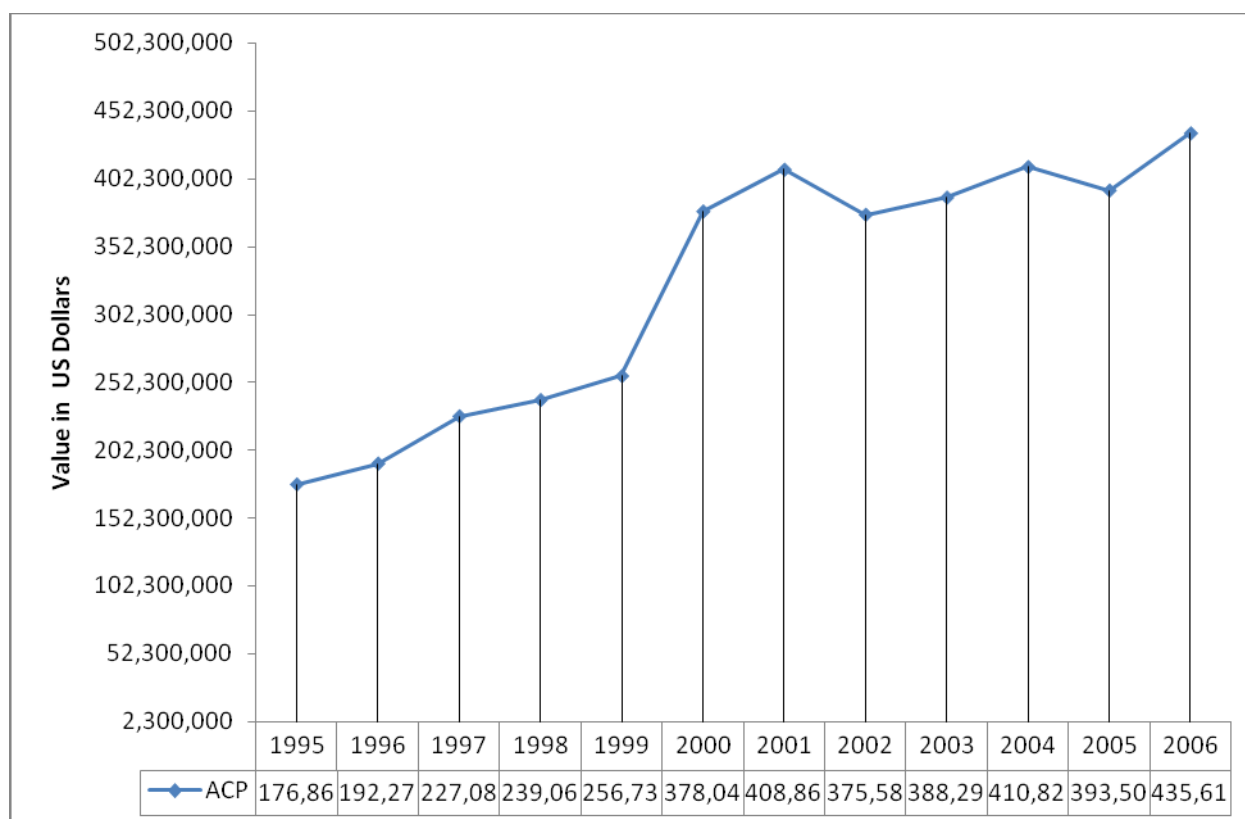
ACP exports to the EC and US are very similar in composition. The top five fishery commodities exported to these two markets are HS0306 (crustaceans), 1604 (prepared fish), 0303 (frozen fish), 0304 (fish fillets), and 0302 (fresh or chilled fish). While most of these commodities are also exported to Japan, the Japanese market is slightly different. HS1604 (prepared or preserved fish) is the commodity which is most traded by the ACP member States to the EC and US in terms of value, while such exports to Japan is not significant. On the other hand, HS0307 (molluscs) presents the most traded product to Japan from ACP member States in terms of value, while such commodity is not exported significantly to the EC and US.

¹²⁷ Source: UN Commodity Trade Statistics Database, available at <http://comtrade.un.org>. Data relates to the same HS product categories used in relation to the ACP-EC export data discussed in Section 4 of this Report: HS0301 live fish, HS0302 fresh or chilled fish, HS0303 frozen fish, HS0304 fish fillets, HS0305 preserved fish, HS0306 crustaceans, HS0307 molluscs, HS1604 prepared or preserved fish, HS1605 prepared or preserved molluscs or crustaceans.

5.2 The United States¹²⁸

Figure 15 presents the aggregate trends of exports by ACP States of fisheries products to the US for the period between 1998 and 2007. Data relates to the same HS product categories used in relation to the ACP-EC export data discussed in Section 4 of this Report.¹²⁹

Figure 15: ACP Fisheries Exports to the US, value in 1000 US Dollars, 1998-2007¹³⁰



The value of trade between ACP and the US shows an overall increase from approximately USD176.8 million in 1995 to USD435.6 million in 2007. Fisheries products are imported from the ACP member States to the US in various forms, with tuna as the most traded species. The African ACP member States which have the highest exports of fish and fishery to the US are Kenya, Mauritius, Tanzania, South Africa, and Namibia. The main Caribbean ACP exporters to the US are the Bahamas, Belize, Guyana, Jamaica, Suriname, and Trinidad and Tobago while the top exporters from the Pacific ACP are Fiji, Solomon Islands, Papua New Guinea, Tonga, and Samoa.

In terms of product nomenclature, the fish exports of Africa ACP member States to the US mostly comprise HS0306 (crustaceans), 0304 (fish fillets), and 1604 (prepared or preserved fish). Similar fishery products are exported by Caribbean ACP member States with the addition of HS0302 (fresh or chilled fish), which is the second highest export to the US with a value of about USD48 million

¹²⁸ Unless otherwise specified, data for this Section was obtained from the US Department of Agriculture, Foreign Agricultural Service, available at <http://www.fas.usda.gov>.

¹²⁹ HS0301 live fish, HS0302 fresh or chilled fish, HS0303 frozen fish, HS0304 fish fillets, HS0305 preserved fish, HS0306 crustaceans, HS0307 molluscs, HS1604 prepared or preserved fish, HS1605 prepared or preserved molluscs or crustaceans.

¹³⁰ Source: UN Commodity Trade Statistics Database, available at <http://comtrade.un.org>.

in 2007. Pacific ACP member States mostly trade HS0302 (fresh or chilled fish) and 1604 (prepared or preserved fish) fisheries products.

The ACP fisheries exports to the US remain a small portion compared to those of other market sources, particularly Southeast Asia. The value of Southeast Asian fisheries export to the US is about USD3.82 billion in 2007. This value has increased from USD2.04 billion in 1998. The species which are most exported to the US from Southeast Asia are shrimp and tuna. Southeast Asia captures the market of shrimp to the US with a value of about USD2.3 billion in 2007, compared to USD 48.8 million for the same year from the ACP member States. Southeast Asia also has a higher export of tuna and tuna products to the US, which is valued at USD522.08 million in 2007, compared to USD157.7 million for the ACP member States.

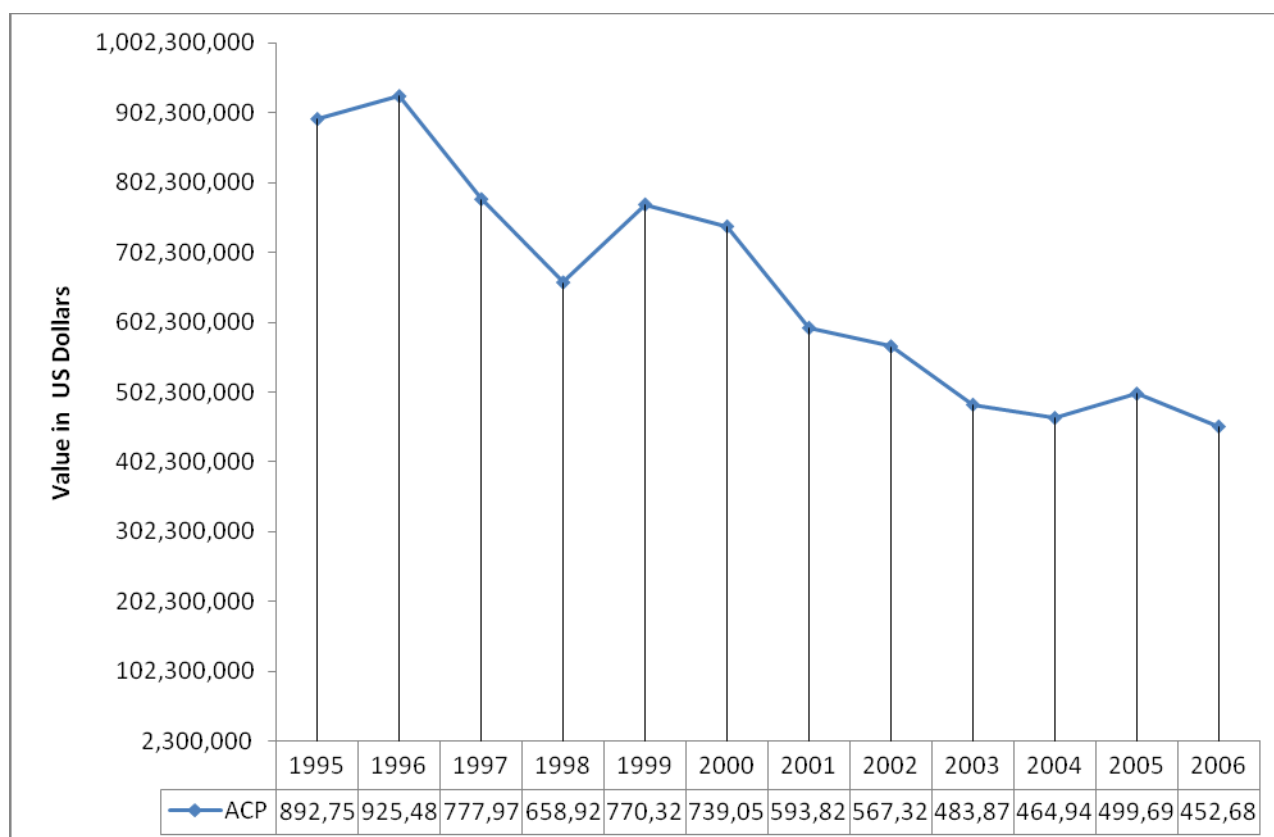
ACP member States directly compete with Southeast Asia in the US market for HS306 (crustaceans), 1604 (prepared fish), 0304 (fish fillets), 0303 (frozen fish), and 0307 (molluscs), although the exports of the latter are significantly higher. Southeast Asia also dominates the US market for HS 1605 (prepared or preserved molluscs or crustaceans). Furthermore, the value of Southeast Asian exports of HS306 (crustaceans) and 1604 (prepared or preserved fish) is 90 per cent more than the value of ACP exports of the same commodities to the US. It is only in HS0302 (fresh or chilled fish) that ACP member States have higher exports (in value terms) to the US compared to those of Southeast Asia.

The trend in the trade of commodities from ACP member States and Southeast Asia to the US suggests that Southeast Asia has a significant advantage in terms of exporting processed fish. This also highlights the lack of post-harvest technology in ACP member States compared to that of Southeast Asia. These factors highlight the dependence of ACP fisheries exports on the EC market, where ACP member States enjoy a greater share in the regional market in addition to more favourable trade preference and bilateral access arrangements. As will be elaborated in Part B of the Report, the ACP share of the EC fisheries market may be negatively impacted by the adoption of additional and more stringent fisheries regulations which have the tendency to have a similar impact as a technical barrier to trade.

5.3 Japan¹³¹

Figure 16 presents the aggregate trends of exports by ACP States of fisheries products to Japan for the period between 1996 and 2007. Data relates to the same HS product categories used in relation to the ACP-EC export data discussed in Section 4 of this Report.¹³²

Figure 16: ACP Fisheries Exports to Japan, value in US Dollars, 1996-2006¹³³



The value of export from ACP member States to Japan for all types of fish and fisheries products shows an overall continuous decrease from approximately USD925 million in 1996 to USD453 million in 2006. The most common fishery products exported by the ACP to Japan are HS0302 (fresh or chilled fish), 0303 (frozen fish), 0304 (fish fillets), 0306 (crustaceans), and 0307 (molluscs). ACP export to Japan shows a general decline for all fisheries products except for HS0301 (live fish) and 0304 (fish fillets). The ACP export of HS0301 to Japan has increased from USD453,655 in 1996 to USD1.2 million in 2006. The ACP export of HS0304 has also increased from USD27.29 million in 1996 to USD47.69 million in 2006.

The ACP-Japan trade data do not present a very promising trend in fisheries exports for the ACP member States compared to the Asian suppliers whose exports to Japan have remained stable during the period of 1996 to 2006. The value of ACP fishery exports to Japan is considerably smaller, estimated only as 0.04 per cent of the total value of Japanese imports. The export of fisheries

¹³¹ Data for this Section were obtained from the UN Commodity Trade Statistics Database, available at <http://comtrade.un.org>.

¹³² HS0301 live fish, HS0302 fresh or chilled fish, HS0303 frozen fish, HS0304 fish fillets, HS0305 preserved fish, HS0306 crustaceans, HS0307 molluscs, HS1604 prepared or preserved fish, HS1605 prepared or preserved molluscs or crustaceans.

¹³³ Source: UN Commodity Trade Statistics Database. Available at <http://comtrade.un.org>.

products to Japan from ACP member States is valued at USD443.5 million compared to USD5.17 billion from Asia in 2006. Similar to ACP fisheries exports to the US, the trend in the trade of fisheries products to Japan highlights the dependence of ACP fisheries exports on the EC market. Section 10.2 of the Report elaborates on the implications of the lack of alternative regional markets for ACP exports in addition to the impact of regional and global regulations against IUU fishing.

Part B – Development Impact of the IUU Regulation

Part B of the Report provides analysis of the IUU Regulation, and assesses the Regulation's likely development impact in terms of:

- how the IUU Regulation seeks to address the EC's objective of combating IUU fishing;
- WTO compatibility issues, particularly the Regulation's framework of retaliatory measures where non-EC States and vessels breach the IUU Regulation as well as other international rules on fisheries conservation and management;
- the impact of the proposed Regulation on ACP exports potentially benefiting from the Duty Free/Quota Free market access arrangements established by the current round of Economic Partnership Agreements and Interim Economic Partnership Agreements between the EC and various ACP States;
- the interaction between the IUU Regulation and possibilities for utilisation of the trade preferences granted to ACP States by the EC's Generalised System of Preferences (GSP) Regulation and the related Rules of Origin under the GSP rules;

6. EC policy framework for fisheries

The EC is the leading importer of fish and has fishing fleets in every ocean in the world. Whilst the EC considers itself as having a major responsibility in taking a lead in preventing, deterring and eliminating IUU fishing, it also certainly has an economic interest in combating IUU fishing. Given the high levels of support (including subsidies to the EC fleet), EC fishing interests are concerned that IUU fish is a source of price competition.

The IUU Regulation forms part of a comprehensive regulation by the EC of fisheries and trade in fisheries products. The detailed analysis of the IUU Regulation set out later in this Report needs to be understood in light of the overall policy framework within which the Regulation is situated.

6.1 The Common Fisheries Policy

The management of fisheries and aquaculture in the EC is governed by the Common Fisheries Policy. The main objective of the Common Fisheries Policy is to ensure the exploitation of living aquatic resources that provides sustainable economic, environmental, and social conditions, primarily through the sustainable exploitation of living aquatic resources based on sound scientific advice and the precautionary approach and to fisheries management.¹³⁴ The scope of the Common Fisheries Policy extends to the conservation, management and exploitation of living aquatic resources and aquaculture, as well as to the processing and marketing of fish and aquaculture products, where such activities are practised on the territory of Member States or in Community waters or by Community fishing vessels or nationals of member States.

¹³⁴ Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, Article 2.

The key reforms of the Common Fisheries Policy are with respect to conservation of resources, protection of the environment from impacts of fishing, fleet management, common organisation of the markets, relations with third countries, and control and enforcement. Some of the measures adopted by the EC to achieve an effective control and enforcement regime include: increasing cooperation among member States to enhance transparency; identifying all fish products from the catcher or exporter to the consumer; stricter monitoring of non-EC vessels; and stricter monitoring of EC vessels outside EC waters.

Since 1993, the EC has adopted a number of Regulations to implement the Common Fisheries Policy.¹³⁵ These regulations spell out the obligation of each EC member State to ensure proper enforcement of all relevant fisheries conservation and management measures by vessels carrying its flag and operating in national waters, in waters of third States, and on the high seas. However, while there is a common obligation among the EC member States to ensure effective fisheries enforcement, the Regulations not in any way affect the sovereignty of such States to discharge their individual flag State duties. The framework for enforcement under the Common Fisheries Policy also provides that in the interest of effectiveness and fairness, the EC is determined to ensure that third country vessels which operate in EC waters or land their catch in EC ports comply with conservation measures established by the Regulations.

6.2 Community Plan of Action for the Eradication of IUU Fishing

The Community Plan of Action for the Eradication of IUU Fishing¹³⁶ was adopted in 2002 in response to the call by the IPOA-IUU to address the problem. The Community Plan of Action contains 15 actions divided into measures at the community level, RFMO level, the international level, and measures to be implemented in partnership with developing countries. Some of the specific measures under the Community Action Plan include the control over nationals, identification and monitoring of IUU vessels, identifying and quantifying illegal catches, requirements for catch certificates and documents, improvement of information on fishing vessels, definition of a substantial link between a State and a vessel, international cooperation, and provision for assistance to developing countries to control IUU fishing. The Community Action Plan recommends the adoption of a regulation to implement these measures.

6.3 EC strategy to combat IUU fishing

In 2007 the EC adopted its Strategy to combat IUU fishing.¹³⁷ While the focus of the earlier Community Action Plan was to ensure effective flag State implementation by EC member States, the EC Strategy to combat IUU fishing is intended to control IUU fishing products from third

¹³⁵ The principal EC regulations adopted to implement these measures are: EC No 2847/93 establishing a control system applicable to the Common Fisheries Policy; EC No 1093/94, setting the terms under which fishing vessels of a third country may land directly and market their catches at Community ports; EC No 1447/1999 establishing a list of types of behaviour which seriously infringe the rules of the Common Fisheries Policy; EC No 2371/2002 establishing conditions for the marketing of fish products; EC No 2371/2002 requiring Member States to cooperate with third countries and provide necessary assistance to ensure compliance with the rules of the Common Fisheries Policy; and EC No 768/2005 establishing a Community Fisheries Control Agency.

¹³⁶ Commission of the European Communities, Communication from the Commission, Community Action Plan for the Eradication of Illegal, Unreported and Unregulated Fishing, COM(2002) 180 final, Brussels, 28 May 2002.

¹³⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, On the new strategy for the Community to prevent, deter, and eliminate Illegal, Unreported and Unregulated Fishing, Brussels, 17.10.2007, COM(2007) 601 final.

countries which enter the EC market. Nine fields of action form the main thrust of the new approach to combat IUU fishing. These include to:

- improve control of compliance with conservation and management measures by third country vessels and their catches accessing fishing ports of the EC;
- improve control of compliance with conservation and management measures by third country fishery products transported by means other than fishing vessels;
- close the EC market to IUU fisheries products;
- address IUU activities carried out by nationals from the EC;
- improve the legal means to identify IUU fishing activities;
- introduce an efficient system for penalties to deter serious infringements of fisheries measures;
- improve action against IUU fishing within RFMOs;
- support the policy and means of developing countries against IUU fishing; and
- increase synergies in the field of monitoring, control, and surveillance.

Although the general approach by the EC to combat IUU fishing is widely supported, a number of concerns have been expressed concerning the proposed fields of action in the strategy. The principal concerns relate to the proposed measures on traceability to ensure compliance by third country vessels with international conservation and management measures. The concern is that this may result in the exclusion of the products of developing countries from EC markets if they are unable to comply with the requirements.¹³⁸ There are also concerns about the proposal to ban fish products from third countries which fail to ensure that their vessels comply with RFMO conservation and management measures.¹³⁹

7. Substance of the IUU Regulation

In October 2007, the European Commission released a proposal for a Council Regulation “establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing”.¹⁴⁰ In June 2008, the European Parliament adopted a non-binding report¹⁴¹ on the IUU Regulation and several minor amendments to the Commission proposal.¹⁴² The amended

¹³⁸ Consultation on the Elaboration of a new Strategy against IUU fishing by the European Community, Response Document Resulting from a stakeholder consultation meeting, Brussels, 20 February 2007, 16 March 2007, 4.

¹³⁹ Consultation on the Elaboration of a New Strategy against IUU fishing by the EC, 4.

¹⁴⁰ Proposal for a COUNCIL REGULATION Establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (presented by the Commission), Brussels, 17 October 2007, COM(2007) 602 final, 2007/0223(CNS).

¹⁴¹ European Parliament Draft Report on the proposal for a Council regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (COM(2007)0602 – C6-0454/2007 – 2007/0223(CNS)), 10 March 2008, 2007/0223(CNS).

¹⁴² See European Parliament Press Release, ‘Community system against illegal, unreported and unregulated fishing’, 05 June 2008,

Regulation was adopted by the Council of the European Union on 29 September 2008,¹⁴³ and is scheduled to enter into force on 1 January 2010.¹⁴⁴ Upon entry into force the IUU Regulation will regulate the highly complex multi-channel fisheries supply system of the EC in an effort to improve global fisheries sustainability.¹⁴⁵ Essentially, the IUU Regulation establishes a system of access conditionality in which access to its markets will be partly conditioned by the extent to which the country, area or region of origin of the exported fish product is completely free or increasingly free of IUU fishing.

Specifically, the IUU Regulation seeks to address the EC's objective of combating IUU fish as follows:

7.1 Scope of the IUU Regulation

The IUU Regulation applies to IUU fishing and associated activities¹⁴⁶ carried out within the jurisdiction of EC Member States, in addition to activities carried out by Community and non-Community vessels on the high seas or in the waters under the jurisdiction of a third State.¹⁴⁷ IUU fishing within maritime waters of overseas countries and territories of EC member States (as listed in Annex II of the EC Treaty) is treated as taking place within maritime waters of third countries.¹⁴⁸

Fishing vessels subject to the IUU Regulation are broadly defined to include “any vessel of any size used for or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, fish processing vessels, and vessels engaged in transshipment and carrier vessels equipped for the transportation of fishery products, except container vessels”.¹⁴⁹

¹⁴³ COUNCIL REGULATION (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999. The text of the IUU Regulation is reproduced in Appendix 6 of the Report.

¹⁴⁴ IUU Regulation, Article 57.

¹⁴⁵ IUU fishing has been characterised as “one of the most severe problems affecting world fisheries” and the “main obstacle in achieving sustainable fisheries in both areas under national jurisdiction and the high seas.” See: UNGA, Fifty-fourth Session, Agenda Items 40(a) and (c), Oceans the Law of the Sea; Law of the Sea; Results of the Review by the Commission on Sustainable Development of the Sectoral Theme of “Oceans and Seas”, Oceans and the Law of the Sea, Report of the Secretary-General, A/54/429, 30 September 1999, para. 249 and UNGA, Fifty-ninth Session, Item 50(b) of the Provisional Agenda, Oceans and the Law of the Sea, Sustainable Fisheries, Including Through the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Related Instruments, Report of the Secretary-General, A/59/298, 26 August 2004, para. 36.

¹⁴⁶ The IUU Regulation adopts a categorization of IUU fishing in broad terms similar to those used in the IPOA-IUU and those adopted by RFMOs (see IUU Regulation, Articles 2 and 3).

¹⁴⁷ IUU Regulation, Article 1(3).

¹⁴⁸ IUU Regulation, Article 1(3). The territories listed in Annex II of the EC Treaty are: Greenland; New Caledonia and Dependencies; French Polynesia; French Southern and Antarctic Territories; Wallis and Futuna Islands; Mayotte; Saint Pierre and Miquelon; Aruba; Netherlands Antilles: Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten; Anguilla; Cayman Islands; Falkland Islands; South Georgia and the South Sandwich Islands; Montserrat; Pitcairn; Saint Helena and Dependencies; British Antarctic Territory; British Indian Ocean Territory; Turks and Caicos Islands; British Virgin Islands; and Bermuda (see Official Journal of the European Union, C 310/400, 16 December 2004).

¹⁴⁹ IUU Regulation, Article 2(5). This definition is similar to the definition in several international and regional fisheries instruments and national fisheries legislation. See for example, Article 1(c), Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean;

In terms of product coverage, the IUU Regulation applies to “any products which fall under Chapter 03¹⁵⁰ and Tariff headings 1604¹⁵¹ and 1605¹⁵² of the Combined Nomenclature established by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs tariff, with the exception of products listed in Annex 1 of this Regulation.”¹⁵³ Section 4.2.2 of this Report provides a detailed description of the Combined Nomenclature product categories referred to in the IUU Regulation.

7.2 Key elements of the IUU Regulation

Broadly speaking, the measures outlined in the IUU Regulation are, on paper, generally consistent with those called for under international fisheries instruments and measures being implemented by RFMOs. However, until the measures are actually implemented, it is difficult to draw any definitive conclusions about their practical implications (see comparative table in Appendix 1). As noted in further detail below, one area where the IUU Regulation would appear to go further than current international efforts to combat IUU fishing relates the restrictive trade measures against non-cooperating third countries.

Four elements of the IUU Regulation are particularly relevant to any consideration of the Regulation’s likely impacts on trade with Commonwealth ACP member States. These elements are:

- Port control over third country fishing vessels;
- Catch certification requirements;
- Establishment of the Community IUU vessel list; and
- Establishment of a list of non-cooperating third countries.

7.2.1 Port control of third country fishing vessels

Chapter II of the IUU Regulation deals with inspections and control of third country fishing vessels seeking access to the ports of EC member States. Under this Chapter, landings or transshipments by third country fishing vessels shall only take place in designated ports of EC member States and subject to specific conditions.¹⁵⁴ Masters of third country fishing vessels intending to enter the ports of an EC member State are required to notify and submit specific information to the competent authorities of the relevant EC member State at least 3 working days before the estimated time of arrival at the port.¹⁵⁵

¹⁵⁰ Fish and crustaceans, molluscs and other aquatic invertebrates.

¹⁵¹ Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs.

¹⁵² Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved.

¹⁵³ IUU Regulation, Article 2(8). The products listed in Annex I of the IUU Regulation upon its adoption are: freshwater fishery products; aquaculture products obtained from fry or larvae; ornamental fish; live oysters; scallops, including queen scallops, of the genera *Pecten*, *Clamys* or *Placopecten*, live fresh or chilled; *Coquilles St Jacques* (*Pecten maximus*), frozen; other scallops, fresh or chilled; mussels; snails, “others [sic] than those obtained from the sea”; and prepared and preserved molluscs.

¹⁵⁴ IUU Regulation, Articles 4 and 5.

¹⁵⁵ The information to be provided includes vessel identification; name of the designated port of destination and the purposes of the call, landing, transshipment or access to services; fishing authorisation, or, where appropriate, authorisation to support fishing operations or to tranship fishery products; dates of the fishing trip; estimated date and time of arrival at port; the quantities of each species retained on board or, where appropriate, a negative report; the zone

The notice of intention to enter into port is to be accompanied by a validated catch certificate if the third country fishing vessel in question carries fishery products on board.¹⁵⁶ The responsibility to verify the accuracy of the information transmitted by the third country fishing vessel in the prior notice and the catch certificate rests with the EC member State.¹⁵⁷ A third country fishing vessel may be granted authorisation to access the port if fishery products on board are accompanied by a catch certificate, and after other information provided to the competent authorities of the relevant EC member State has been verified as complete.¹⁵⁸

Where the information provided by the fishing vessel is not complete or its verification is pending, an EC member State, acting as a port State, may authorise port access or permit all or part of a landing in port, but would need to keep the fishery products concerned in storage under the control of the competent authorities, until the rest of the required information has been received or the verification process is completed.¹⁵⁹ If the verification process is not completed within 14 days of the landing, the EC port member State may confiscate and dispose of the fish in accordance with its national laws.¹⁶⁰ Storage costs are required to be borne by the operators of the vessel.¹⁶¹

Masters of third country fishing vessels intending to use the ports or transshipment facilities of an EC member State are also required to submit a declaration indicating the quantity of fishery products by species to be landed or transhipped, in addition to the date and place of each catch.¹⁶² EC port member States are required to retain such declarations for a minimum period of three years and notify the European commission on a quarterly basis of quantities landed or transhipped by third country fishing vessels.¹⁶³

EC Member States are required to carry out inspections in their ports of at least 5 per cent of landings and transshipment operations by third country fishing vessels each year.¹⁶⁴ The proposed Regulation also requires the mandatory inspection of all fishing vessels that have been sighted as or presumed to have conducted IUU fishing and have been reported in the Community alert system, or have been listed under an RFMO IUU List.¹⁶⁵ The inspection may cover the fishing vessel's documents, logbook, fishing gear, catch onboard and other possible evidence that might be of relevance to the alleged IUU fishing activities.¹⁶⁶

If the results of inspection disclose evidence that a third country fishing vessel has engaged in IUU fishing, the EC port member State is required not to authorise the landing or transshipment of catch

or zones where the catch was made or where transshipment took place, whether in Community waters, in zones under the jurisdiction or sovereignty of a third country or on the high seas; the quantities for each species to be landed or transhipped (See IUU Regulation, Article 6(1)). Masters of third country fishing vessels are exempted from providing certain information specified in Article 6(1) where a catch certificate for the full catch to be landed or transhipped in EC territory has been validated in accordance with Chapter III of the IUU Regulation.

¹⁵⁶ IUU Regulation, Article 6(2).

¹⁵⁷ IUU Regulation, Article 17.

¹⁵⁸ IUU Regulation, Articles 7(1) and 7(2).

¹⁵⁹ IUU Regulation, Article 7(3).

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² IUU Regulation, Article 8(1).

¹⁶³ IUU Regulation, Articles 8(2) and 8(4).

¹⁶⁴ IUU Regulation, Article 9(1).

¹⁶⁵ IUU Regulation, Article 9(2).

¹⁶⁶ IUU Regulation, Article 10(1).

in port.¹⁶⁷ In such circumstances, the EC port member State is to immediately notify its decision to the European Commission and transmit notification to the competent authority of the vessel's flag State.¹⁶⁸ Where the suspected IUU fishing has taken place on the high seas or in the maritime waters of a third country, the EC port member State is required to cooperate with the flag State in carrying out investigations into the suspected breach, and where appropriate, in applying penalties consistent with international law.¹⁶⁹

7.2.2 Analysis of port control of third country fishing vessels requirements

The requirements in Chapter II of the IUU Regulation apply to third country fishing vessels intending to land, tranship or otherwise access port services in the ports of EC member States.¹⁷⁰ The port State requirements under the IUU Regulation will have extensive application, given the broad definition of "fishing vessel" under the Regulation.¹⁷¹ In practice, the port State measures would apply to third country fishing vessels that land their catch directly in the ports of EC member States and to third country exporters even if the fish is transported by reefers.

The effectiveness of port State measures to combat IUU fishing is universally acknowledged and sanctioned by international fisheries instruments. It is however important that the implementation of such measures achieve a balance between combating IUU fishing on the one hand and safety of fishing vessels and their crew and appropriate safeguards against abuse of port State powers. These safeguards are recognised for example in the *Draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, currently under negotiation in the FAO.¹⁷²

A major shortcoming of the provisions of the IUU Regulation on port entry requirements is that they do not contain sufficient safeguards for third country fishing vessels against undue delay resulting from unfounded inspection or denial of port access. The only safeguards provided under the IUU Regulation relate to cases of force majeure¹⁷³ and the vague requirement that EC member States shall undertake inspections and verifications "on the basis of risk management".¹⁷⁴ A requirement that inspections "cause minimum disturbance to the vessels activities and cause no deterioration in fish quality was proposed by the European Commission but not included in the final draft of the IUU Regulation.¹⁷⁵ It will be necessary that EC member States implementing the port State requirements under the IUU Regulation develop clear and transparent procedures, without which the port State measures will run the risk of being implemented in an inconsistent and discriminatory manner.

¹⁶⁷ IUU Regulation, Article 11.

¹⁶⁸ IUU Regulation, Article 11(3).

¹⁶⁹ IUU Regulation, Article 11(4).

¹⁷⁰ IUU Regulation, Article 4(2).

¹⁷¹ IUU Regulation, Article 2(5) broadly defines a fishing vessel as "any vessel of any size used for or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, fish processing vessels, and vessels engaged in transshipment and carrier vessels equipped for the transportation of fishery products, except container vessels".

¹⁷² Article 18 of the Draft Agreement on Port State Measures provides for appeals against port inspections while Article 19 provides for compensation.

¹⁷³ IUU Regulation, Article 4(2).

¹⁷⁴ IUU Regulation, Article 9(1) and 17(3).

¹⁷⁵ See Proposal for a COUNCIL REGULATION Establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (presented by the Commission), Brussels, 17 October 2007, COM(2007) 602 final, 2007/0223(CNS), Article 11(1).

7.2.3 Catch certification requirements

Chapter III of the IUU Regulation starts with the premise that the importation into the EC of fishery products obtained from IUU fishing shall be prohibited.¹⁷⁶ In general, the importation of fishery products into the EC is only allowed when accompanied by a catch certificate, completed by the master of the fishing vessel and validated by the flag State of the vessel. To be valid, the catch certificate must contain all information specified in the template documents shown in Annex II of the IUU Regulation,¹⁷⁷ including:

- basic information such as the name of the fishing vessel, home port and registration number, call sign, licence number, Inmarsat number and IMO number (if issued);
- information on the product (the type of species, catch areas and dates, estimated live weight and verified weight landed, as well as the applicable conservation and management measures and any transshipment at sea is also required); and
- information and declaration on export and import of the fishery product (including the vessel name and flag, flight number airway bill number, truck nationality and registration number, other transport documents and container number).

Exportation and indirect importation of fishery products are also subject to the validation of a catch certificate by the competent authorities.¹⁷⁸ Verifiable documentation or certification is required of products constituting one single consignment which are transported in the same form to the EC from a third country other than the flag State.¹⁷⁹ Similarly, verifiable certificates are required for products constituting one single consignment which have been processed in a third country other than the flag State.¹⁸⁰ Proper documentation is required of every step of transshipment or transit, as well as the exact description of the unprocessed and processed products and their respective quantities.

Catch documents and any related documents, that are validated in conformity with catch documentation schemes adopted by an RFMO¹⁸¹ and are recognised by the EC as complying with the requirements of the IUU Regulation, will be accepted as catch certificates in respect of the products from species to which such catch documentation schemes apply.¹⁸²

The IUU Regulation gives wide powers to the competent authorities of EC member States to carry out all of the controls they deem necessary for the validation of the catch certificate and other information provided.¹⁸³ In addition to the inspection of fishing vessels at port, these control measures may consist of examining the products, verifying declaration data and the existence and authenticity of documents, examining the accounts of operators and other records, inspecting means

¹⁷⁶ IUU Regulation, Article 12(1).

¹⁷⁷ This catch certificate specimen has similar content to the standard *Dissostichus* catch document form used by CCAMLR and the statistical document forms used by IOTC, ICCAT, IATTC, and CCSBT.

¹⁷⁸ IUU Regulation, Articles 14 and 15.

¹⁷⁹ IUU Regulation, Article 14(1).

¹⁸⁰ IUU Regulation, Article 14(2).

¹⁸¹ In existing RFMO, catch certification and statistical documentation regimes are only established for some species of tuna, swordfish, and toothfish.

¹⁸² IUU Regulation, Article 13(1).

¹⁸³ IUU Regulation, Article 17.

of transport, including containers and storage places of the products and carrying out official enquiries.¹⁸⁴ The competent authority of the EC member State may, for the purpose of verification, request the assistance of the competent authorities of the flag State or of a country other than the flag State from which fishery products have been indirectly imported.¹⁸⁵

Importers are required to submit validated catch certificates to the competent authorities of the EC member State in which the product is intended to be imported at least three working days before the estimated time of arrival into the territory of that State.¹⁸⁶ However, an importer who has been granted the status of an approved economic operator has the option to merely advise the EC member State of the arrival of the products and keep the validated catch certificates for verification of the competent authority at a later stage when the fishery product has entered the territory of the EC member State.¹⁸⁷ According to Article 16(3) of the IUU Regulation, the status of an approved economic operator may be granted on the basis of the following criteria:

- the establishment of the importer on the territory of that Member State;
- a sufficient number and volume of import operations to justify the implementation of the Article 16(2);
- an appropriate record of compliance with the requirements of conservation and management measures;
- a satisfactory system of managing commercial and, where appropriate, transport and processing records, which enables the appropriate checks and verifications to be carried out for the purpose of the IUU Regulation;
- the existence of facilities with regard to the conduct of those checks and verifications;
- where appropriate, practical standards of competence or professional qualifications directly related to the activities carried out; and
- where appropriate, proven financial solvency.

These criteria are similar to those implemented to determine the list of authorised establishments complying with EC SPS Regulations.

A range of actions may be taken by EC member States against third country fishing vessels that have not complied with the catch certification requirements.¹⁸⁸ EC member States are permitted to refuse importation of fishery products without having to request additional evidence or send a request for assistance to the flag State on a number of discretionary grounds.¹⁸⁹

¹⁸⁴ IUU Regulation, Article 17(2).

¹⁸⁵ IUU Regulation, Article 17(6).

¹⁸⁶ IUU Regulation, Article 16. This requirement may be adapted according to the type of fishery product, distance to the place of entry, and the transport used.

¹⁸⁷ IUU Regulation, Article 16(2).

¹⁸⁸ IUU Regulation, Article 18.

¹⁸⁹ These include that: the importer has not been able to submit a catch certificate for the products concerned; the products intended for importation are not the same as those mentioned in the catch certificate; the catch certificate is not validated by the public authority of the flag State; the catch certificate does not indicate all the required

7.2.4 Analysis of catch certification requirements

Under the IUU Regulation, the responsibility for preparing catch certificates rests with fishing vessel. However, a catch certificate would need to be validated by a public authority of the flag State with the necessary powers to verify the information.¹⁹⁰ The requirement for flag State verification will pose some practical implementation challenges for ACP member States as demonstrated below.

Generally, ACP member States would only have control over their flagged vessels that fish in their own waters or in the waters of other States or on the high seas. Where a foreign flagged vessel is used to fish in the waters of an ACP member State, the responsibility for validating the catch certificate rests with the flag State and not the ACP member State in whose waters the fish was taken. Under this scenario, the ACP member State would not have any control over the action taken by such flag States to comply with the IUU Regulation.

The verification requirements of the IUU Regulation also have implications for fisheries access agreements. Most ACP member State fisheries access agreements are State/industry or State/fishing association agreements which do necessarily involve the flag States. This will make it almost impossible for the ACP member States to exercise any controls over the flag States of such vessels. For the several ACP member States currently running open registries, the IUU Regulation will add another layer of responsibility to the already growing flag State responsibilities under international fisheries instruments. Such flag States will need to ensure that they have processes in place to discharge their verification functions. Failure to do so may result in a prohibition of fisheries exports or the re-flagging of their vessels to other more responsible flags

Another area of uncertainty in relation to the catch certification and verification requirements concerns their application to chartered fishing vessels and the so-called “domestic-based foreign fishing vessels” operating as integral parts of the domestic fisheries in many Pacific Island States. Technically, these vessels are foreign flagged, but their fishing activities are wholly based in the host country, with little or no connections with the flag State. The complexities of applying the verification requirements to charter and “domestic-based foreign fishing vessels” are similar to those applicable to foreign fishing vessels generally.

The requirement for flag State verification also raises issues of transparency and accountability in relation to bilateral fishing agreements between ACP member States and the EC. Under such bilateral access agreements, the EC member flag State will be the responsible authority to provide the validation required; resulting in the EC flag State member approving its own validation. An additional source of uncertainty is the fact that EC member flagged fishing vessels are not required

information; the importer is not in a position to prove that the fishery products comply with the conditions set out in Article 14(1) or 14(2) regarding certification requirements for indirect importation of fishery products; a fishing vessel figuring on the catch certificate as vessel of origin of the catches is included in the Community IUU vessel list or in the IUU vessel lists of RFMOs; the catch certificate has been validated by the authorities of a flag State identified as a non-cooperating third country in accordance with Article 31; the competent authorities have received a reply to a request for assistance from a third country, according to which the exporter was not entitled to request the validation of a catch certificate; the competent authorities have received a reply according to which the products do not comply with the conservation and management measures or other conditions are not met; the competent authorities have received no reply within the stipulated deadline; the competent authorities have received a reply which does not provide pertinent answers to the questions raised in the request for assistance.

¹⁹⁰ IUU Regulation, Articles 12(3) and 12(4).

to submit prior notice of arrival into their national ports. Consequently, such vessels will not submit validated catch certificate required under Chapter III of the Regulation. ACP member States would need to seek clarification from the EC on how the catch certification requirements will work in practice under their bilateral access agreements.

To prevent their products from being denied entry into the territories of EC member States for non-compliance with the catch certification and validation requirements under the IUU Regulation, ACP member States would need to ensure that they have adequate provisions and procedures in place, reflected in their national legislation and access/charter agreements, compelling the masters and the flag States of the vessels they license to comply with the catch certification and verification requirements. ACP member States would also need to become selective in the choice of the flags of vessels they license. A non-responsible flag State may not be willing or able to provide the necessary validation required by the IUU Regulation. ACP member States that utilise charter arrangements and license “domestic-based foreign fishing vessels” may also need to review those arrangements to ensure that they have some control over the vessels in terms of compliance with the catch certification and verification requirements of the IUU Regulation. In addition, in order to facilitate export of fishery products into the EC, ACP member States would also need to ensure that their fishing companies and establishments obtain the status of approved economic operators.

7.2.5 EC IUU Vessel List

A central feature of the IUU Regulation is the creation of a Community IUU vessel list, which will contain information on vessels identified by the EC and the member States to have engaged in IUU fishing. The IUU list is to be established based on compliance with the regulation, catch data, trade information obtained from national statistics and other reliable sources, vessel registers and databases, RFMO catch document or statistical document programmes, reports on sightings of presumed IUU vessels, including information obtained by RFMOs, other relevant information obtained in ports or on fishing grounds and other additional information provided by Member States.¹⁹¹ The IUU vessel list will also include IUU vessels listed by RFMOs on their respective IUU lists.¹⁹²

The actions that may be taken by EC member States against vessels on the Community IUU vessel list are varied and include:¹⁹³

- flag Member States shall not submit to the Commission any requests for fishing authorisations in respect of IUU fishing vessels;
- current fishing authorisations or special fishing permits issued by flag Member States in respect of IUU fishing vessels shall be withdrawn;
- IUU vessels flying the flag of a third country shall not be authorised to fish in Community waters and shall be prohibited to be chartered;

¹⁹¹ IUU Regulation, Article 25.

¹⁹² IUU Regulation, Article 30.

¹⁹³ IUU Regulation, Article 37.

- fishing vessels flying the flag of an EC Member State shall not in any way assist, engage in fish processing operations or participate in any transshipment or joint fishing operations with fishing vessels on the IUU vessel list;
- IUU vessels flying the flag of a Member State shall only be authorised access to their home ports and no other Community ports except in case of force majeure or distress;
- IUU vessels flying the flag of a third country shall not be authorised to enter into a port of a Member State, except in case of force majeure or distress; alternatively, a Member State may authorise the entry into its ports of an IUU fishing vessel on the condition that the catches on board and, where appropriate, fishing gear prohibited pursuant to conservation and management measures adopted by RFMOs are confiscated;
- member States shall confiscate catches and, where appropriate, fishing gear prohibited pursuant to RFMO conservation and management measures on board IUU fishing vessels which have been authorised to enter their ports for reason of force majeure or distress;
- IUU fishing vessels flying the flag of a third country shall not be supplied in ports with provisions, fuel or other services, except in case of force majeure;
- IUU fishing vessels flying the flag of a third country shall not be authorised to change the crew, except as necessary in case of force majeure;
- Member States shall refuse the granting of their flag to IUU fishing vessels;
- the importation of fishery products caught by such vessels shall be prohibited, and accordingly catch certificates accompanying such products shall not be accepted or validated;
- the exportation and re-exportation of fishery products from IUU vessels for processing shall be prohibited;
- IUU fishing vessels with no fish and crew on board shall be authorised to enter a port for its scrapping, but without prejudice to any prosecution and sanctions imposed against that vessel and any legal or natural person concerned.

7.2.6 Analysis of Community IUU vessel list

The measures stipulated by the IUU Regulation to be taken against vessels on the EC IUU list are generally consistent with provisions under international fisheries instruments and conservation and management measures adopted by various RFMOs (see Appendix 1). One area of concern, though, is the fact that trade prohibitions are not applied as a last resort. Given that investigations of alleged violations by fishing vessels usually take time to conclude, the application of an interim measure that do not include outright prohibition of the trade in affected fishery products may be necessary to ensure procedural fairness.

7.2.7 EC list of non-cooperating third countries

In addition to a list of IUU vessels, the IUU Regulation provides for the establishment of a list of non-cooperating third countries. A State may be identified as a non-cooperating third country if it fails to discharge the duties incumbent upon it under international law as flag, port, coastal or

market States and to take action to prevent, deter and eliminate IUU fishing activities.¹⁹⁴ The listing of such States is based on a number of considerations and factors, including:

- examination of measures taken by the State concerned in respect of recurrent IUU fishing activities carried out or supported by vessels flying its flag or by its nationals, or by vessels operating in its waters or using its ports, or of access of fisheries products stemming from IUU fishing activities into its market;
- whether the State concerned effectively cooperates with the EC by providing a response to requests made by the European Commission to investigate, provide feedback or follow-up to IUU fishing and associated activities;
- whether the State concerned has taken effective enforcement measures in respect of the operators responsible for IUU fishing, and in particular whether sanctions of sufficient severity to deprive the offenders of the benefits accruing from these activities have been applied;
- the history, nature, circumstances, extent and gravity of the manifestations of IUU fishing activities considered;
- for developing countries, the existing capacity of their competent authorities;
- the ratification of or accession of the States concerned to international fisheries instruments, and in particular the LOSC, UN Fish Stocks Agreement, and the FAO Compliance Agreement;
- the status of the State concerned as a contracting party to regional fisheries management organisations, or the State's agreement to apply the conservation and management measures established by such organisations;
- any acts or omissions by the State concerned that may have diminished the effectiveness of applicable laws, regulations or international conservation and management measures;
- where appropriate, specific constraints of developing countries, in particular in respect to monitoring, control and surveillance of fishing activities.¹⁹⁵

The IUU Regulation requires the prohibition on the importation into the EC of fishery products caught by fishing vessels flying the flag of non-cooperating third countries, and non-acceptance of catch certificates accompanying such products.¹⁹⁶ In cases where the identification of a non-cooperating State is justified by the lack of appropriate measures adopted by the State in relation to IUU fishing activities affecting a given stock or species, the prohibition of importation may only apply in respect of this stock or species.¹⁹⁷ Of particular relevance to the ACP member States is the provision in the IUU Regulation regarding the denunciation by the EC of any standing bilateral fisheries agreement or fisheries partnership agreements with such States, as well as refusal to enter

¹⁹⁴ IUU Regulation, Article 31(3).

¹⁹⁵ IUU Regulation, Articles 31(4), 31(5), and 31(6) and 31(7).

¹⁹⁶ IUU Regulation, Article 38.

¹⁹⁷ IUU Regulation, Article 38(1).

into negotiations to conclude a bilateral fisheries agreement or fisheries partnership agreements with such States.¹⁹⁸

7.2.8 Analysis of EC list of non-cooperating third countries

As noted above, the decision to list a State as non-cooperating flag State will be based on a number of factors such as implementation of relevant international obligations, the IUU fishing record of such a State and its nationals and the record of the State in taking effective enforcement actions in respect of the IUU fishing activities by its vessels, national and operators. These factors are highly subjective and can be applied in an arbitrary manner. For example, it is not clear the basis on which the EC will make a judgement and the standard to be applied to determine whether or not a State has taken effective measures in respect of its operators, or whether or not sanctions applied to IUU fishers are of sufficient severity.

One of the penalties that may be imposed on non-cooperating third countries is prohibition of private trade arrangements between nationals of an EC member State and such States in order for a fishing vessel flying the flag of that member State to use the fishing possibilities of the non-cooperating State. Again, it is not clear how the EC will make this assessment in practice given the highly complex nature of commercial arrangements involved in industrial fisheries (including venture capital funds). There is potential for discriminatory treatment by the EC of non-cooperating third States should the EC fail to apply similar stringent measures against its members which fail to discharge their international obligations and comply with other relevant EC Regulations on fisheries control and enforcement.

¹⁹⁸ IUU Regulation, Article 38(8) and (9).

8. Implications of IUU Regulation for ACP fisheries exports

This section of the Report identifies implications of the IUU Regulation in terms of trade in fishery products between the EC and ACP States. Consistent with the terms of reference for this Report, particular attention is devoted to analysing how the IUU Regulation will impact upon the:

- utilisation of Duty Free and Quota Free (DFQF) market access arrangements established by Economic Partnership Agreements and Interim Economic Partnership Agreements between the EC and various ACP States;
- utilisations of trade preferences granted to a number of ACP States by the EC Generalised System of Preferences Regulation; and
- the application of Rules of Origin set out in the above arrangements.

8.1 Implications for DFQF market access under EPAs and IEPAs

One of the outcomes from the December 2005 Hong Kong Ministerial Meeting (a plenary sessions of the Doha Round of Trade talks) was the adoption of the ‘Duty-Free and Quota-Free’ initiative under which developed countries agreed to extend duty-free, quota-free treatment to most products imported from least developed countries (LDCs). The terms of the DFQF initiative allow the exclusion of sensitive products, provided such exclusion does not exceed 3% of imports from the relevant LDCs. The EC has subsequently, with limited exceptions, offered DFQF access to its markets to all States party to EPAs and IEPAs. Such offers are extended to both LDCs and non-LDCs.

The IUU Regulation does not purport to modify the DFQF access granted pursuant to EPAs and IEPAs, or amend any specific EC trade regulation as a result of its future adoption.¹⁹⁹ However, the elements of the IUU Regulation discussed in the previous section of the Report may have indirect implications for the ability of ACP member countries to take advantage of DFQF access. The indirect impediments to DFQF access by these elements are two-fold:

- Provisions of the IUU Regulation regarding port State control over third country fishing vessels do not set out clear provisions stipulating the rights of third country fishing vessels during port inspections. The IUU Regulation makes no direct provision for the prevention of unnecessary delays to the fishing vessel being inspected, and does not establish a compensation or complaint framework regarding actions of the port State.²⁰⁰
- As noted in Section 7 of the Report, Chapter III of the IUU Regulation sets out conditions of access of third country fishery products to EC territories, including provisions regarding flag State notification, audit and cooperative arrangements on catch certification. These provisions have the effect of making DFQF access for all types of fishery products conditional on the adoption of complex legal, administrative and technical procedures by EC Members, and between EC Member States and third countries. This trade-restrictive effect of Chapters II and III are alleviated to some extent by Chapter XI of the IUU Regulation,

¹⁹⁹ See IUU Regulation, Article 56.

²⁰⁰ See Section 7 of this Report

which requires administrative authorities in EC Member States to cooperate with third States in the development of compliance procedures, and further requires the adoption of a system of mutual assistance to that end.²⁰¹ An important policy issue is the extent to which DFQF beneficiaries will be assisted in meeting the requirements of the IUU Regulation, in addition to the implementation of administrative procedures and cooperation with the EC. This issue is addressed further in Section 10 of the Report.

8.2 Implications for GSP, GSP+ and EBA beneficiaries

As noted above, the Generalised System of Preferences (GSP) is a system of exemption from WTO rules aimed at promoting developing countries exports by allowing their products preferential access to the markets of developed countries. Although donor countries are under no obligation in international law to give preferences, almost all developed countries operate GSP schemes which vary significantly.

All EC GSP arrangements are unilateral EU Council Regulations subject only to the conditions set out in the WTO Enabling Clause. There is no obligation upon the EC to maintain a GSP arrangement, and the EC is at liberty to amend or revoke these arrangements, so long as this does not discriminate between developing countries. The current EC Regulation, outlining the guidelines for the GSP scheme applies until 31 December 2008. The EC announced in July 2008 that the current GSP regime will be extended for the period 1 January 2008 to the end of 2011.²⁰²

There are three systems of tariff preferences in the EC's GSP Regulation: GSP Standard, GSP Everything but Arms preferences for least developed countries, and GSP+. Appendix 2 identifies which ACP States are granted access under these schemes.

8.2.1 GSP Standard²⁰³

GSP Standard is available to developing countries meeting certain vulnerability criteria. The scheme provides the same level of preferential access to the EC markets for ACP member States as granted to other non-ACP developing countries. GSP Standard has higher tariffs than under an EPA and under previous Cotonou preferences. The scheme provides limited coverage, given that some goods (e.g. sugar, bananas and rice) are not included in GSP and have to be exported under Most Favoured Nation (MFN) conditions.

²⁰¹ See IUU Regulation, Article 51(1) and (2).

²⁰² Liam Campling, FFA Fisheries Trade Briefing, Volume 1: Issue 8 & 9 (July and August 2008).

²⁰³ See the provisions in force until 31 December 2008: Council Regulation (EC) No 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences, http://trade.ec.europa.eu/doclib/docs/2005/june/tradoc_123910.pdf and the proposal for the period 2009-2011: European Commission, Proposal for a Council Regulation applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, No 1933/2006 and Commission Regulations (EC) No 964/2007 and No 1100/2006, 21 December 2007, <http://register.consilium.europa.eu/pdf/en/08/st05/st05177.en08.pdf>.

8.2.2 GSP - EBA²⁰⁴

Under the GSP-EBA Scheme, unilateral trade preferences are granted by the EC to Least Developed Countries (LDCs). Except for arms, the GSP-EBA window allows all goods from the 49 LDCs to enter the EC duty and tariff free. Three categories of goods – rice, bananas and sugar have longer implementation periods. Apart from these three goods, LDCs now have DFQF access to the EC market for all traded items.

8.2.3 GSP+²⁰⁵

The GSP+ scheme establishes a set of unilateral trade preferences granted by the EC to developing States meeting certain economic vulnerability criteria.²⁰⁶ The GSP+ scheme came into effect from 1 July 2005 and replaces the GSP ‘Drugs Regime’ which has been repealed. The scheme does not require eligible ACP member States to open their markets to imports from the EC. In order to be eligible for the scheme, beneficiary States must also meet certain political criteria. They must be pursuing sustainable development and good governance as defined by the EC and must also ratify a number of specifically identified international treaties on labour standards, human rights, good governance and environmental protection.²⁰⁷

GSP+ rules are expected to be reviewed in 2008. In the interim, non-LDC ACP member States not party to an EPA or IEPA enjoy better market access conditions if eligible under GSP+ as opposed to standard GSP. Currently all African and Pacific non-LDC ACP member States except South Africa, meet the economic vulnerability criteria for GSP+. In respect of the political criteria, only the Seychelles and Ghana were eligible for GSP+ based on having ratified the required conventions.

²⁰⁴ See the provisions in force until 31 December 2008: Council Regulation (EC) No 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences, http://trade.ec.europa.eu/doclib/docs/2005/june/tradoc_123910.pdf and the proposal for the period 2009- 2011: European Commission, Proposal for a Council Regulation applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, No 1933/2006 and Commission Regulations (EC) No 964/2007 and No 1100/2006, 21 December 2007, <http://register.consilium.europa.eu/pdf/en/08/st05/st05177.en08.pdf>.

²⁰⁵ For the period until 31 December 2008 GSP rules are to be found in Council Regulation (EC) No 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences, http://trade.ec.europa.eu/doclib/docs/2005/june/tradoc_123910.pdf. For the period 2009-2011 the proposed GSP rules are to be found in European Commission, Proposal for a Council Regulation applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, No 1933/2006 and Commission Regulations (EC) No 964/2007 and No 1100/2006, 21 December 2007, <http://register.consilium.europa.eu/pdf/en/08/st05/st05177.en08.pdf>. More generally, see Lorand Bartels, November 2007: The EU’s GSP+ arrangement as an alternative to the EPA process; European Commission, September 2007: Is GSP+ an alternative to an Economic Partnership Agreement? http://trade.ec.europa.eu/doclib/docs/2007/september/tradoc_136097.pdf.

²⁰⁶ The recipients must demonstrate that their economies are ‘dependent and vulnerable,’ meaning that the five largest sections of its GSP-covered exports to the EC must represent more than 75% of its total GSP-covered exports. In addition, GSP-covered exports from that country must also represent less than 1% of total EU imports under GSP.

²⁰⁷ The 23 of the most important international conventions that must have been ratified before the end of October 2005 relate to core political, human and labour rights including: the elimination of discrimination against women; the prohibition of torture; the right to strike; the banning of child labour, protection of the environment, good governance and the fight against drug production and trafficking. The remaining conventions which must be ratified within the lifetime of the regulations i.e. by December 2008 include the Kyoto Protocol, the Convention on International Trade in Endangered Species and the UN Convention against Corruption.

8.2.4 Analysis of impact of IUU Regulation on the GSP, GSP-EBA and GSP+

The IUU Regulation does not directly curtail access to the EC market by the current beneficiaries of the GSP, GSP-EBA and GSP+. However, the additional administrative requirements that may be required to implement the proposed Regulation (already noted) may have indirect impacts on the ability of GSP, GSP-EBA and GSP+ beneficiaries to attain the basic objective of these market access arrangements, which is to promote economic development and poverty reduction.

Most of the LDCs have very little capacity to enforce fisheries regulations and establish catch certification systems. In the event that such States are listed under the EC List of non-cooperating third countries, the IUU Regulation is clear on the sanctions to be imposed, which include the prohibition of importation or reconsideration of bilateral fisheries access agreements. If applied without proper consultation, such sanctions, particularly the latter, may prove detrimental to the economic development of LDCs. In this respect, it is worth noting that Chapter XI of the IUU Regulation, as described above, anticipates these challenges to some extent by establishing a framework for providing assistance to developing States to meet the requirements of the proposed Regulation. This is clearly a central policy issue for ACP member States, requiring a strategic approach. This issue is addressed in Section 10 of the Report.

8.3 Impact of IUU Regulation on Rules of Origin

This section analyses the impact of the IUU Regulation with particular reference to its potential effect on (a) utilisation of the 15% value tolerance rule of origin in current EPAs and IEPAs, and (b) application of the global sourcing rules of origin in the Pacific IEPA. These rules are described in detail in Figure 1.

There is no direct link between the IUU Regulation and the utilisation of the new 15% value tolerance rule for the origin of fish and rules for bilateral and regional cumulation, and the proposed catch certification system. However, implementation of the IUU Regulation would impose an indirect additional burden on countries of origin to ensure that all value added fish of a particular product coming from other countries has not been obtained through IUU means. The following points are particularly relevant.

- Existing EC regulations on RoO²⁰⁸ only determine where goods originate, not where they have been shipped from. In the case of fishery products, the current EC rules do not verify whether or not a product has been derived from IUU fishing. Because different derogations apply in current IEPA arrangements, it would be difficult to trace how particular products falling under the derogation may have been obtained through IUU fishing
- Under the IUU Regulation, there are two ways of identifying and publicising IUU offenders. The first is through an IUU vessel list and second is through an EC list of non-cooperating third countries. In the case of vessels included in the Community IUU vessel list, the importation of fishery products caught by IUU vessels are to be prohibited and catch certificates accompanying such products will not be accepted or validated. In the case of States included in the list of non-cooperating third countries, the IUU Regulation provides

²⁰⁸ These are contained in Articles 66-97 and Annexes 14-18 and 21 of Commission Regulation No. 2454/93 (the implementing provisions of the Community Customs Code), as amended by Regulations (EC) Nos. 12/97, 1602/2000 and 881/2003.

for the prohibition on the importation into the EC of fishery products caught by vessels flying the flag of such States, as well as non-acceptance of catch certificates accompanying such products or affected stock or species. The IUU Regulation does not clarify how rules of origin are to be applied in the context of these prohibitions. In fact, the existing RoO are insufficient to implement these provisions of the IUU Regulation. The proof of origin, for example, (which includes the Certificate of Origin Form A, invoice declaration, movement certificate, and declaration by the exporter) only traces the goods back to the exporter's business and not the fishing vessel. These certificates are only used to establish preference products and countries and not their compliance with fisheries laws and regulations. By contrast, the EU SPS requirements, at least for freezer and factory ships, do provide a link to the fishing vessel.²⁰⁹

- In the case of the Pacific IEPA, the global sourcing rules of origin for fresh and frozen fish fillets apply in order to provide Pacific Island States exporters with maximum flexibility in buying fish for value-added processing and export. The implementation of the IUU Regulation would impose additional burden on the Pacific Island States to ensure that all value added fish has not been derived from IUU fishing. Although these rules “shall apply without prejudice” to EC SPS measures and combating IUU fishing in the Pacific Island region, as provided in the PACP IEPA, it is uncertain as to how such rules would be applied in practice and in a proportionate manner.

The implications of the IUU Regulation on the utilisation of the 15% value tolerance rule in current EPAs and IEPAs, and application of the global sourcing rules of origin in the Pacific IEPA have clear parallels with the operation of the EU SPS Scheme. The additional specific administrative requirements of the IUU Regulation when set against those of RoO and SPS requirements is provided in the comparative table in Appendix 3.

²⁰⁹ EC Regulation No 178/2002 only provides for the obligations of food and feed business operators and retailers in ensuring the safety of food in the market. Article 18 provides the general traceability requirements that food operators need to comply with under the regulation.

9. GATT/WTO compatibility issues

The international trade in fish and fishery products are subject to the General Agreement on Tariffs and Trade (GATT) and a number of agreements adopted within the framework of the WTO.²¹⁰ GATT requires the substantial reduction of tariffs and other barriers to trade²¹¹ consistent with its underlying objective of trade liberalisation. It has also adopted legal principles to ensure the conduct of multilateral trade on a non-discriminatory basis.²¹² These principles have been reflected in the FAO Code of Conduct for Responsible Fisheries which calls on States to “liberalise trade in fish and fishery products and eliminate barriers and distortions to trade such as duties, quotas and non-tariff barriers.”²¹³

The IUU Regulation enables the application of a number of restrictive measures that affect the international trade in fish and fisheries products. Notwithstanding the fact that the IUU Regulation has yet to be implemented, a number of issues may be raised with respect to the compatibility of certain features of the IUU Regulation with WTO agreements. These issues relate to:

- the catch certification requirements and measures that may be applied by the EC territories against third country fisheries products that fail to comply with the requirements;
- the actions that may be taken by EC territories against foreign vessels, including vessels on the Community IUU vessel list and vessels flying the flags of States listed under the EC list of non-cooperating third countries;
- the actions that may be taken by EC territories against non-cooperating third countries.

This section analyses the compatibility of measures adopted under the IUU Regulation within the GATT/WTO framework in respect of these issues, by reference to trade rules established by WTO Agreements, interpretations of such agreements by the WTO Dispute Settlement Body (DSB) in the context of compulsory WTO dispute resolution proceedings and the degree to which such measures have been accepted internationally as a legitimate response to IUU fishing.

9.1 Catch certification requirements

As set out in detail above, Chapter III of the IUU Regulation establishes catch certification requirements for fishery products from third countries that enter EC territories. The compatibility of these requirements with WTO rules requires analysis of the GATT in addition to the Agreement on Technical Barriers to Trade (TBT Agreement).

²¹⁰ The WTO Agreements that are of particular relevance to the trade in fish and fisheries products are: Agreement on the Application of Sanitary and Phytosanitary Measures, Agreement on Technical Barriers to Trade, Agreement on Trade-related Investment Measures, Agreement on Pre-shipment Inspection, Agreement on Rules of Origin, Agreement on Safeguards, Agreement on Import Licensing Procedures, and Agreement on Subsidies and Countervailing Measures.

²¹¹ See GATT provisions related to the importation of products, Articles VIII, X, XI, and XIII.

²¹² GATT 1994, Preamble. See applicable principles such as the most-favoured nation and national treatment principles in Articles I, II, and III of GATT.

²¹³ FAO Code of Conduct, Article 11.2.5.

Article XI(1) of the GATT, entitled ‘General Elimination of Quantitative Restrictions’, is considered a fundamental feature of the WTO system²¹⁴ and has been interpreted by the WTO Dispute Settlement Body (DSB) as applying broadly to all measures ‘prohibiting or restricting the importation, exportation or sale for export of products other than measures that take the form of duties, taxes or other charges.’²¹⁵ The prohibition of the importation, exportation, re-exportation, and indirect importation of fishery products on the basis of non-compliance with catch certification requirements under the IUU Regulation may be seen as a quantitative restriction under the GATT. However, Article XX of the GATT establishes several exceptions to the application of the agreement, and provides that:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any [Member] of measures: ... (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption; ...

In summary, GATT Article XX allows for, among other things, the protection of some important non-economic societal values, such as public health and the environment. Measures satisfying the conditions set out in Article XX are thus permitted, even if they are inconsistent with other provisions of the GATT 1994.²¹⁶

The IUU Regulation may be viewed as justifiable in terms of Article XX(g) for two reasons: (a) the Regulation has been designed fundamentally for the purpose of conserving fisheries resources and; (b) as described above, forms part of a EC strategy to impose equivalent restrictions on both domestic and international IUU fishing vessels.

In relation to the *chapeau* requirement that a trade measure must not amount to ‘arbitrary or unjustifiable discrimination between countries where the same conditions prevail’, the DSB has noted that:

Authorising an importing Member to condition market access on exporting Members putting in place regulatory programmes comparable in effectiveness to that of the importing Member gives sufficient latitude to the exporting Member with respect to the programme it may adopt to achieve the level of effectiveness required. It allows the exporting Member to adopt a regulatory programme that is suitable to the specific conditions prevailing in its territory. As we see it ... conditioning market access on the adoption of a programme comparable in effectiveness, allows for sufficient flexibility in the application of the measure so as to avoid “arbitrary of unjustifiable discrimination”.²¹⁷

The Appellate Body of the DSB has also stressed that, in order to meet the requirements of the *chapeau* of Article XX, WTO members need to make serious efforts, in good faith, to negotiate a multilateral solution before resorting to unilateral trade measures.²¹⁸

²¹⁴ See Panel Report, Turkey – Textiles, para. 9.63: ‘The prohibition on the use of quantitative restrictions forms one of the cornerstones of the GATT system.’ See also Peter Van den Bossche, *The Law and Policy of the World Trade Organisation: Text Cases and Materials* (2005), p 444.

²¹⁵ See GATT Panel Report, Japan – Semi-Conductors, para. 104. See also Van den Bossche, p 444.

²¹⁶ See, eg, US – Section 337, GATT Panel Report, US – Section 337, para 5.9

²¹⁷ Appellate Body Report, US – Shrimp (Article 21.5 – Malaysia), para. 144.

²¹⁸ Van den Bossche, *The Law and Policy of the World Trade Organisation: Text Cases and Materials* (2005). See specifically, Appellate Body Report, US – Shrimp (Article 21.5 Malaysia) paras 115-134.

In view of the above comments, the IUU Regulation may be viewed as consistent with the *chapeau* of Article XX because: (a) catch certification requirements may be satisfied by documentation adopted by RFMOs; (b) the Regulation has been developed in the context of international efforts and consultation to combat IUU fishing; and (c) the Regulation provides for assistance to and consultation with affected States.

Catch certification requirements set out in the IUU Regulation may also be viewed as technical barriers to trade, thereby coming under the TBT Agreement. In its Preamble, the TBT Agreement provides that:

Recognizing that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, and are otherwise in accordance with the provisions of this Agreement;

Recognizing that no country should be prevented from taking measures necessary for the protection of its essential security interest;

Recognizing the contribution which international standardization can make to the transfer of technology from developed to developing countries;

Recognizing that developing countries may encounter special difficulties in the formulation and application of technical regulations and standards and procedures for assessment of conformity with technical regulations and standards, and desiring to assist them in their endeavours in this regard.

Catch certification requirements set out in the IUU Regulation may be viewed as consistent with the principles of the TBT Agreement in three ways:²¹⁹

- The requirement under the IUU Regulation to certify that fish catch has been obtained in accordance with applicable laws and regulations and international conservation and management measures is, arguably, “necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices” as such as IUU fishing.
- The IUU Regulation explicitly recognises the capacity constraints of developing countries in the implementation of the catch certification scheme and other requirements.²²⁰ The Regulation also provides for assistance to ensure compliance with the requirements of the IUU Regulation.²²¹
- The catch certification system set out in the IUU Regulation is intended to be implemented in a non-discriminatory manner. EC currently implements catch certification systems for fisheries products of EC territories based on catch certification schemes established by RFMOs. The IUU Regulation extends the application of the current scheme to all fish and

²¹⁹ A potential area of inconsistency between the IUU Regulation and the TBT Agreement, depending on how the Regulation is implemented, relates to the port inspection provisions of the IUU Regulation which are discussed under 5.2 below.

²²⁰ See, eg, IUU Regulation, Preamble paragraph 14 and Article 31(7).

²²¹ IUU Regulation, Chapter XI.

fishery products, including those traded between the EC and third States in order to strengthen measures to combat IUU fishing. Chapter III of the IUU Regulation also clearly stipulates the actions that may be taken by EC competent authorities to verify catch certificates, as well as the procedure for the notification of any refusal of importation to the flag State concerned and the right to appeal against any decision taken by the EC authorities.

In terms of specific provisions, the TBT Agreement requires that technical regulations and measures should not create unnecessary obstacles to international trade.²²² To this end, Article 2.2 provides that ‘technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate object, taking into account of the risks non-fulfilment would create.’ Article 2.2 sets out several legitimate objectives, including the protection of human life or health or protection of the environment.²²³ Article 2.4 of the TBT Agreement further provides that: ‘Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations.’²²⁴

The IUU Regulation can be viewed as compatible with the above Articles by virtue of the fact that catch certification requirements set out Regulation are predominantly consistent with measures adopted by RFMOs and called for by FAO IPOA-IUU to prevent the depletion of fish stocks by IUU fishing.

9.2 Vessel inspections and actions to be taken against IUU vessels

The second issue relevant to consideration of the compatibility of the IUU Regulation with international trade rules concerns the actions that may be taken by EC member States against foreign vessels, including vessels on the Community IUU vessel list and vessels flying the flags of States listed under the list of non-cooperating third countries.

In accordance with Chapter 2, Section 2 of the IUU Regulation, EC member States are required to carry out inspections in their ports of at least 5 percent of landings and transshipment operations by third country fishing vessels each year. Chapter 2, Section 2 also requires the mandatory inspection of all vessels that have been sighted as, alleged or presumed to have conducted IUU fishing, have been reported in the Community alert system, or have been listed under an RFMO IUU List.²²⁵ Article 36 of the IUU Regulation provides for both port State and market-related measures against IUU vessels, including the restriction of landing, transshipment and trade of fish and fishery products caught through IUU means.

The above measures are port enforcement actions which, in respect of IUU vessels, have already been mandated under international fisheries agreements and conservation and management measures adopted by RFMOs. In view of this international acceptance of port enforcement actions, such measures taken against IUU vessels under the IUU Regulation are unlikely to be challenged in

²²² See Article 2.2 of the TBT Agreement (for technical regulations), Article 5.1.2 of the TBT Agreement (for conformity assessment procedures) and Annex 3E to the TBT Agreement (for standards). See also Van den Bossche, p 457-480.

²²³ See the list contained in Article 2.2 of the TBT Agreement. The list of legitimate objectives enumerated in Article 2.2 is not exhaustive. It will be up to the DSB to assess whether policy objectives other than those listed in Article 2.2 are, in a particular case, legitimate policy objectives.

²²⁴ Article 2.4 of the TBT Agreement. See also Annex 3F to the TBT Agreement (for standards) and Article 5.4 of the TBT Agreement (for conformity assessment procedures).

²²⁵ IUU Regulation, Article 9(2).

WTO fora, especially in light of recent negotiations and efforts to achieve consistency between multilateral environmental agreements and WTO rules.²²⁶ Furthermore, many ACP States are obliged to take equivalent port enforcement actions against IUU vessels by virtue of their endorsement of the IPOA-IUU and membership of RFMOs, which is outlined in Appendix 2.

However, in order to achieve consistency with the principles of non-discrimination set out in the GATT and TBT Agreement,²²⁷ there are precautions that would need to be taken by the EC before any port State enforcement action is taken against foreign vessels, especially in relation to the requirement to inspect 5 per cent of landings, transshipments and on-board processing operations by third country fishing vessels each year. The EC would need to ensure that the identification and listing of vessels believed to have conducted IUU fishing has been conducted in a transparent manner that avoids arbitrary discrimination against specific flag States. Consequently, each EC territory acting as a port State would need to put in place a more detailed, fair, transparent, and non-discriminatory procedure that would establish that a vessel has indeed engaged in IUU fishing.

The prohibition of the importation and exportation of fish and fishery products derived from IUU fishing is by nature a trade-related measure, and may be more susceptible to objections by affected vessels or flag States. In order to fully comply with the WTO rules and principles, any prohibition on the trade in fish and fishery products imposed on foreign fishing vessels would also need to be applied in a fair and non-discriminatory manner. Similar to the procedures that should be established by EC port State members, such measures should be reflected in the national regulations of each EC territory and publicised to affected trading partners.²²⁸ If the importation of a fishery product from a third country is prohibited without established national administrative arrangements being put in place, the probability that the proposed measures would be considered arbitrary or discriminatory would become greater.

9.3 Actions to be taken against ‘non-cooperating’ States

The third issue regarding the compatibility between the IUU Regulation and international trade rules relates to the actions that may be taken against States listed under the EC list of non-cooperating third countries. The measures to be applied to such countries under Article 38 of the IUU Regulation largely take the form of prohibitions against vessels flying the flags of such States. Article 37(5) of the IUU Regulation provides for the prohibition of the exportation of Community fishing vessels to States considered as non-cooperating. Furthermore, under Article 37(8) and (9), the EC “shall propose the denunciation of any standing bilateral fisheries agreement or fisheries

²²⁶ A summary of such efforts may be found at http://www.wto.org/english/tratop_e/envir_e/envir_e.htm.

²²⁷ The most relevant principle is the Most Favoured Nation (MFN) treatment obligation, which is set out in GATT Article 1 and Article 2.1 of the TBT Agreement. GATT Article 1 requires that ‘... with respect to all rules and formalities in connection with importation and exportation ... any advantage, favour, privilege or immunity granted by any [WTO Member] to any product originating in or destined for any other State shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other [WTO Members].’ Article 2.1 of the TBT Agreement requires WTO Members to ‘ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.’

²²⁸ There are no dispute settlement provisions set out in the IUU Regulation – this would be a matter for domestic law in each individual country, which may vary significantly given the mix of civil and common law jurisdictions in the EC member States.

partnership agreement with such countries” and “shall not enter into negotiations to conclude a bilateral fisheries agreement or fisheries partnership agreement with such countries.”

There may be instances where actions taken by the EC against a non-cooperating third country may be justified on the basis of international fisheries instruments. If, for example, a State is listed by the EC as a non-cooperating third country on the basis that its vessels have been engaged in IUU fishing in the area of competence of an RFMO, and that RFMO has called on its members to prohibit the importation of fish and fishery products until such a time as that State has rectified the actions of its fishing vessels (similar to previous actions taken by ICCAT), the prohibition of trade with that ‘non-cooperating State’ may be permissible. The EC action may also be justified in listing a flag State as non-cooperating on the basis that the State has continuously failed to take action against IUU fishing which directly affects the EC market (and despite assistance, consultation, and cooperation with such State).

If a State is listed as non-cooperating for failure to comply with the catch certification requirements of the IUU Regulation, WTO rules are more specifically relevant than principles contained in international fisheries instruments. Imposition of similar types of trade restrictions have been ruled in the past as unilateral and contrary to WTO agreements. For example, a United States ban on imports of yellow-fin tuna from Mexico for failure to protect Eastern Pacific Tropical dolphins in accordance with the *Marine Mammal Protection Act*²²⁹ was considered contrary to GATT rules.²³⁰

In *US-Shrimp*, a DSB Panel found that the United States acted inconsistently with GATT Article XI(1) by imposing an import ban on shrimp and shrimp products harvested by vessels of foreign nations where the exporting country had not been certified by the US authorities as using methods not leading to the accidental killing of sea turtles above certain levels.²³¹ The DSB Appellate Body stated:

It may be quite acceptable for a government, in adopting and implementing a domestic policy, to adopt a single standard applicable to all its citizens throughout that country. However, it is not acceptable, in international trade relations, for one WTO Member to use an economic embargo to require the other Members to adopt essentially the same comprehensive regulatory program, to achieve a certain policy goal, as that in force within that Member’s territory, without taking into consideration different conditions which may occur in the territories of those other Members.²³²

However, a revised version of the US trade measure at issue in *US-Shrimp*, containing more flexible criteria for the certification of shrimp imports and involving consultation with affected States, was subsequently upheld by the DSB Appellate Body as justified by GATT Article XX(g).²³³

In view of the above comments, the listing of a State as non-cooperating for failure to comply with the catch certification requirements is arguably justified in terms of Article XX(g) because: (a) the catch certification requirements contain a sufficient degree of flexibility by accepting documentation adopted by RFMOs, (b) the Regulation has been developed in the context of international efforts and consultation to combat IUU fishing, and (c) the Regulation provides for

²²⁹ World Trade Organisation Website, Mexico etc versus US: ‘Tuna-Dolphin’. www.wto.org.

²³⁰ WTO, Mexico etc versus US: ‘Tuna-Dolphin’, 2.

²³¹ Van Den Bossche, 444. See also Panel Report, US – Shrimp, paras 7.17 and 8.1.

²³² Appellate Body Report, US – Shrimp, 164, 165 and 177.

²³³ See Appellate Body Report, US – Shrimp (Article 21.5 – Malaysia). See also http://www.wto.org/english/tratop_e/envir_e/edis08_e.htm.

assistance to and consultation with affected States. Consistent with Article 34 of the IUU Regulation, States may also be removed from the list of non-cooperating third countries if the State “concerned demonstrates that the situation that warranted its listing has been rectified.”

Finally, with respect to the possible application of Articles 37(8) and (9) of the IUU Regulation, denunciation of standing bilateral fisheries agreements with third States and prevention of fisheries partnership agreements may be viewed as forms of economic sanctions that would directly affect developing States, particularly least developing States. If implemented, these specific features of the IUU Regulation may not only be viewed as more restrictive than existing requirements adopted by RFMOs and set out in the IPOA-IUU, but may also have strong negative implications for international trade in fish and fishery products, contrary to the basic objectives of the WTO system.

10. Issues for policy reflection

This Section of the Report identifies issues for policy consideration by ACP States and the EC at national, regional and multilateral levels.

10.1 Policy responses to the IUU Regulation by ACP States

EC member States and ACP member States have equal international obligations to prevent, deter, and eliminate IUU fishing. Measures to combat IUU fishing such as the ones contained in the IUU Regulation will become prevalent and embedded parts of national, regional, sub-regional and international fisheries governance arrangements to ensure sustainable and responsible fishing practices.

The evidence so far shows that many developing States are at the receiving end of IUU fishing. IUU fishing poses a serious threat to the sovereignty and sovereign rights of many developing coastal States in terms of managing their fishery resources in a sustainable manner. IUU fishing also poses a serious threat to the food security of many developing countries. Developing States are also the weakest link in the global fight against IUU fishing. Most these States are resource, finance, knowledge and capacity challenged in terms of implementing sustainable fisheries governance measures.

It is true that some developing States derive short term economic benefits from IUU fishing activities by providing, for example, “ports of convenience” for IUU fishing vessels and by refusing to implement appropriate control measures on their vessels. However, the majority of developing States have demonstrated their opposition to IUU fishing and therefore have a direct interest in ending trade in IUU caught fish. This is evidenced by the growing number of developing countries taking regional actions against IUU fishing (such as the recent Statement by the Southern African Development Community and the regional plan of action adopted by the Southeast Asian States to eradicate IUU fishing which have already been noted).

The actual implications of the IUU Regulation on ACP member States can only be fully assessed when they are implemented. However from the text of the proposed Regulation, one can identify particular areas which will give rise to implementation challenges for ACP member States. For example, the requirements for catch certification and validation of such certificate would require the implementation of appropriate legislative and administrative measures to ensure compliance. ACP flag States will need to have processes in place to monitor and control their vessels (through e.g vessel monitoring systems and observer programmes). They will also need to implement effective fisheries management measures such as fishing authorizations and data collection systems. These requirements will, undoubtedly, impose additional resource and administrative burden on the already stressed and weak administrations of most ACP member States. Although it can be argued that these requirements are already part of the international obligations of the ACP States, these countries currently do have some policy flexibility in terms of the level of resources and time-frame for implementation of these international obligations and without the threat of trade sanctions.

As already noted, the requirements of the IUU Regulation regarding non-cooperating third countries will also impose additional administrative burdens and cost on ACP member States. For example, they will be required to put in place legal and administrative measures and procedures to respond to

investigations by EC member States and to provide feedback or follow-up to IUU fishing and related activities of their vessels.

A critical issue for the ACP member States is how to develop a coordinated and sustained strategic approach to obtain the necessary technical and financial assistance to support the implementation of domestic governance measures compliant with the IUU Regulation and international obligations to combat IUU fishing. This will require prior identification of national gaps, evaluation of cost of implementation, including capacity building requirements, on-going implementation costs etc. In this respect, lessons can be drawn from the implementation of SPS measures. Such a strategic approach would assist ACP States to avoid the negative effects of IUU fishing, in addition to the negative effects of trade measures applied in response to failures to comply with the IUU Regulation.

10.2 Availability of alternative markets for ACP fisheries exports

The analysis in Part A of the Report shows that there is some scope for alternative markets for ACP fisheries exports to the US and Japan. However, the point needs to be made that these markets are moving towards establishing IUU control restrictions similar to the EC's IUU Regulation. Similar to the fisheries trade between the EC and ACP, domestic rules apply to the ACP export of fish and fishery product to the US and Japan. If ACP States desire to increase their exports to the US and Japan, they would need to improve their capabilities in fish processing in order to increase their competitiveness in the international trade of fish, and subsequently capture some of the market currently monopolised by Southeast Asia on preserved fish. Significantly and in the context of this Report, ACP States would also need to improve their capabilities to comply with increasing regulation on fisheries, which include promoting food safety and sustainable fisheries, including combating IUU fishing.²³⁴ For example, the actions proposed under the US Magnuson-Stevens Fishery Conservation and Management Reauthorisation legislation are very similar to the measures proposed under the EC IUU Regulation. In the case of Japan, similar policy and legal measures are yet to be adopted. However, Japan is also known to be at the forefront of the global fight against IUU fishing like the EC. Japan is currently a member of all RFMOs where it has continuously supported the adoption of catch documentation schemes and IUU fishing measures. Relevant to its participation in RFMOs, in 2007, Japan organised a Joint Tuna RFMO meeting in order to promote the harmonisation of conservation and management measures among the five tuna RFMOs. Japan has further undertaken other relevant measures such as scrapping of vessels and buyback programs in order to limit fishing capacity.²³⁵

²³⁴ E.g. US, Food and Drug Administration Act, Title 3, Section 306, Maintenance and Inspection of Records for Food, 9 December 2004; US, Public Health Security and Bioterrorism Preparedness Response Act of 2002; Japan, Food Sanitation Law, Law No 55 of 2003; Japan, Quality labelling Standard for Perishable Foods, notification No 514 of the Ministry of Agriculture, Forestry and Fisheries of March 31, 2000.

²³⁵ J.M. Ward, J.E. Kirkley, R. Metzner, and S. Pascoe, Measuring and Assessing Capacity in Fisheries. 1. Basic Concepts and Management Options, FAO Fisheries Technical Paper No. 433/1, Rome, FAO, 2004, page 33; ICCAT, Supplemental Resolution by ICCAT to Enhance the Effectiveness of the ICCAT Measures to Eliminate Illegal, Unregulated and Unreported Fishing Activities by Large-Scale Tuna Longline Vessels in the Convention Area and Other Areas, 00-19 GEN, 27 December 2000; ICCAT, Resolution by ICCAT Concerning Cooperative Actions to Eliminate Illegal, Unreported and Unregulated Fishing Activities by Large-Scale Tuna Longline Vessels, 02-26 GEN, 04 June 2003.

These developments suggest that in the context of the impacts of the IUU Regulation, ACP options to diversify away from the EC towards other markets in the longer term would appear therefore to be limited.

10.3 Policy considerations for the EC

Whilst the IUU Regulation is a welcome development, the Regulation would need to be implemented in a fair and transparent manner. The EC must acknowledge the vulnerability of developing countries to implement the requirements of the Regulation. It is important that developing States are not directly or indirectly required to bear a disproportionate burden of global efforts to combat IUU fishing. It is therefore important that the trade implications of the IUU Regulation for developing States are weighed against the need of such States to protect their fisheries resources from the damaging effects of IUU fishing.

A major policy issue for the EC is how to assist developing States in order to implement the requirements under international instruments and the IUU Regulation. Without the necessary technical and financial resource to implement and enforce these new demands, it is likely that several ACP exporters (and even entire countries) will be hit hard. The implementation of the EC's SPS measures provide valuable lessons and are a well known double standard as these rules seem to be less strictly enforced within certain EC Member states.

The IUU Regulation aims to address the implementation challenges that developing countries will face by proposing to provide for mutual assistance between EC Member States and third States, although the level of resources to be provided by the EC has not been specified. The EC would need to clarify the scope of this cooperative arrangement and ensure that the financial assistance to be provided will be allocated outside existing development funding arrangements.

Appendix 1: Comparison of IUU Regulation and international requirements

| Key Element of the IUU Regulation | Relevant Provision of International Instruments | Relevant RFMO Conservation and Management Measure |
|---|--|---|
| Port State control over third country fishing vessels | <p>IPOA-IUU, paras 52-60</p> <p>LOSC, Art. 25</p> <p>UN Fish Stocks Agreement, Art 23</p> <p>FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing</p> | <p>Recommendation by ICCAT on Establishing Statistical Document Programs for Swordfish, Bigeye Tuna, and Other Species Managed by ICCAT, 00-22 SDP, 26 June 2001</p> <p>ICCAT, Recommendation by ICCAT Concerning the ICCAT Bigeye Tuna Statistical Document Program, 01-21 SDP, 21 September 2002</p> <p>ICCAT, Recommendation by ICCAT Establishing a Swordfish Statistical Document Programme, 01-22 SDP, 21 September 2002.</p> <p>ICCAT, Resolution by ICCAT Concerning the Effective Implementation of the ICCAT Bluefin Tuna Statistical Document Program, 94-05 SDP, 23 January 1995, Addendum; ICCAT, Recommendation by ICCAT Concerning the Implementation of the ICCAT Bluefin Tuna Statistical Document Program on Re-export, 97-04 SDP, 12 December 1997, Attachment.</p> <p>CCSBT, Southern Bluefin Tuna Statistical Document Program, Updated October 2003,</p> <p>IATTC Resolution C-03-01, Resolution on IATTC Bigeye Tuna Statistical Document Program, 24 June 2003; IOTC, Resolution 01/06, Recommendation by IOTC Concerning the IOTC Bigeye Tuna Statistical Document Programme</p> <p>CCAMLR, Conservation Measures 10-05 (2004), Catch Documentation Scheme for <i>Dissostichus</i> spp,</p> <p>IATTC, Agreement on the International Dolphin Conservation Program, Procedures for AIDCP Dolphin Safe Tuna Certification, amended, 20 October 2005.</p> <p>IOTC, Resolution 01/06, Recommendation by IOTC Concerning the IOTC Bigeye Tuna Statistical Document Programme.</p> |
| Catch certification requirements | IPOA-IUU, para. 69 | <p>Recommendation by ICCAT on Establishing Statistical Document Programs for Swordfish, Bigeye Tuna, and Other Species Managed by ICCAT, 00-22 SDP, 26 June 2001</p> <p>Recommendation by ICCAT Concerning the ICCAT Bigeye Tuna Statistical Document Program, 01-21</p> |

| | | |
|--|--------------------------------------|--|
| | | <p>SDP, 21 September 2002</p> <p>ICCAT, Recommendation by ICCAT Establishing a Swordfish Statistical Document Programme, 01-22 SDP, 21 September 2002</p> |
| IUU Vessels List | IPOA-IUU, para. 81.4. | <p>Recommendation by ICCAT to Establish a List of Vessels Presumed to have Carried out IUU Fishing Activities in the ICCAT Convention area 06-12</p> <p>IOTC Resolution 06/01 on Establishing a List of Vessels Presumed to Have Carried Out IUU Fishing in the IOTC Area</p> <p>IATTC, Resolution C-05-07, Resolution to Establish a List of Vessels Presumed to have Carried out IUU Fishing Activities in the Eastern Pacific Ocean</p> <p>WCPFC, Conservation and Management Measure to Establish a List of Vessels Presumed to have carried out Illegal, Unreported and Unregulated Fishing Activities in the WCPO, Conservation and Management Measure 2007-03, 07 December 2007</p> <p>NEAFC Non-Contracting Party Scheme</p> <p>CCAMLR, Conservation Measure 10-07 (2006), Scheme to Promote Compliance by Non-Contracting Party Vessels with CCAMLR Conservation Measures</p> <p>CCAMLR, Conservation Measure 10-06 (2006), Scheme to Promote Compliance by Contracting Party Vessels with CCAMLR Conservation Measures</p> <p>NAFO Conservation and Enforcement Measures, Chapter VI, Scheme to Promote Compliance by Non-contracting Party Vessels with Recommendations Established by NAFO</p> |
| List of Non-cooperating States | | |
| Denial of port landing and transshipment | UN Fish Stocks Agreement, Art. 23(3) | <p>Recommendation by ICCAT Amending the Recommendation by ICCAT to Establish a List of Vessels Presumed to have carried out Illegal, Unreported and Unregulated Fishing Activities in the ICCAT Convention Area, 06-12 GEN, 13 June 2007, para. 9</p> <p>IOTC, Resolution 06/01 on Establishing a List of Vessels Presumed to Have Carried Out IUU Fishing in the IOTC Area, para. 13</p> <p>NEAFC, Non-Contracting Party Scheme, Art. 11(d)</p> <p>CCAMLR, Non-Contracting Party Scheme, Art. 11(f)</p> |

| | | |
|---|--|--|
| | | <p>CCAMLR, Contracting Party Scheme, Art. 18(vii)</p> <p>IATTC, Resolution on IUU Vessels List, Art. 9(e)</p> <p>IOTC Resolution on IUU Vessels List, para. 12(e).</p> |
| Prohibition of importation of fish and other trade restrictive measures | | <p>ICCAT Recommendation Against Belize, Cambodia, Honduras, and St. Vincent and the Grenadines</p> <p>ICCAT, Recommendation by ICCAT Concerning the Importation of Bigeye Tuna and Bigeye Tuna Products from St. Vincent and the Grenadines, 01-14 SANC, 21 September 2002</p> <p>ICCAT, Recommendation by ICCAT Concerning the Importation of Atlantic Bluefin Tuna, Atlantic Swordfish, and Atlantic Bigeye Tuna and their Products from Belize, 02-16 SANC, 04 June 2003</p> <p>ICCAT, Recommendation by ICCAT Concerning the Importation of Bigeye Tuna and Its Products from Honduras, 02-18 SANC, 04 June 2003</p> <p>ICCAT, Recommendation by ICCAT Concerning the Trade Sanction Against St. Vincent and the Grenadines, 02-20 SANC, 04 June 2003.</p> |

Appendix 2: Table of market access and RFMO membership

| Members of the Commonwealth | ACP Member ²³⁶ | GSP Access ²³⁷ | EPA Status ²³⁸ | RFMO Membership |
|-----------------------------|---------------------------|---------------------------|--|---|
| Antigua and Barbuda | X | | CARIFORUM EPA | |
| Australia | | | | |
| The Bahamas | X | | CARIFORUM EPA | NEAFC (cooperating non-contracting party) |
| Bangladesh | | | | |
| Barbados | X | | CARIFORUM EPA | ICCAT |
| Belize | X | | CARIFORUM EPA | NEAFC (cooperating non-contracting party), IOTC, IATTC (cooperating non-party), ICCAT |
| Botswana | X | | Interim SADC EPA initialled 23 November 2007 | |
| Brunei Darussalam | | | | |
| Cameroon | X | | Interim CEMAC EPA initialled on 17 December 2007 | |
| Canada | | | | |
| Cyprus | | | | |
| Dominica | X | | CARIFORUM EPA | |
| Fiji Islands (suspended) | X | | Interim PACP EPA initialled 29 November 2007 | WCPFC |
| The Gambia | X | GSP EBA | | |
| Ghana | X | | Interim ECOWAS EPA initialled 13 December 2007 | ICCAT |
| Grenada | X | | CARIFORUM EPA | |
| Guyana | X | | CARIFORUM EPA | ICCAT, ICCAT (cooperating non-contracting party) |
| India | | | | |
| Jamaica | X | | CARIFORUM EPA | |
| Kenya | X | | Interim EAC EPA initialled 23 November 2007 | IOTC |
| Kiribati | X | | | WCPFC |
| Lesotho | X | | Interim SADC EPA initialled 23 November 2007 | |
| Malawi | X | GSP EBA | | |
| Malaysia | | | | |

²³⁶ See http://www.acpsec.org/en/acp_states.htm.

²³⁷ In relation to GSP Standard and GSP EBA beneficiaries, see http://trade.ec.europa.eu/doclib/docs/2005/june/tradoc_123910.pdf. In relation to GSP+ beneficiaries, see: http://trade.ec.europa.eu/doclib/docs/2006/january/tradoc_126925.pdf.

²³⁸ See http://ec.europa.eu/trade/issues/bilateral/regions/acp/regneg_en.htm.

| | | | | |
|-------------------------------|---|---------|--|---|
| Maldives | | | | |
| Mauritius | X | | Interim ESA EPA initialled 4 December 2007 | CCAMLR (as non-member of Commission) |
| Mozambique | X | | Interim SADC EPA initialled 23 November 2007 | |
| Namibia | X | | Interim SADC EPA initialled 11 December 2007 | CCAMLR, ICCAT |
| Nauru (in arrears) | X | GSP | | WCPFC |
| New Zealand | | | | |
| Nigeria | X | GSP | | |
| Pakistan | | | | |
| Papua New Guinea | X | | Interim EPA initialled 29 November 2007 | WCPFC |
| St Kitts and Nevis | X | | CARIFORUM EPA | |
| St Lucia | X | | CARIFORUM EPA | |
| St Vincent and the Grenadines | X | | CARIFORUM EPA | ICCAT |
| Samoa | X | | | WCPFC |
| Seychelles | X | | Interim ESA EPA initialled 28 November 2007 | IOTC |
| Sierra Leone | X | GSP EBA | | |
| Singapore | | | | |
| Solomon Islands | X | | | WCPFC |
| South Africa | X | | | CCSBT (cooperating non-member), CCAMLR, ICCAT |
| Sri Lanka | | GSP+ | | |
| Swaziland | X | | Interim SADC EPA initialled 23 November 2007 | |
| Tonga | X | | | WCPFC |
| Trinidad and Tobago | X | | CARIFORUM EPA | ICCAT |
| Tuvalu | X | | | WCPFC |
| Uganda | X | | Interim EAC EPA initialled 23 November 2007 | |
| United Kingdom | | | | |
| United Republic of Tanzania | X | | Interim EAC EPA initialled 23 November 2007 | IOTC |
| Vanuatu | X | | | CCAMLR (as non-member of Commission), IOTC, IATTC, WCPFC, ICCAT |
| Zambia | X | GSP EBA | | |

Appendix 3: Comparison of EU SPS Regulations and IUU Regulation

| Key Elements | EU SPS Regulations ²³⁹ | IUU Regulation |
|----------------------------------|---|--|
| Objective | Harmonisation of food laws across EU Member States to ensure free movement of safe and wholesome food and protect human health and consumer interest | Each EC Member State is mandated to take appropriate measures to ensure that all fish and fishery products entering the EU market have not been obtained through IUU fishing. However, such measures are applied without prejudice to the primacy of flag State jurisdiction |
| International legal basis | GATT and WTO SPS Agreement, Codex Alimentarius Commission regulations | IPOA-IUU, LOSC, UN Fish Stocks Agreement, FAO Compliance Agreement, FAO Code of Conduct for Responsible Fisheries, RFMO Conservation and Management measures |
| Approach | Sea/farm-to-fork. Promotes traceability to ensure safety in all aspects of the food production chain | Same approach but a different objective |
| Applicable Principles | Use of best scientific evidence available | Calls for scientific expertise to support some of the elements of the proposed regulation's implementation, but not clear as to how scientific principles will be taken into account in establishing catch certification system |
| | Recognition of the precautionary principle | |
| | | Proportionality principle |
| Import requirements | Entrance of imported fishery products via an approved Border Inspection Post | Port state control for third country fishing vessels (e.g designated ports, prior notice, port inspection, etc) |
| | Compliance with certification requirements | Compliance with proposed catch certification system |
| | Recognition of a competent authority | Validation of catch certificates by competent authorities of flag State |
| | Must fulfil relevant animal, hygiene, and public health standards | Compliance with international agreements and national laws and regulations |
| | Must fulfil other specific conditions. For example, for live and processed bivalve molluscs etc, imports are only permitted from approved and listed production areas. In case of aquaculture products, a control plan for heavy metals and contaminants must be in place | Compliance with RFMO obligations |
| | Recognition of authorised approved vessels and establishment | List of approved economic operators |
| | | List of IUU vessels |
| | Inspection missions by EC in third countries | |

²³⁹ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. Amending acts include Regulation (EC) No 1642/2003 and EC No 575/2006.

| | | |
|---|--|---|
| | Positive list of eligible countries for the relevant product | List of non-cooperating third countries |
| Measures against non-compliance | Fishery product is either destroyed or under certain conditions, re-dispatched within 60 days | IUU product are refused to be landed or transhipped |
| | | Importation of fishery product prohibited |
| | | Business with IUU vessels prohibited |
| | | Possible denunciation of existing bilateral fisheries agreements |
| Responsible EC Body | European Food Safety Authority, whose main task is to provide assistance and independent scientific advice | Commission |
| Alert System | Rapid alert system | Community Alert System |
| | | IUU vessel list |
| | | List of non-cooperating third countries |
| Technical and financial assistance | Development funding arrangements and technical training provided to developing countries such as ACP and Asian States and OCT (e.g. SFP program) | General provision on proposed cooperative administrative arrangements |
| | | General provision on proposed mutual assistance |

Appendix 4: Country-specific trends in ACP fisheries exports to the EC²⁴⁰

Antigua and Barbuda: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|-------|-------|-------|-------|-------|------|-------|-------|-------|
| EU15 | 67 | 578 | 718 | 536 | 618 | 1,276 | 509 | 661 | 918 | 461 | 2,891 | 522 | 488 |
| EU25 | | | | | 1,695 | 1,753 | 1,346 | 1,082 | 1,091 | 758 | 2,891 | 522 | 488 |
| EU27 | | | | | 1,695 | 1,753 | 1,346 | 1,082 | 1,099 | 924 | 3,640 | 1,397 | 1,206 |

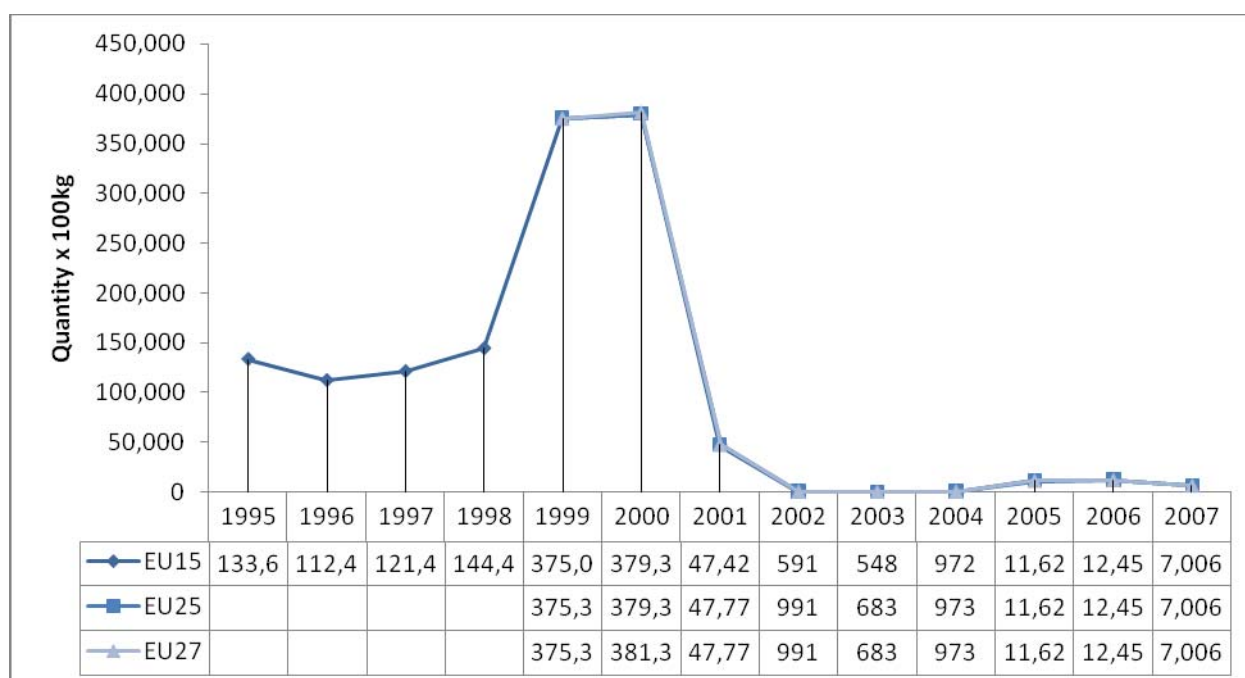
Bahamas: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| EU15 | 8,569 | 15,00 | 8,362 | 9,766 | 7,366 | 8,625 | 7,023 | 8,919 | 10,29 | 10,60 | 12,36 | 10,48 | 9,252 |
| EU25 | | | | | 7,369 | 8,625 | 7,025 | 8,929 | 10,29 | 10,60 | 12,36 | 10,48 | 9,252 |
| EU27 | | | | | 7,369 | 8,625 | 7,025 | 8,929 | 10,29 | 10,60 | 12,36 | 10,48 | 9,252 |

Barbados: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| EU15 | 40 | 45 | 81 | 61 | 11 | 46 | 49 | 17 | 9 | 16 | 141 | 0 | 0 |
| EU25 | | | | | 11 | 46 | 49 | 17 | 9 | 16 | 141 | 0 | 0 |
| EU27 | | | | | 11 | 46 | 49 | 17 | 9 | 16 | 141 | 0 | 0 |

Belize: exports to the EC, in quantity x100 kg, 1995-2007



²⁴⁰ Data generated using web-based query of EuroStat External Trade Dataset (EU27 Trade Since 1995 By HS2-HS4). The query interface can be accessed at <http://epp.eurostat.ec.europa.eu/newxtweb/>. The following HS product categories are analysed: HS0301 live fish, HS0302 fresh or chilled, HS0303 frozen fish, HS0304 fish fillets, HS0305 preserved fish, HS0306 crustaceans, HS0307 molluscs, HS1604 prepared or preserved fish, HS1605 prepared or preserved molluscs or crustaceans.

Botswana: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| EU15 | | 438 | | | | 104 | | | | | | | |
| EU25 | | | | | | 104 | | | | | | | |
| EU27 | | | | | | 104 | | | | | | | |

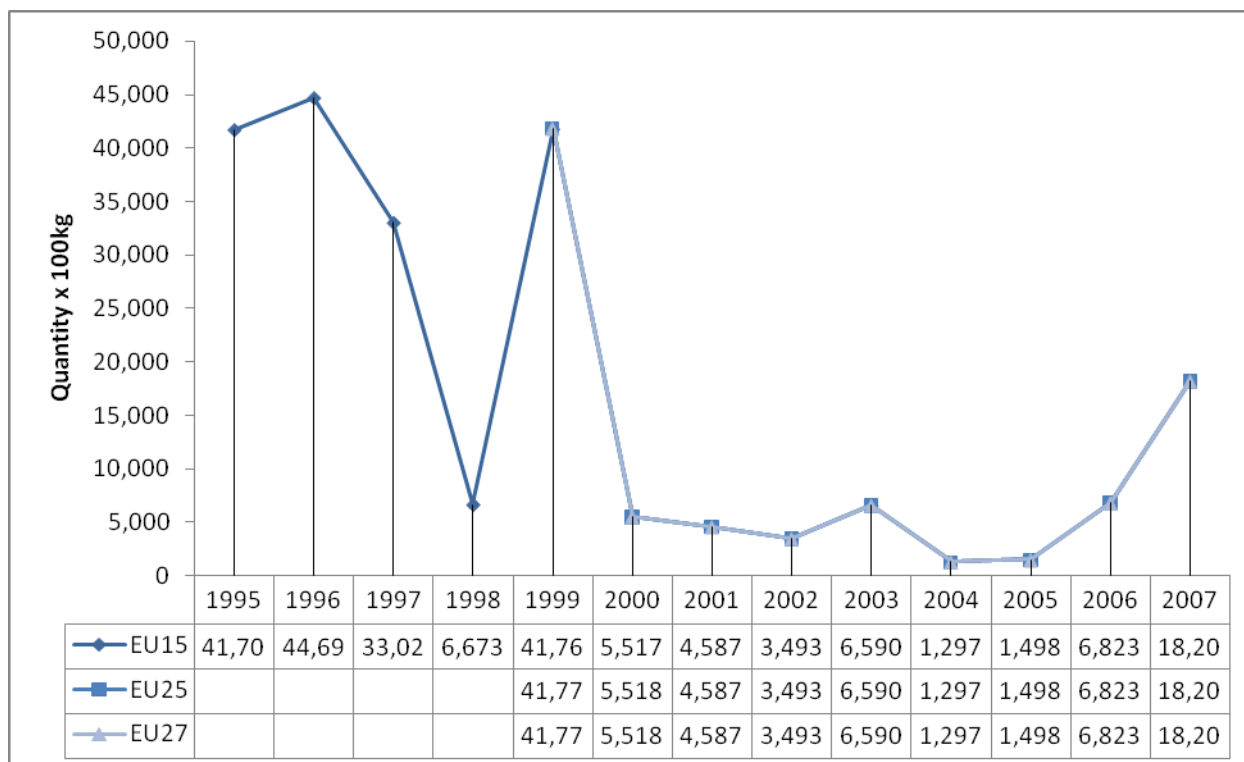
Cameroon: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|------|------|------|------|
| EU15 | 3,125 | 4,104 | 11,82 | 16,68 | 12,72 | 11,00 | 6,568 | 1,290 | 819 | 677 | 13 | 952 | 19 |
| EU25 | | | | | 12,72 | 11,18 | 6,568 | 1,290 | 2,129 | 677 | 243 | 952 | 19 |
| EU27 | | | | | 12,72 | 11,18 | 6,568 | 1,290 | 2,129 | 677 | 243 | 952 | 19 |

Dominica: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| EU15 | | 2 | 5 | | | | 90 | 463 | 7 | | 4 | 3 | |
| EU25 | | | | | | | 90 | 463 | 7 | | 4 | 3 | |
| EU27 | | | | | | | 90 | 463 | 7 | | 4 | 3 | |

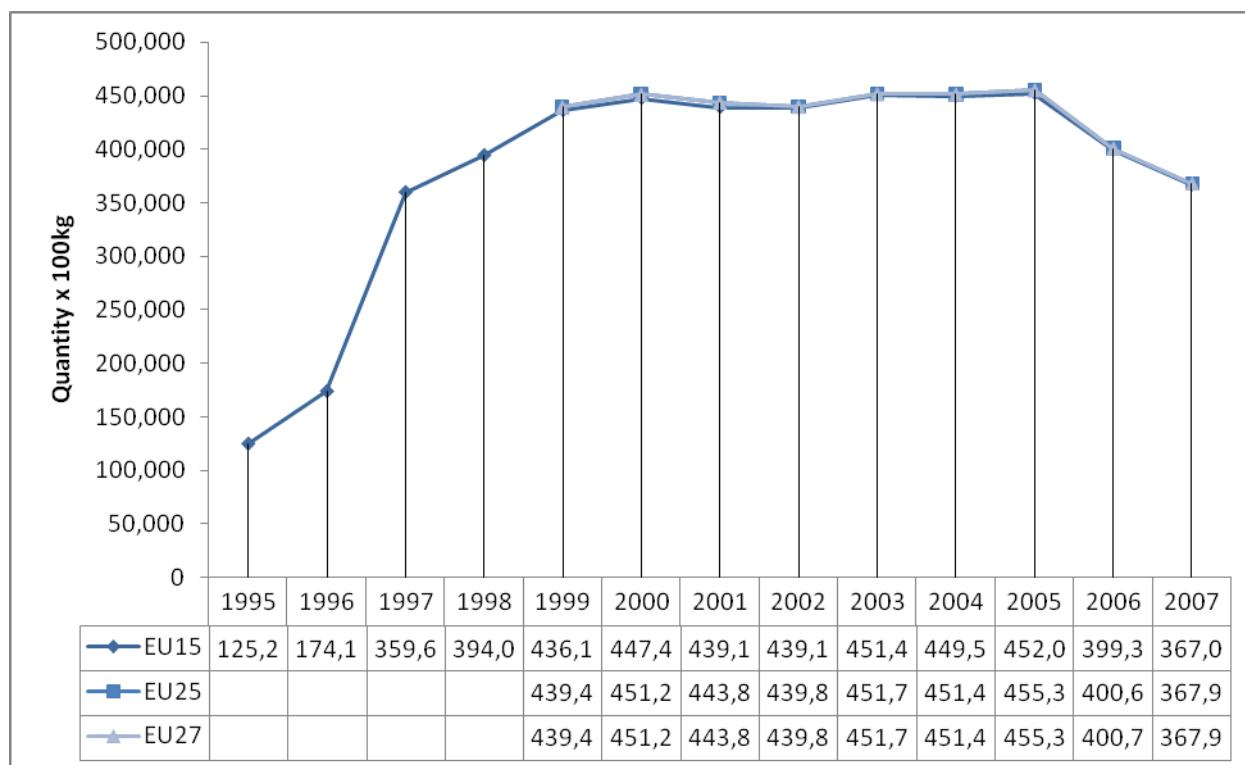
Fiji: exports to the EC, in quantity x100 kg, 1995-2007



Gambia: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| EU15 | 3,535 | 5,656 | 12,95 | 10,31 | 14,52 | 9,292 | 9,657 | 8,276 | 5,027 | 4,727 | 2,305 | 3,280 | 9,482 |
| EU25 | | | | | 14,53 | 9,296 | 9,658 | 8,278 | 5,028 | 4,728 | 2,305 | 3,280 | 9,482 |
| EU27 | | | | | 14,53 | 9,310 | 9,673 | 8,278 | 5,028 | 4,729 | 2,305 | 3,280 | 9,482 |

Ghana: exports to the EC, in quantity x100 kg, 1995-2007



Grenada: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|-------|-------|------|-------|-------|-------|-------|-------|-------|-------|-------|
| EU15 | 20 | 14 | 1,577 | 1,292 | 936 | 1,205 | 2,306 | 2,461 | 2,530 | 2,345 | 2,374 | 3,042 | 1,768 |
| EU25 | | | | | 936 | 1,205 | 2,306 | 2,461 | 2,530 | 2,345 | 2,374 | 3,042 | 1,768 |
| EU27 | | | | | 936 | 1,205 | 2,306 | 2,461 | 2,530 | 2,345 | 2,374 | 3,042 | 1,768 |

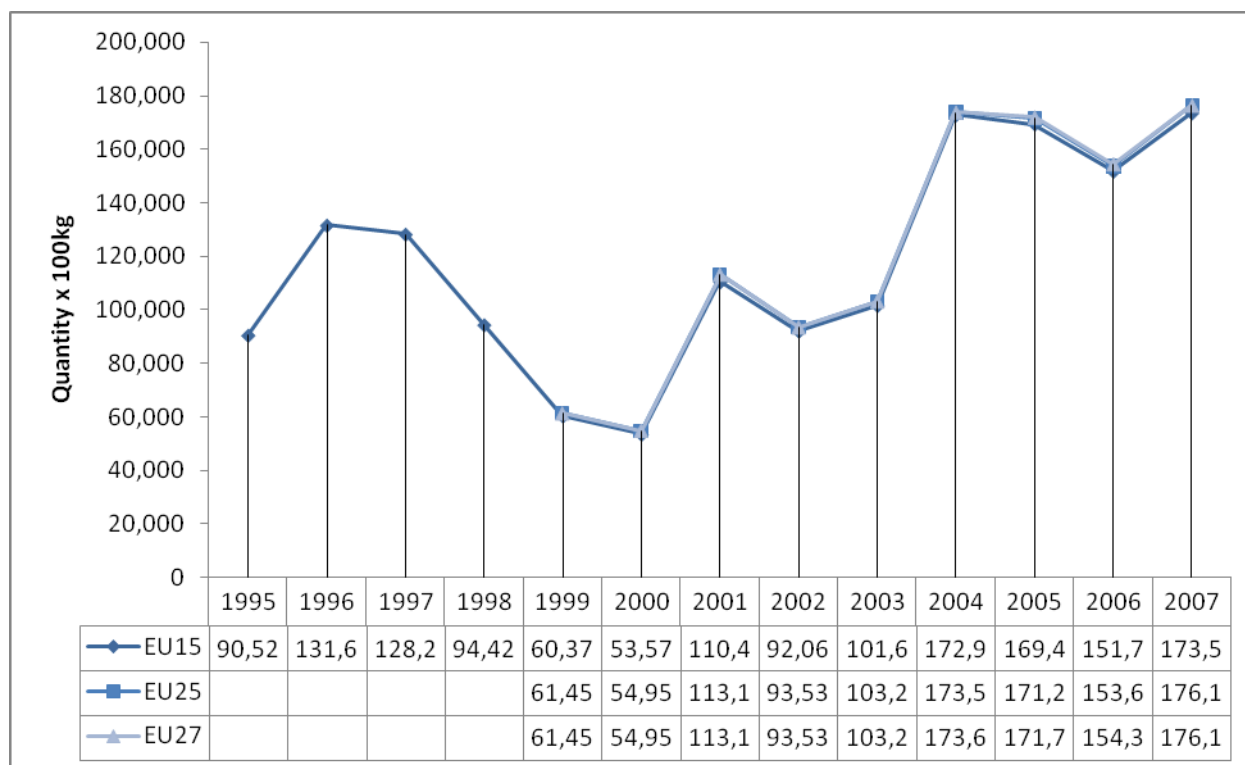
Guyana: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|
| EU15 | 248 | 215 | 377 | 617 | 10 | 0 | 50 | 18 | 21 | 12,30 | 11,31 | 12,37 | 9,001 |
| EU25 | | | | | 10 | 0 | 50 | 431 | 21 | 12,30 | 11,31 | 12,37 | 9,001 |
| EU27 | | | | | 10 | 0 | 50 | 431 | 21 | 12,30 | 11,31 | 12,37 | 9,001 |

Jamaica: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| EU15 | 5,089 | 4,777 | 14,80 | 5,252 | 3,179 | 2,311 | 5,488 | 5,265 | 6,312 | 5,937 | 7,052 | 9,113 | 7,716 |
| EU25 | | | | | 3,179 | 2,311 | 5,488 | 5,265 | 6,312 | 5,937 | 7,052 | 9,113 | 7,716 |
| EU27 | | | | | 3,179 | 2,311 | 5,488 | 5,265 | 6,312 | 5,937 | 7,052 | 9,113 | 7,716 |

Kenya: exports to the EC, in quantity x100 kg, 1995-2007



Kiribati: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|-------|------|------|------|------|------|------|------|------|------|
| EU15 | | | | 5,408 | 3 | | 6 | 0 | 0 | | | 0 | 402 |
| EU25 | | | | | 3 | | 6 | 0 | 0 | | | 0 | 402 |
| EU27 | | | | | 3 | | 6 | 0 | 0 | | | 0 | 402 |

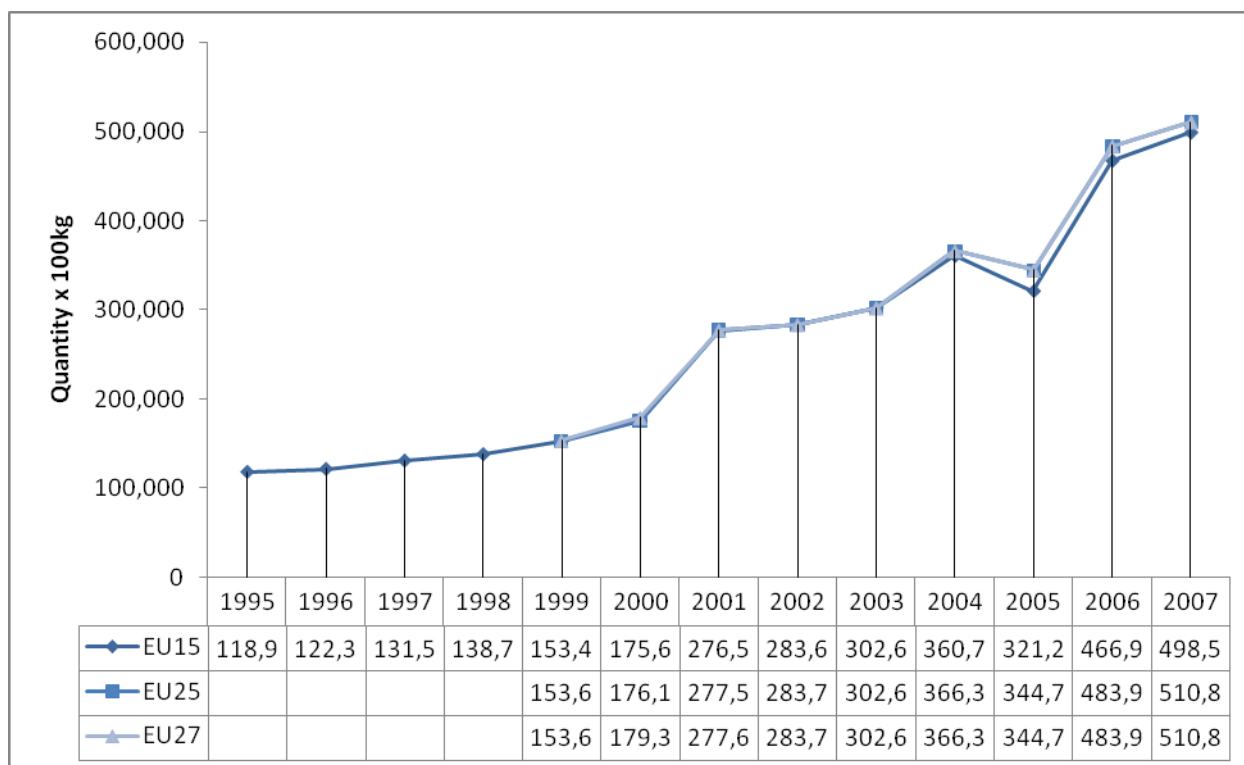
Lesotho: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|------|------|-------|-------|------|------|------|------|------|
| EU15 | | | | | | 607 | 5,679 | 3,727 | 58 | | 44 | | |
| EU25 | | | | | | 607 | 5,679 | 3,727 | 58 | | 44 | | |
| EU27 | | | | | | 607 | 5,679 | 3,727 | 58 | | 44 | | |

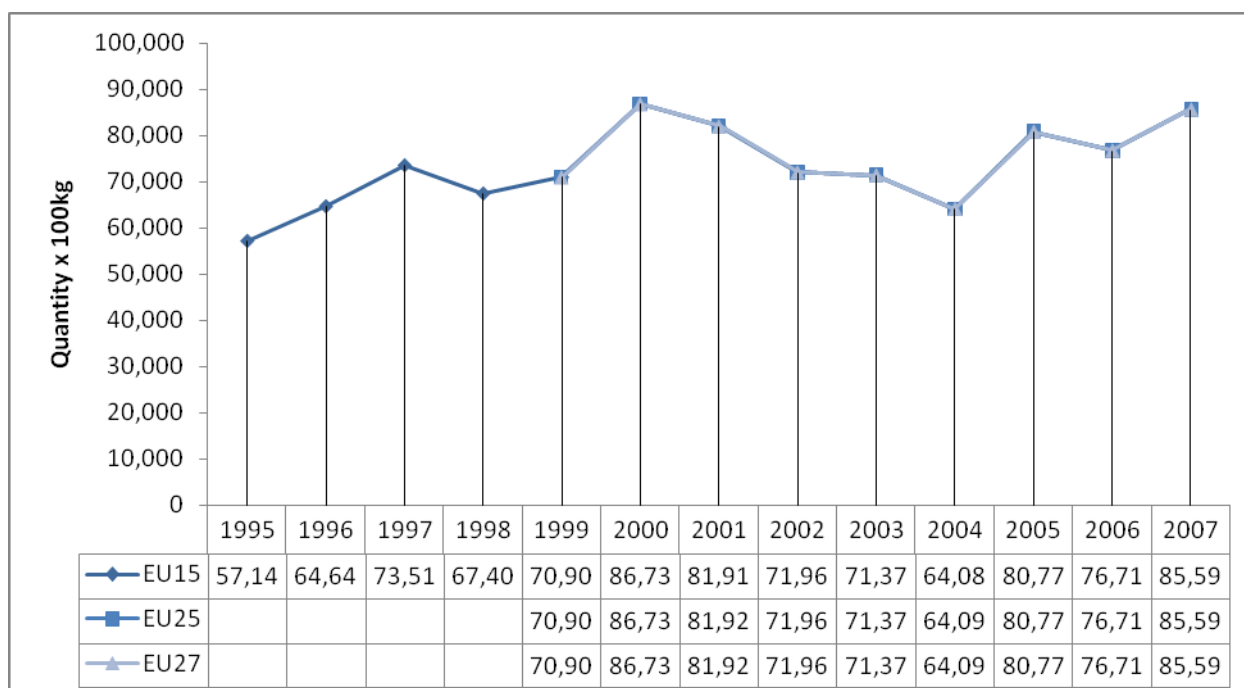
Malawi: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|------|------|-------|-------|------|------|------|------|------|
| EU15 | | | | | | 607 | 5,679 | 3,727 | 58 | | 44 | | |
| EU25 | | | | | | 607 | 5,679 | 3,727 | 58 | | 44 | | |
| EU27 | | | | | | 607 | 5,679 | 3,727 | 58 | | 44 | | |

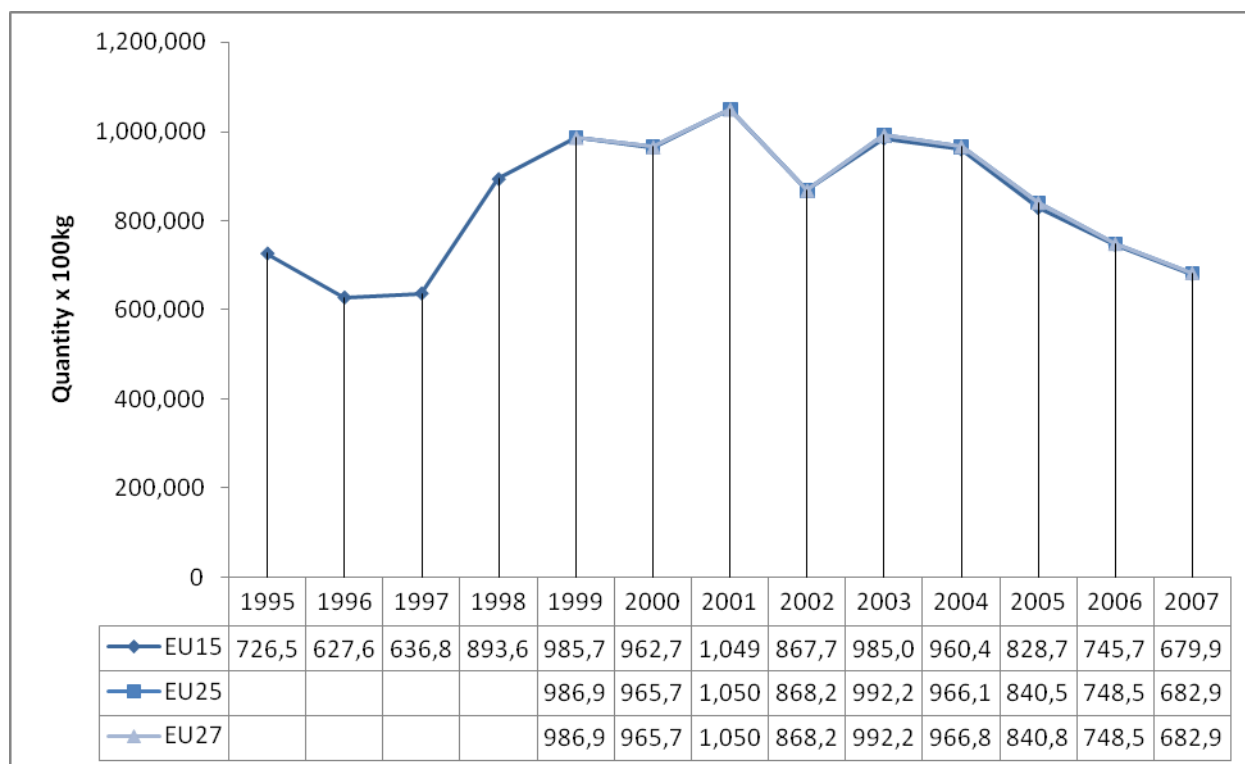
Mauritius: exports to the EC, in quantity x100 kg, 1995-2007



Mozambique: exports to the EC, in quantity x100 kg, 1995-2007



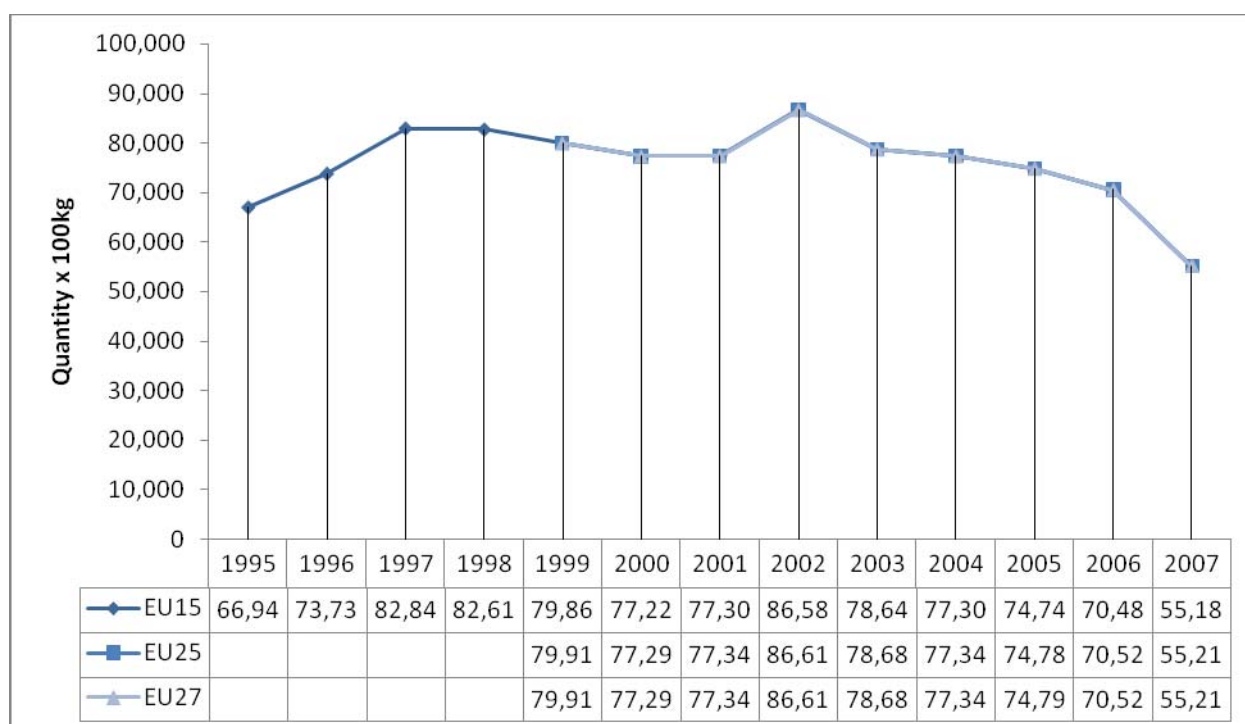
Namibia: exports to the EC, in quantity x100 kg, 1995-2007



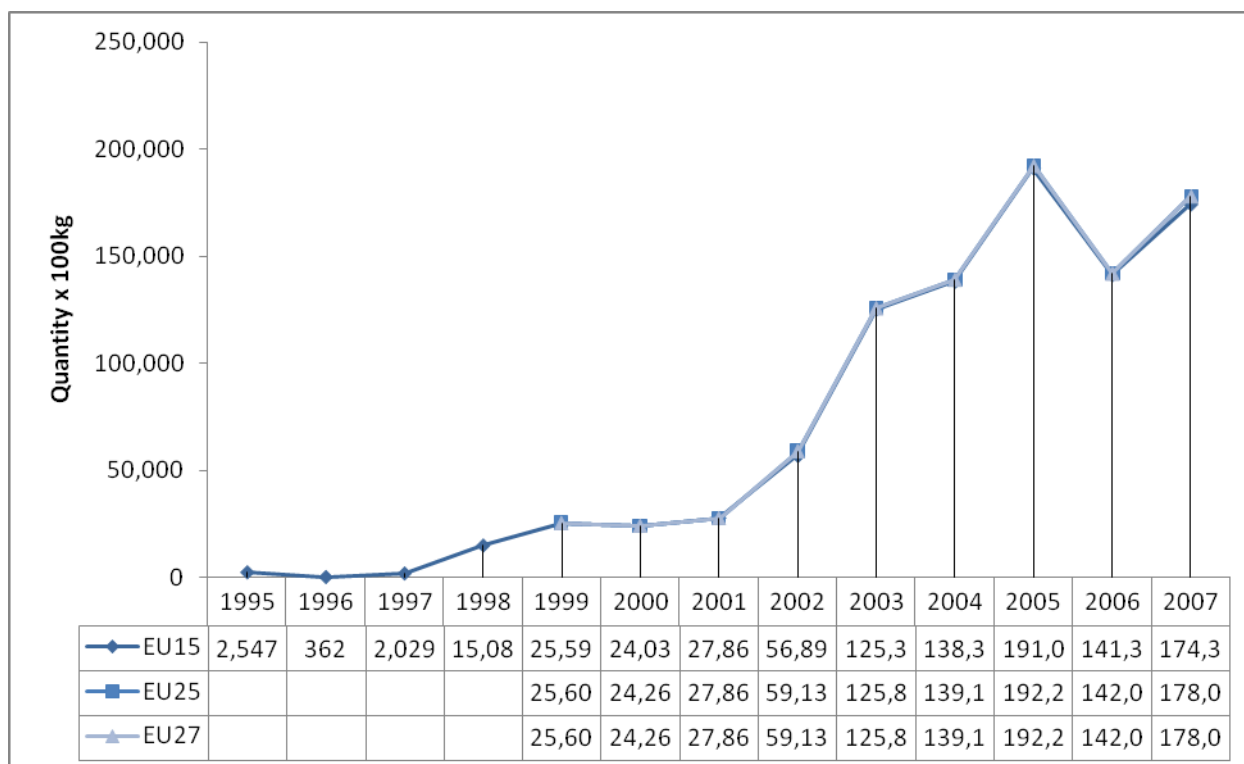
Nauru: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| EU15 | 177 | | 40 | | | | | 0 | | | | 0 | |
| EU25 | | | | | | | | 0 | | | 89 | 0 | |
| EU27 | | | | | | | | 0 | | | 89 | 0 | |

Nigeria: exports to the EC, in quantity x100 kg, 1995-2007



Papua New Guinea: exports to the EC, in quantity x100 kg, 1995-2007



St Kitts and Nevis: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|------|------|------|------|------|-------|------|------|------|
| EU15 | | 0 | | 3 | 0 | 264 | | | | 2,063 | | | 0 |
| EU25 | | | | | 0 | 264 | | | | 2,063 | | | 0 |
| EU27 | | | | | 0 | 264 | | | | 2,063 | | | 0 |

St Lucia: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| EU15 | | 20 | | 42 | 5 | | | 26 | | 2 | | | |
| EU25 | | | | | 5 | | 0 | 26 | | 2 | | | |
| EU27 | | | | | 5 | | | 26 | | 2 | | | |

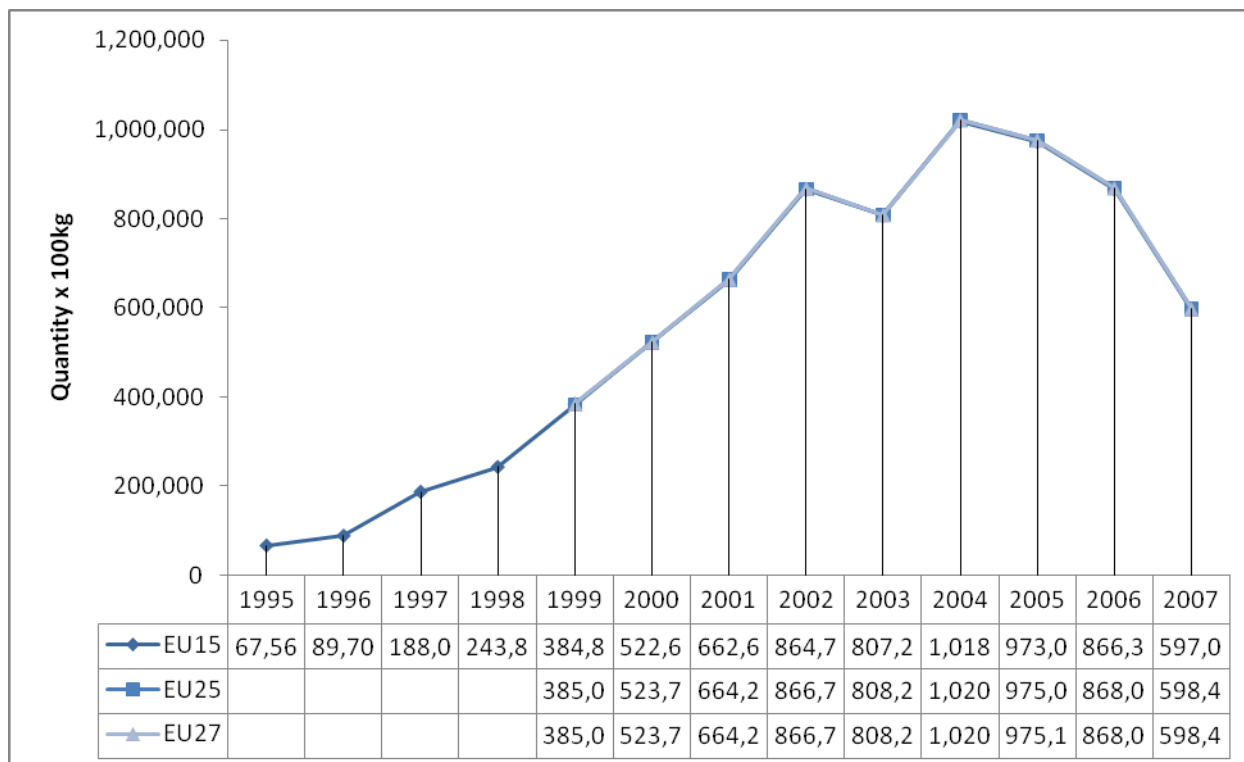
St Vincent and the Grenadines: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|-------|-------|-------|-------|-------|-------|-------|------|------|------|------|------|------|
| EU15 | 7,347 | 15,31 | 22,59 | 21,64 | 3,404 | 4,600 | 1,008 | 89 | | 209 | 0 | 0 | 0 |
| EU25 | | | | | 3,404 | 4,600 | 1,008 | 89 | | 209 | 0 | 0 | 0 |
| EU27 | | | | | 3,404 | 4,600 | 1,008 | 89 | | 209 | 0 | 0 | 0 |

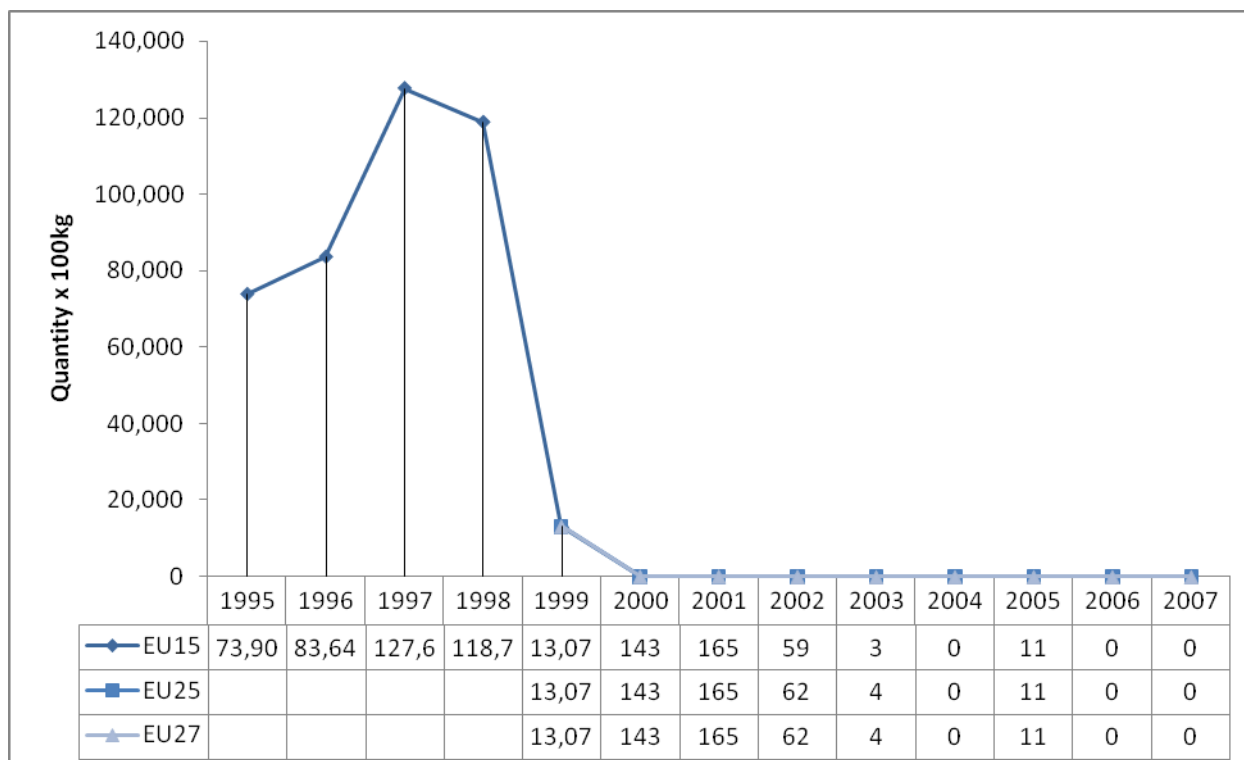
Samoa: exports to the EC, in quantity x100 kg, 1995-2007

No data available.

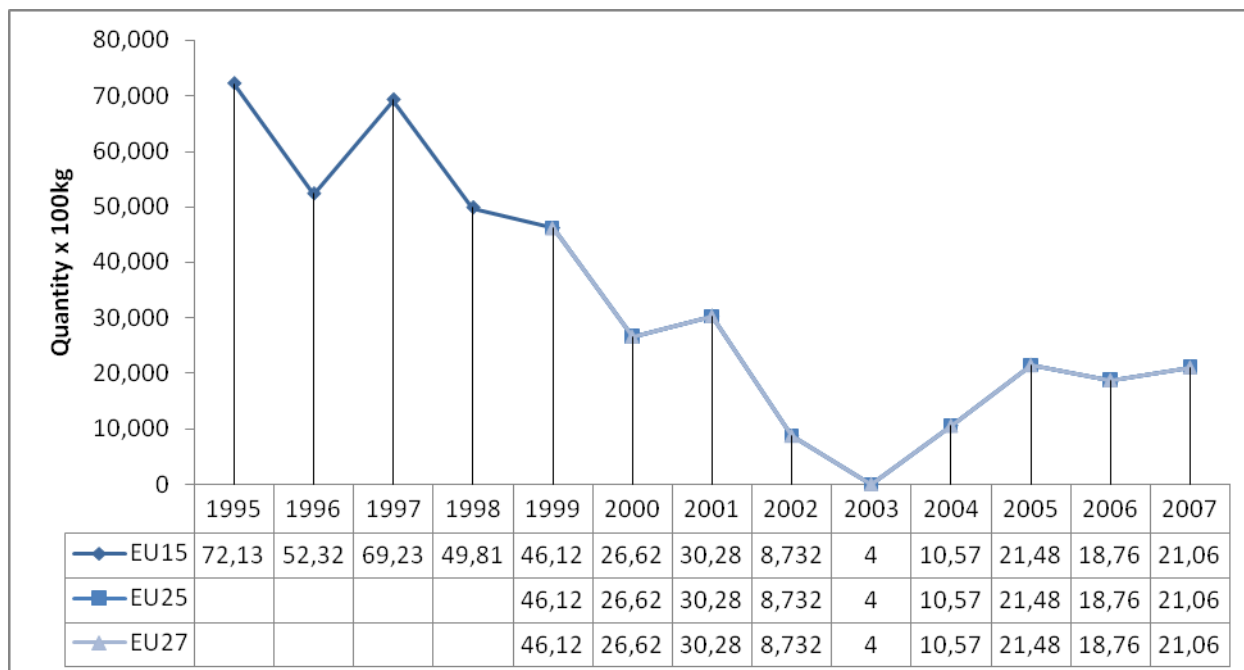
Seychelles: exports to the EC, in quantity x100 kg, 1995-2007



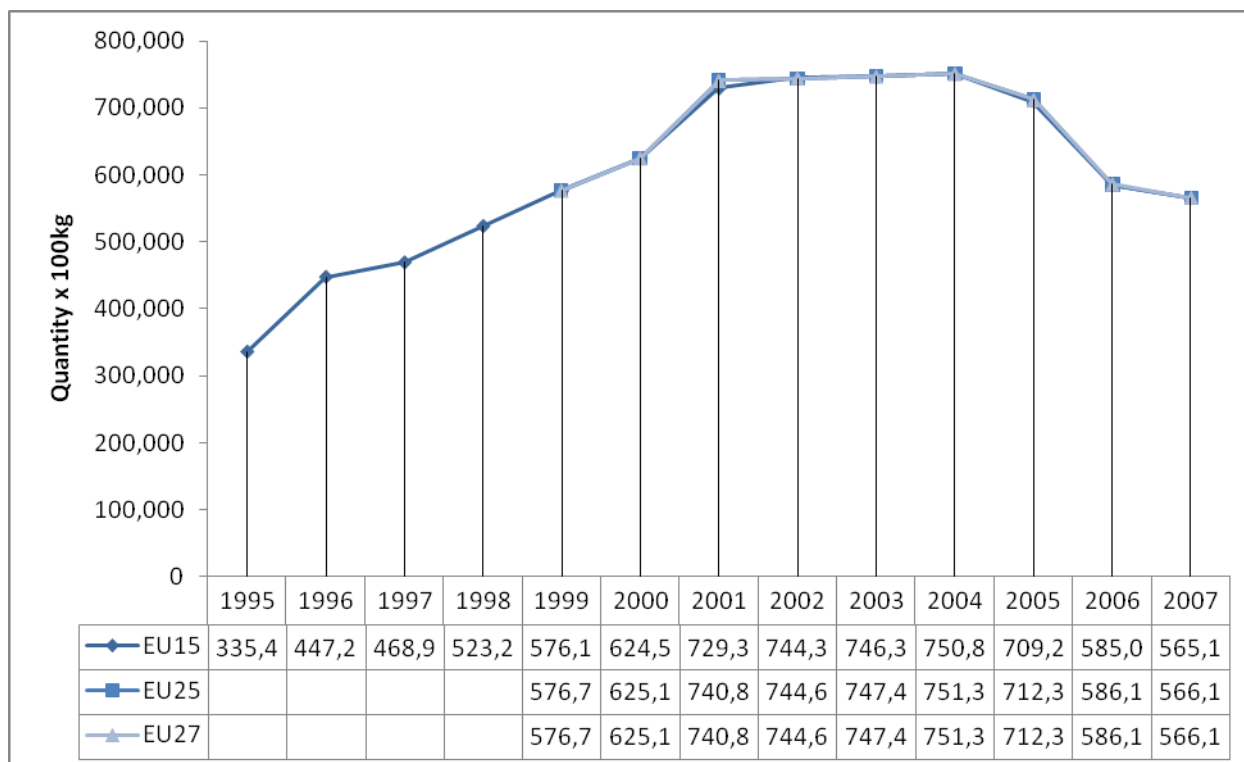
Sierra Leone: exports to the EC, in quantity x100 kg, 1995-2007



Solomon Islands: exports to the EC, in quantity x100 kg, 1995-2007



South Africa: exports to the EC, in quantity x100 kg, 1995-2007



Swaziland: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| EU15 | | | 0 | 3 | 6 | | 15 | 155 | 241 | | 127 | 50 | 201 |
| EU25 | | | | | 6 | 0 | 15 | 155 | 241 | | 127 | 50 | 201 |
| EU27 | | | | | 6 | 0 | 15 | 155 | 241 | | 127 | 50 | 201 |

Tonga: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| EU15 | 1 | | 39 | 21 | 19 | 27 | 35 | 10 | 1 | 49 | 27 | 5 | 54 |
| EU25 | | | | | 19 | 27 | 35 | 10 | 1 | 49 | 27 | 5 | 54 |
| EU27 | | | | | 19 | 27 | 35 | 10 | 1 | 49 | 27 | 5 | 54 |

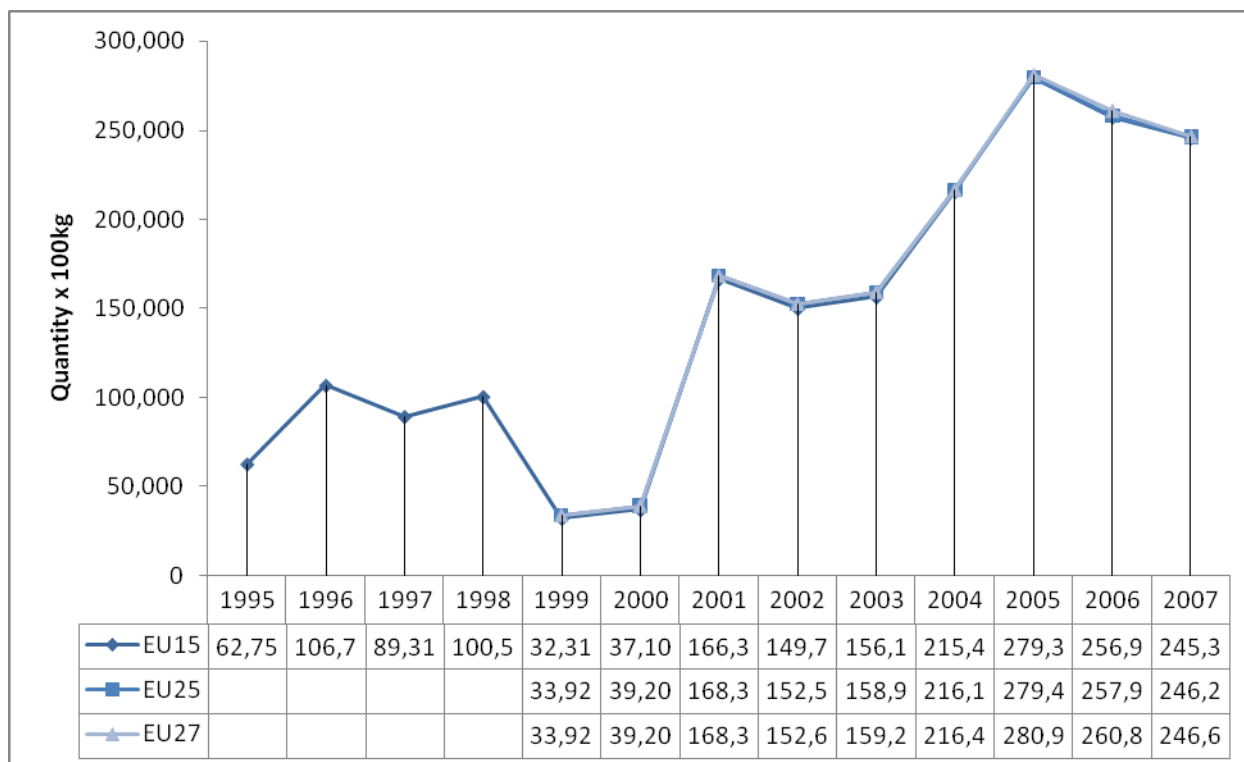
Trinidad and Tobago: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|-------|-------|-------|-------|-------|------|------|------|------|------|------|------|------|
| EU15 | 4,237 | 3,018 | 7,068 | 2,095 | 1,675 | | 3 | 8 | | | 212 | | 4 |
| EU25 | | | | | 1,675 | | 3 | 8 | | | 212 | | 4 |
| EU27 | | | | | 1,675 | | 3 | 8 | | | 212 | | 4 |

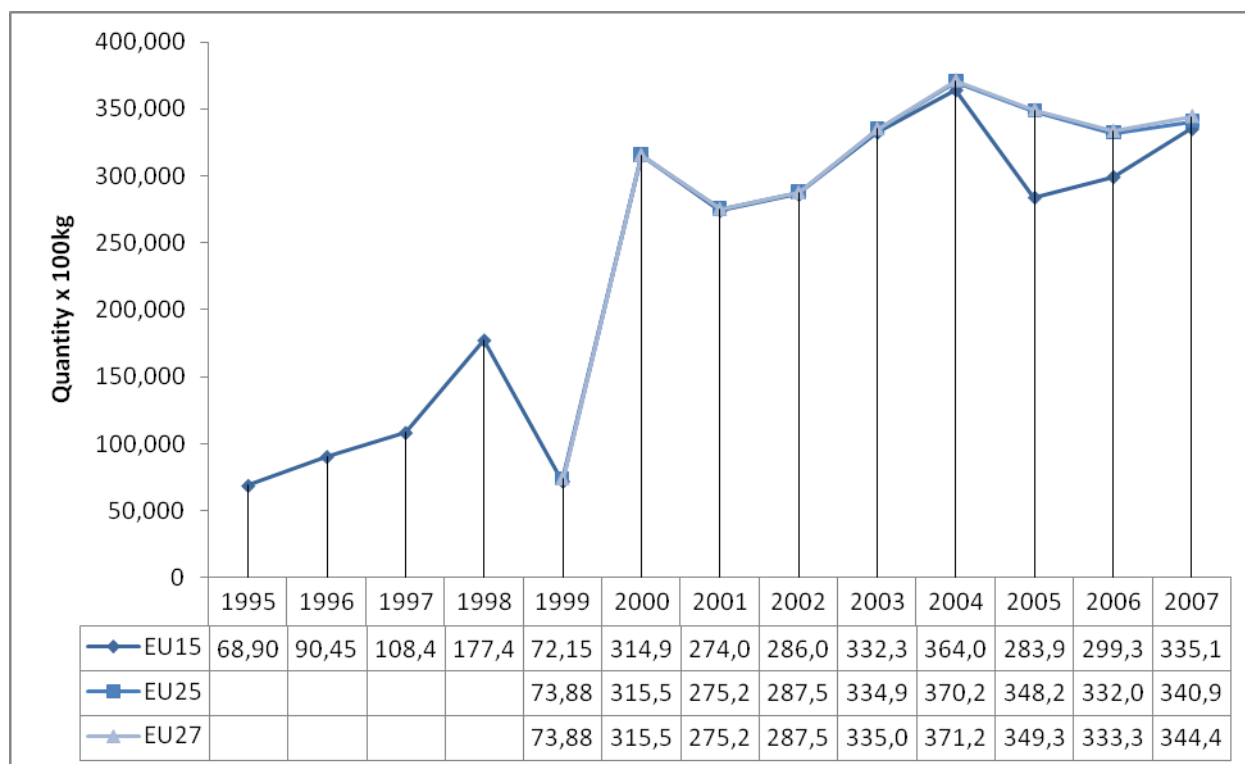
Tuvalu: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| EU15 | | 205 | 227 | 32 | 198 | 25 | | | | | 4 | | |
| EU25 | | | | | 198 | 25 | | | 20 | 1 | 4 | | |
| EU27 | | | | | 198 | 25 | | | 20 | 1 | 4 | | |

Uganda: exports to the EC, in quantity x100 kg, 1995-2007



Tanzania: exports to the EC, in quantity x100 kg, 1995-2007



Vanuatu: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|-------|-------|-------|-------|------|------|------|------|------|------|------|------|------|
| EU15 | 17,05 | 34,94 | 26,48 | 1,733 | 20 | 73 | 82 | 15 | 5 | 12 | 102 | 76 | 203 |
| EU25 | | | | | 25 | 73 | 87 | 15 | 5 | 12 | 102 | 76 | 203 |
| EU27 | | | | | 25 | 73 | 87 | 15 | 5 | 12 | 102 | 76 | 203 |

Zambia: exports to the EC, in quantity x100 kg, 1995-2007

| | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------|------|------|------|------|------|------|------|------|-------|------|------|------|------|
| EU15 | 36 | 260 | 60 | 8 | 1 | 111 | 27 | 32 | 1,244 | 48 | 25 | 37 | 22 |
| EU25 | | | | | 1 | 111 | 27 | 35 | 1,244 | 50 | 26 | 38 | 22 |
| EU27 | | | | | 1 | 111 | 27 | 35 | 1,244 | 50 | 26 | 38 | 22 |

Appendix 5: Terms of Reference for Report

The Consultant shall undertake the following tasks:

Part A:

- (a) Provide a brief literature review of the impact of the globalisation process and how it is changing processes of global fisheries trade and production;
- (b) To analyse the trends in fisheries exports from individual ACP country suppliers in the marine, inland and aquaculture sector, pre- and post-Cotonou;
- (c) To analyse the general trends in market share of different suppliers (from different regions including South Asia (India, Sri Lanka, Maldives), Southeast Asia (Thailand, Indonesia, the Philippines and Vietnam), East Asia (Taiwan, South Korea and Japan), Africa, the Caribbean and the Pacific Islands into the EU;
- (d) [omitted by agreement]
- (e) To assess and discuss the EU's fisheries policy rules (including the proposed reforms to the EU's Common Fisheries Policy) that govern its relations with external countries and how these have evolved in view of changing global trading patterns and processes emanating from the globalisation process;

Part B:

- (f) To analyse the EU's IUU Regulation and its possible implications on ACP exporters in terms of:
 - a. How it seeks to address the EC's ambitious objective of combating IUU and thus fulfil its international commitments where multilateral measures have not been able to achieve a satisfactory outcome;
 - b. WTO compatibility issues pertaining to the retaliatory measures to be applied against other states and vessels breaching the EU's IUU regulation and other international rules on fisheries conservation and management;
 - c. The new Duty Free and Quota Free (DFQF) market access arrangement and Fisheries Rules of Origin applicable to ACP member States that have signed EPAs since January 2008 – with particular emphasis on how the IUU regulation will impact utilisation on the new 15% value tolerance rules of origin for fish products in all current EPAs and global sourcing RoO in the Pacific EPA;
 - d. GSP, GSP+ and EBA beneficiaries;
- (g) In view of the findings in Parts A and B above, identify issues for policy consideration both at national, regional as well as multilateral/international levels; and
- (h) To prepare a comprehensive non-technical summary of the study (maximum 5 pages) for wider dissemination of the study findings.

Appendix 6: Text of the IUU Regulation

[footnotes and some Annex contents omitted]

COUNCIL REGULATION (EC) No 1005/2008

of 29 September 2008

establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

After consulting the Committee of the Regions,

Whereas:

- (1) The Community is a Contracting Party to the United Nations Convention on the Law of the Sea of 10 December 1982 ("UNCLOS"), has ratified the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995 ("UN Fish Stocks Agreement") and has accepted the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 of the Food and Agriculture Organization of the United Nations ("FAO Compliance Agreement"). Those provisions predominantly set out the principle that all States have a duty to adopt appropriate measures to ensure sustainable management of marine resources and to cooperate with each other to this end.
- (2) The objective of the Common Fisheries Policy, as set out in Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy¹, is to ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.
- (3) Illegal, unreported and unregulated (IUU) fishing constitutes one of the most serious threats to the sustainable exploitation of living aquatic resources and jeopardises the very foundation of the Common Fisheries Policy and international efforts to promote better ocean governance. IUU fishing also represents a major threat to marine biodiversity which needs to be addressed in accordance with the objectives set out in the Communication from the Commission – Halting the loss of biodiversity by 2010 – and beyond.

- (4) The FAO adopted in 2001 an International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing, which the Community has endorsed. Furthermore, regional fisheries management organisations, with the active support of the Community, have established an array of measures designed to counteract illegal, unreported and unregulated fishing.
- (5) In line with its international commitments, and given the scale and urgency of the problem, the Community should substantially enhance its action against IUU fishing and adopt new regulatory measures designed to cover all facets of the phenomenon.
- (6) The action by the Community should be targeted primarily at behaviour falling under the definition of IUU fishing and which causes the most serious damage to the marine environment, the sustainability of fish stocks and the socio-economic situation of fishermen abiding by the rules on conservation and management of fisheries resources.
- (7) In line with the definition of IUU fishing, the scope of this Regulation should extend to fishing activities carried out on the high seas and in maritime waters under the jurisdiction or sovereignty of coastal countries, including maritime waters under the jurisdiction or sovereignty of the Member States.
- (8) In order to properly address the internal dimension of IUU fishing, it is vital for the Community to adopt the necessary measures to improve compliance with the rules of the Common Fisheries Policy. Pending the revision of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the Common Fisheries Policy provisions to this end should be inserted in this Regulation.
- (9) Community rules, and in particular Title II of Regulation (EEC) No 2847/93, provide for a comprehensive system designed to monitor the legality of catches from Community fishing vessels. The current system applying to fishery products caught by third country fishing vessels and imported into the Community does not ensure an equivalent level of control. This weakness constitutes an important incentive for foreign operators carrying out IUU fishing to trade their products in the Community and increase the profitability of their activities. As the world's largest market for, and importer of fishery products, the Community has a specific responsibility in making sure that fishery products imported into its territory do not originate from IUU fishing. A new regime should therefore be introduced to ensure a proper control of the supply chain for fishery products imported into the Community.
- (10) Community rules governing access to Community ports of fishing vessels flying the flag of a third country should be strengthened with a view to ensuring a proper control over the legality of the fishery products landed by fishing vessels flying the flag of a third country. This should notably imply that access to Community ports is only authorised for fishing vessels flying the flag of a third country which are able to provide accurate information on the legality of their catches and to have this information validated by their flag State.
- (11) Transshipments at sea escape any proper control by flag or coastal States and constitute a usual way for operators carrying out IUU fishing to dissimulate the illegal nature of their catches. It is therefore justified for the Community to authorise transshipment operations only if they occur within the designated ports of Member States, in ports of third countries between Community fishing vessels, or outside Community waters between Community fishing

vessels and fishing vessels registered as carrier vessels under the auspices of a regional fisheries management organisation.

- (12) It is appropriate to lay down the conditions, procedure and frequency according to which checking, inspection and verification activities shall be carried out by Member States, on the basis of risk management.
- (13) Trade with the Community in fishery products stemming from IUU fishing should be prohibited. In order to make this prohibition effective and ensure that all traded fishery products imported into or exported from the Community have been harvested in compliance with international conservation and management measures and, where appropriate, other relevant rules applying to the fishing vessel concerned, a certification scheme applying to all trade in fishery products with the Community shall be put in place.
- (14) The Community should take into account the capacity constraints of developing countries for the implementation of the certification scheme.
- (15) It is appropriate that, under this scheme, a certificate be required as a pre-condition for the import of fishery products into the Community. That certificate should contain information demonstrating the legality of the products concerned. It should be validated by the flag State of the fishing vessels which caught the fish concerned, in line with its duty under international law to ensure that fishing vessels flying its flag comply with international rules on conservation and management of fisheries resources.
- (16) It is essential that this certification scheme apply to all imports of marine fishery products into the Community and exports from the Community. This scheme should also apply to fishery products which have been transported or processed in a country other than the flag State before reaching the territory of the Community. Specific requirements should therefore apply with respect to those products, in order to guarantee that the products arriving into the territory of the Community are not different from those the legality of which has been validated by the flag State.
- (17) It is important to ensure an equal level of control for all imported fishery products, without prejudice to the volume or frequency of trade, by introducing specific procedures for granting the status of approved economic operator.
- (18) The exportation of catches from fishing vessels flying the flag of a Member State should also be subject to the certification scheme under the framework of cooperation with third countries.
- (19) Member States into which the products are intended to be imported should be able to check the validity of the catch certificates accompanying the consignment and be entitled to refuse the importation where the conditions laid down in this Regulation with respect to the catch certificate are not met.
- (20) It is important that checking, inspection and verification activities pertaining to fishery products in transit or transshipment be carried out primarily by the Member States of final destination in order to improve their efficiency.
- (21) In order to assist control authorities within Member States in their tasks of monitoring the legality of fishery products traded with the Community, as well as to warn Community

operators, a Community alert system should be established, designed to spread information, where appropriate, about well-founded doubts as to compliance by certain third countries with applicable conservation and management rules.

- (22) It is essential that the Community adopt dissuasive measures against fishing vessels carrying out IUU fishing and which are not subject to appropriate action by their flag State in response to such IUU fishing.
- (23) To this end, the Commission, in collaboration with Member States, the Community Fisheries Control Agency, third States and other bodies, should identify fishing vessels suspected of carrying out IUU fishing, on the basis of risk management, and the Commission should seek information from the competent flag State as to the accuracy of the findings.
- (24) In order to facilitate enquiries pertaining to fishing vessels presumed to have carried out IUU fishing and prevent the continuation of the alleged infringement, those fishing vessels should be subject to specific control and inspection requirements by Member States.
- (25) When, on the basis of the information obtained, there are sufficient grounds to consider that fishing vessels flying the flag of a third country have been engaged in IUU fishing and that the competent flag States have not taken effective action in response to such IUU fishing, the Commission should place those vessels on the Community IUU vessel list.
- (26) When, on the basis of the information obtained, there are sufficient grounds to consider that Community fishing vessels have been engaged in IUU fishing and that the competent flag Member States have not taken effective action pursuant to this Regulation and to Regulation (EEC) No 2847/93 in response to such IUU fishing, the Commission should place those vessels on the Community IUU vessel list.
- (27) With a view to remedying the absence of effective action by flag States towards fishing vessels flying their flags and placed on the Community IUU vessel list, and to restrict the continuation of fishing activities by those vessels, Member States should apply appropriate measures against those vessels.
- (28) To safeguard the rights of the fishing vessels placed on the Community IUU vessel list and of their flag States, the procedure for the listing should give the flag State the opportunity to inform the Commission of the measures taken and, where possible, give the owner or operators concerned the possibility of being heard at each stage of the procedure and allow for the delisting of a fishing vessel when the criteria for its listing are no longer met.
- (29) In order to provide for a single framework within the Community and to avoid proliferation of lists pertaining to fishing vessels involved in IUU fishing, fishing vessels included in the IUU lists adopted by regional fisheries management organisations should automatically be included in the corresponding list drawn up by the Commission.
- (30) The failure by some States to discharge the duty incumbent on them under international law as flag, port, coastal or market States, to take appropriate measures to ensure compliance by their fishing vessels or nationals with rules on the conservation and management of fisheries resources is one of the main drivers of IUU fishing and should be addressed by the Community.

- (31) To this end, in addition to its action at international and regional levels, the Community should be entitled to identify those non-cooperating States, on the basis of transparent, clear and objective criteria relying on international standards, and, after giving them adequate time and to respond to a prior notification, adopt non-discriminatory, legitimate and proportionate measures with respect to those States, including trade measures.
- (32) It is for the Council to adopt trade measures in respect of other States. As the establishment of a list of non-cooperating states should entail trade counter-measures in respect of the States concerned, it is appropriate that the Council reserve itself the right to exercise implementing powers directly in this specific case.
- (33) It is essential that nationals of Member States be effectively deterred from engaging in or supporting IUU fishing by fishing vessels flying the flag of third countries and active outside the Community, without prejudice to the primacy of the responsibility of the flag State. Member States should therefore put in place the necessary measures and cooperate between themselves and with third countries to identify their nationals carrying out IUU fishing, make sure that they are adequately sanctioned and verify the activities of their nationals involved with third country fishing vessels, outside the Community.
- (34) The persistence of a high number of serious infringements against the rules of the Common Fisheries Policy within Community waters or by Community operators lies to a large extent in the non-deterrent level of sanctions prescribed within Member States' legislation in relation to serious infringements to those rules. This weakness is compounded by the wide variety of sanctions levels across Member States, which encourages illegal operators to operate in maritime waters or the territory of the Member States where these are the lowest. To address this weakness, building upon the provisions set out in Regulations (EC) No 2371/2002 and (EEC) No 2847/93 in this area, it is appropriate to approximate within the Community the maximum levels of administrative sanctions foreseen in relation to serious infringements against Common Fisheries Policy rules, taking into account the value of the fishery products obtained by committing the serious infringement, their repetition and the value of the prejudice to the fishing resources and the marine environment concerned, as well as to foresee immediate enforcement measures and complementary measures.
- (35) In addition to behaviour constitutive of a serious infringement against rules on fishing activities, the conduct of business directly connected to IUU fishing, including the trade in or the importation of fishery products stemming from IUU fishing, or the falsification of documents, should also be considered as serious infringements requiring the adoption of harmonised maximum levels of administrative sanctions by Member States.
- (36) The sanctions for serious infringements of this Regulation should also apply to legal persons as those infringements are committed, to a large extent, in the interest of legal persons or for their benefit.
- (37) Provisions pertaining to sightings of fishing vessels at seas adopted within certain regional fisheries management organisations should be implemented in a harmonised manner within the Community.
- (38) Cooperation between Member States, the Commission, and with third countries is essential to ensure that IUU fishing is properly investigated and sanctioned and that the measures laid down in this Regulation can be applied. A system for mutual assistance should be established to enhance such cooperation.

- (39) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of eliminating IUU fishing to lay down rules on the measures foreseen in this Regulation. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty.
- (40) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.
- (41) This Regulation identifies IUU fishing as a violation of applicable laws, rules or regulations of particular gravity, as it seriously undermines the attainment of the objectives of the violated rules and jeopardises the sustainability of the stocks concerned or the conservation of the marine environment. Given its restricted scope, the implementation of this Regulation must build upon, and be complementary to that of Council Regulation (EEC) No 2847/93, which establishes the basic framework for the control and monitoring of fishing activities under the Common Fisheries Policy. Accordingly, this Regulation reinforces the rules of Regulation (EEC) No 2847/93 in the area of port inspections of third country fishing vessels, which are now repealed and replaced by the port inspection regime established in Chapter II of this Regulation. In addition, this Regulation provides for a regime of sanctions in Chapter IX that applies specifically to IUU fishing activities. The provisions of Regulation (EEC) No 2847/93 relating to sanctions remain thus applicable to violations of the rules of the Common Fisheries Policy other than those addressed by this Regulation.
- (42) The protection of individuals with regard to the processing of personal data is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, which is fully applicable to the processing of personal data for the purposes of this Regulation, in particular as regards the rights of data subjects to access, rectification, blocking and erasure of data and notification to third parties, which have not in consequence been further particularised in this Regulation.
- (43) The entry into force of provisions of this Regulation on matters covered by Council Regulations (EEC) No 2847/93, (EC) No 1093/942, (EC) No 1447/19993, (EC) No 1936/20014 and (EC) No 601/20045 should result in the repeal of parts or the entirety of those Regulations,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation establishes a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.

2. For the purposes of paragraph 1, each Member State shall take appropriate measures, in accordance with Community law, to ensure the effectiveness of that system. It shall place sufficient means at the disposal of its competent authorities to enable them to perform their tasks as laid down in this Regulation.
3. The system laid down in paragraph 1 shall apply to all IUU fishing and associated activities carried out within the territory of Member States to which the Treaty applies, within Community waters, within maritime waters under the jurisdiction or sovereignty of third countries and on the high seas. IUU fishing within maritime waters of the overseas territories and countries referred to in Annex II of the Treaty shall be treated as taking place within maritime waters of third countries.

Article 2

Definitions

For the purposes of this Regulation:

- (1) "illegal, unreported and unregulated fishing" or "IUU fishing" means fishing activities which are illegal, unreported or unregulated;
- (2) "illegal fishing" means fishing activities:
 - (a) conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
 - (b) conducted by fishing vessels flying the flag of States that are contracting parties to a relevant regional fisheries management organisation, but which operate in contravention of the conservation and management measures adopted by that organisation and by which those States are bound, or of relevant provisions of the applicable international law; or
 - (c) conducted by fishing vessels in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organisation;
- (3) "unreported fishing" means fishing activities:
 - (a) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
 - (b) which have been undertaken in the area of competence of a relevant regional fisheries management organisation and have not been reported, or have been misreported, in contravention of the reporting procedures of that organisation;
- (4) "unregulated fishing" means fishing activities:
 - (a) conducted in the area of application of a relevant regional fisheries management organisation by fishing vessels without nationality, by fishing vessels flying the flag of a State not party to that organisation or by any other fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organisation; or

- (b) conducted in areas or for fish stocks in relation to which there are no applicable conservation or management measures by fishing vessels in a manner that is not consistent with State responsibilities for the conservation of living marine resources under international law;
- (5) "fishing vessel" means any vessel of any size used or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, fish processing vessels, vessels engaged in transshipment and carrier vessels equipped for the transportation of fishery products, except container vessels;
- (6) "Community fishing vessel" means a fishing vessel flying the flag of a Member State and registered in the Community;
- (7) "fishing authorisation" means entitlement to engage in fishing activities during a specified period, in a given area or for a given fishery;
- (8) "fishery products" mean any products which fall under Chapter 03 and Tariff headings 1604 and 1605 of the Combined Nomenclature established by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs tariff¹, with the exception of the products listed in Annex I of this Regulation;
- (9) "conservation and management measures" mean measures to conserve and manage one or more species of living marine resources and that are adopted and in force in accordance with the relevant rules of international and/or Community law;
- (10) "transshipment" means the unloading of all or any fishery products on board a fishing vessel to another fishing vessel;
- (11) "importation" means the introduction of fishery products into the territory of the Community, including for transshipment purposes at ports in its territory;
- (12) "indirect importation" means the importation from the territory of a third country other than the flag State of the fishing vessel responsible for the catch;
- (13) "exportation" means any movement to a third country of fishery products harvested by fishing vessels flying the flag of a Member State, including from the territory of the Community, from third countries or from fishing grounds;
- (14) "re-exportation" means any movement from the territory of the Community of fishery products which had been previously imported into the territory of the Community; (15) "regional fisheries management organisation" means a sub-regional, regional or a similar organisation with competence, as recognised under international law, to establish conservation and management measures for living marine resources placed under its responsibility by virtue of the convention or agreement by which it was established;
- (16) "contracting party" means a contracting party to the international convention or agreement establishing a regional fisheries management organisation, as well as States, fishing entities or any other entities that cooperate with such an organisation and have been granted cooperating non-contracting party status with respect to such an organisation;

- (17) "sighting" means any observation by a Member State's competent authority responsible for inspection at sea, or by the master of a Community or third country fishing vessel of a fishing vessel that may fall under one or several of the criteria referred to in Article 3(1);
- (18) "joint fishing operation" means any operation between two or more fishing vessels where catch is transferred from the fishing gear of one fishing vessel to another or where the technique used by those fishing vessels requires one common fishing gear;
- (19) "legal person" means any legal entity having such status under the applicable national law, with the exception of States or public bodies in the exercise of State authority and public organisations;
- (20) "risk" means the likelihood of an event that may occur, with regard to fishery products imported into or exported from the territory of the Community, which prevents the correct application of this Regulation or of the conservation and management measures;
- (21) "risk management" means the systematic identification of risk and the implementation of all measures necessary for limiting exposure to risk. This includes activities such as collecting data and information, analysing and assessing risk, prescribing and taking action, and regular monitoring and review of the process and its outcomes, based on international, Community or national sources or strategies;
- (22) "high seas" means all the part of the sea as defined in Article 86 of the United Nations Convention of the Law of the Sea ("UNCLOS");
- (23) "consignment" means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee.

Article 3

Fishing vessels engaged in IUU fishing

1. A fishing vessel shall be presumed to be engaged in IUU fishing if it is shown that, contrary to the conservation and management measures applicable in the fishing area concerned, it has:
 - (a) fished without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State, or
 - (b) not fulfilled its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system, or prior notices under Article 6, or
 - (c) fished in a closed area, during a closed season, without or after attainment of a quota or beyond a closed depth, or
 - (d) engaged in directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited, or
 - (e) used prohibited or non-compliant fishing gear, or
 - (f) falsified or concealed its markings, identity or registration, or
 - (g) concealed, tampered with or disposed of evidence relating to an investigation, or

- (h) obstructed the work of officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures, or the work of observers in the exercise of their duties of observing compliance with the applicable Community rules, or
 - (i) taken on board, transhipped or landed undersized fish in contravention of the legislation in force, or
 - (j) transhipped or participated in joint fishing operations with, supported or re-supplied other fishing vessels identified as having engaged in IUU fishing under this Regulation, in particular those included in the Community IUU vessel list or in the IUU vessel list of a regional fisheries management organisation; or
 - (k) carried out fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation and is flagged to a State not party to that organisation, or not cooperating with that organisation as established by that organisation, or (l) no nationality and is therefore a stateless vessel, in accordance with international law.
2. The activities set out in paragraph 1 shall be considered as serious infringements in accordance with Article 42 depending on the gravity of the infringement in question which shall be determined by the competent authority of the Member State, taking into account the criteria such as the damage done, its value, the extent of the infringement or its repetition.

CHAPTER II

INSPECTIONS OF THIRD COUNTRY FISHING VESSELS IN MEMBER STATES PORTS

Article 4

Inspection in port schemes

1. With a view to prevent, deter and eliminate IUU fishing, an effective scheme of inspections in port for third country fishing vessels calling at the ports of Member States shall be maintained.
2. Access to ports of Member States, the provision of port services, and the conduct of landing or transhipment operations in such ports shall be prohibited for third country fishing vessels unless they meet the requirements laid down in this Regulation, except in cases of force majeure or distress within the meaning of Article 18 of the UNCLOS ("force majeure or distress") for services strictly necessary to remedy those situations.
3. Transhipments between third country fishing vessels or between the latter and fishing vessels flying the flag of a Member State shall be prohibited in Community waters and shall take place only in port, in accordance with the provisions of this Chapter.
4. Fishing vessels flying the flag of a Member State shall not be authorised to tranship at sea catches from third country fishing vessels outside Community waters unless the fishing vessels are registered as carrier vessels under the auspices of a regional fisheries management organisation.

Article 5

Designated ports

1. Member States shall designate ports, or places close to the shore, where landings or transshipment operations of fishery products and port services referred to in Article 4(2) are permitted.
2. Access to port services and the conduct of landing or transshipment operations by third country fishing vessels shall be authorised only in designated ports.
3. Member States shall transmit to the Commission no later than 15 January of each year a list of designated ports. Any subsequent changes to this list shall be notified to the Commission at least 15 days before the change takes effect.
4. The Commission shall, without delay, publish the list of designated ports in the Official Journal of the European Union and on its website.

Article 6

Prior notice

1. Masters of third country fishing vessels or their representatives shall notify the competent authorities of the Member State whose designated port or landing facilities they wish to use at least 3 working days before the estimated time of arrival at the port, of the following information:
 - (a) vessel identification;
 - (b) name of the designated port of destination and the purposes of the call, landing, transshipment or access to services;
 - (c) fishing authorisation or, where appropriate, authorisation to support fishing operations or to tranship fishery products;
 - (d) dates of the fishing trip;
 - (e) estimated date and time of arrival at port;
 - (f) the quantities of each species retained on board or, where appropriate, a negative report;
 - (g) the zone or zones where the catch was made or where transshipment took place, whether in Community waters, in zones under the jurisdiction or sovereignty of a third country or on the high seas;
 - (h) the quantities for each species to be landed or transhipped.

Masters of third country fishing vessels or their representatives shall be exempted from notifying information contained in points (a), (c), (d), (g) and (h), where a catch certificate has been validated in accordance with Chapter III for the full catch to be landed or transhipped in the territory of the Community.

2. The notification set out in paragraph 1 shall be accompanied by a catch certificate validated in accordance with Chapter III if the third country fishing vessel carries on board fishery products. The provisions laid down in Article 14 on the recognition of catch documents or port State control forms which are part of catch documentation or port State control schemes adopted by regional fisheries management organisations shall apply *mutatis mutandis*.

3. The Commission, in accordance with the procedure referred to in Article 54(2), may exempt certain categories of third country fishing vessels from the obligation stipulated in paragraph 1 for a limited and renewable period, or make provision for another notification period taking into account, inter alia, the type of fishery product, the distance between the fishing grounds, landing places and ports where the vessels in question are registered or listed.
4. This Article shall apply without prejudice to special provisions set forth in fisheries agreements concluded between the Community and third countries.

Article 7

Authorisation

1. Without prejudice to point 5 of Article 37, a third country fishing vessel shall be granted authorisation to access the port only if the information set out in Article 6(1) is complete and, if the third country vessel carries on board fishery products, is accompanied by the catch certificate referred to in Article 6(2).
2. Authorisation to commence landing or transshipment operations in port shall be subject to a check to determine the completeness of the information submitted as prescribed in paragraph 1 and, where appropriate, to an inspection carried out in accordance with Section 2.
3. By way of derogation to paragraphs 1 and 2 of this Article the port Member State may authorise port access and all or part of a landing in cases where the information set out in Article 6(1) is not complete or its check or verification is pending, but shall, in such cases, keep the fishery products concerned in storage under the control of the competent authorities. The fishery products shall only be released to be sold, taken over or transported once the information set out in Article 6(1) has been received or the checking or verification process is completed. If this process is not completed within 14 days of the landing, the port Member State may confiscate and dispose of the fishery products in accordance with national rules. The cost of storage shall be borne by the operators.

Article 8

Recording of landing or transshipment operations

1. Masters of third country fishing vessels or their representative shall submit to the authorities of the Member State whose designated ports of landing or transshipment facilities they use, if possible by electronic means prior to landing or transshipment operations, a declaration indicating the quantity of fishery products by species to be landed or transhipped, and the date and place of each catch. Masters and their representatives shall be held responsible for the accuracy of such declarations.
2. Member States shall keep the originals of the declarations set out in paragraph 1, or a hardcopy when transmitted electronically, for a period of three years or longer in accordance with national rules.
3. Landing and transshipment declaration procedures and forms shall be determined in accordance with the procedure referred to in Article 54(2).
4. Member States shall notify the Commission by computer transmission before the end of the first month of each calendar quarter of the quantities landed and/or transhipped by third country fishing vessels in their ports during the previous quarter.

SECTION 2

PORT INSPECTIONS

Article 9

General principles

1. Member States shall carry out inspections in their designated ports of at least 5 % of landing and transshipment operations by third country fishing vessels each year, in accordance with the benchmarks determined by the procedure referred to in Article 54(2) on the basis of risk management, without prejudice to the higher thresholds adopted by regional fisheries management organisations.
2. The following fishing vessels shall be inspected in all cases:
 - (a) fishing vessels sighted in accordance with Article 48;
 - (b) fishing vessels reported in the framework of a notification made under the Community alert system in accordance with Chapter IV;
 - (c) fishing vessels identified by the Commission as presumed to have engaged in IUU fishing in accordance with Article 25;
 - (d) fishing vessels appearing in a IUU vessel list adopted by a regional fisheries management organisation notified to Member States in accordance with Article 30.

Article 10

Inspection procedure

1. Officials in charge of inspections ("officials") shall be able to examine all relevant areas, decks and rooms of the fishing vessel, catches processed or not, nets or other gear, equipment and any relevant documents which officials deem it necessary to verify in compliance with applicable laws, regulations or international management and conservation measures. Officials may also question persons deemed to have information on the matter subject to inspection.
2. Inspections shall involve the monitoring of the entire landing or transshipment operations and include a cross-check between the quantities by species recorded in the prior notice of landing and the quantities by species landed or transhipped.
3. Officials shall sign their inspection report in the presence of the master of the fishing vessel, who shall have the right to add or cause to be added any information that he considers relevant. Officials shall indicate in the logbook that an inspection has been made.
4. A copy of the inspection report shall be handed over to the master of the fishing vessel, who may forward it to the owner.
5. The master shall cooperate with and assist in the inspections of the fishing vessel and shall not obstruct, intimidate or interfere with the officials in the performance of their duties.

Article 11

Procedure in the event of infringements

1. If the information collected during the inspection provides evidence to the official to believe that a fishing vessel has engaged in IUU fishing in accordance with the criteria set out in Article 3, the official shall:
 - (a) record the suspected infringement in the inspection report;
 - (b) take all necessary action to ensure safekeeping of the evidence pertaining to such suspected infringement;
 - (c) immediately forward the inspection report to the competent authority.
2. If the results of the inspection provide evidence that a third country fishing vessel has engaged in IUU fishing in accordance with the criteria set out in Article 3, the competent authority of the port Member State shall not authorise such vessels to land or tranship their catch.
3. The inspecting Member State shall immediately notify its decision not to authorise landing or transhipment operations taken in accordance with paragraph 2, accompanied by a copy of the inspection report, to the Commission or to a body designated by it, which shall immediately transmit it to the competent authority of the flag State of the inspected fishing vessel with a copy to the flag State or States of donor vessels where the inspected fishing vessel has engaged in transhipment operations. Where appropriate, a copy of the notification shall also be communicated to the Executive Secretary of the regional fisheries management organisation in whose area of competence the catch was made.
4. Where the suspected breach has taken place in the high seas, the port Member State shall cooperate with the flag State in carrying out an investigation into it and, where appropriate, shall apply the sanctions provided for by the legislation of that port Member State, under the condition that, in accordance with international law, that flag State has expressly agreed to transfer its jurisdiction. In addition, where the suspected breach has taken place in the maritime waters of a third country, the port Member State shall also cooperate with the coastal State in carrying out an investigation into it and, where appropriate, shall apply the sanctions provided for by the legislation of that port Member State, under the condition that, in accordance with international law, that coastal State has expressly agreed to transfer its jurisdiction.

CHAPTER III

CATCH CERTIFICATION SCHEME FOR IMPORTATION AND EXPORTATION OF FISHERY PRODUCTS

Article 12

Catch certificates

1. The importation into the Community of fishery products obtained from IUU fishing shall be prohibited.
2. To ensure the effectiveness of the prohibition established in paragraph 1, fishery products shall only be imported into the Community when accompanied by a catch certificate in conformity with this Regulation.
3. The catch certificate referred to in paragraph 2 shall be validated by the flag State of the fishing vessel or fishing vessels which made the catches from which the fishery products have been obtained. It shall be used to certify that such catches have been made in accordance with applicable laws, regulations and international conservation and management measures.

4. The catch certificate shall contain all the information specified in the specimen shown in Annex II, and shall be validated by a public authority of the flag State with the necessary powers to attest the accuracy of the information. In agreement with flag States, within the framework of the cooperation set out in Article 20(4), the catch certificate may be established, validated or submitted by electronic means or be replaced by electronic traceability systems ensuring the same level of control by authorities.
5. The list in Annex I of the products excluded from the scope of implementation of the catch certificate may be reviewed each year on the basis of the results of the information gathered under Chapters II, III, IV, V, VIII, X and XII, and amended in accordance with the procedure referred to in Article 54(2).

Article 13

Catch documentation schemes agreed and in force in the framework of a regional fisheries management organisation

1. Catch documents, and any related documents, validated in conformity with catch documentation schemes adopted by a regional fisheries management organisation which are recognised as complying with the requirements laid down in this Regulation, shall be accepted as catch certificates in respect of the fishery products from species to which such catch documentation schemes apply and shall be subject to the check and verification requirements incumbent upon the Member State of importation in accordance with Articles 16 and 17 and to the provisions on refusal of importation laid down in Article 18. The list of such catch documentation schemes shall be determined in accordance with the procedure referred to in Article 54(2).
2. Paragraph 1 shall apply without prejudice to the specific regulations in force whereby such catch documentation schemes are implemented into Community law.

Article 14

Indirect importation of fishery products

1. In order to import fishery products constituting one single consignment, transported in the same form to the Community from a third country other than the flag State, the importer shall submit to the authorities of the Member States of importation:
 - (a) the catch certificate(s) validated by the flag State, and
 - (b) documented evidence that the fishery products did not undergo operations other than unloading, reloading or any operation designed to preserve them in good and genuine condition, and remained under the surveillance of the competent authorities in that third country.

Documented evidence shall be provided by means of:

- (i) where appropriate, the single transport document issued to cover the passage from the territory of the flag State through that third country; or
- (ii) a document issued by the competent authorities of that third country:
 - giving an exact description of the fishery products, the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used, and

– indicating the conditions under which the fishery products remained in that third country.

Where the species concerned are subject to a regional fisheries management organisation catch documentation scheme which has been recognised under Article 13, the documents referred to above may be replaced by the re-export certificate of that catch documentation scheme, provided that the third country has fulfilled its notification requirements accordingly.

2. In order to import fishery products constituting one single consignment and which have been processed in a third country other than the flag State, the importer shall submit to the authorities of the Member State of importation a statement established by the processing plant in that third country and endorsed by its competent authorities in accordance with the form in Annex IV:
 - (a) giving an exact description of the unprocessed and processed products and their respective quantities;
 - (b) indicating that the processed products have been processed in that third country from catches accompanied by catch certificate(s) validated by the flag State; and
 - (c) accompanied by:
 - (i) the original catch certificate(s) where the totality of the catches concerned has been used for the processing of the fishery products exported in a single consignment, or
 - (ii) a copy of the original catch certificate(s), where part of the catches concerned has been used for the processing of the fishery products exported in a single consignment.

Where the species concerned are subject to a regional fisheries management organisations catch documentation scheme which has been recognised under Article 13, the statement may be replaced by the re-export certificate of that catch documentation scheme, provided that the third country of processing has fulfilled its notification requirements accordingly.

3. The documents and the statement set out in paragraphs (1)(b) and (2) of this Article respectively may be communicated by electronic means within the framework of the cooperation laid down in Article 20(4).

Article 15

Exportation of catches made by fishing vessels flying the flag of a Member State

1. The exportation of catches made by fishing vessels flying the flag of a Member State shall be subject to the validation of a catch certificate by the competent authorities of the flag Member State, as established in Article 12(4), if required within the framework of the cooperation laid down in Article 20(4).
2. Flag Member States shall notify to the Commission their competent authorities for the validation of the catch certificates referred to in paragraph 1.

Article 16

Submission and checks of catch certificates

1. The validated catch certificate shall be submitted by the importer to the competent authorities of the Member State in which the product is intended to be imported at least three working days before the estimated time of arrival at the place of entry into the territory of the Community. The deadline of three working days may be adapted according to the type of fishery product, the distance to the place of entry into the territory of the Community or the transport means used. Those competent authorities shall, on the basis of risk management, check the catch certificate in the light of the information provided in the notification received from the flag State in accordance with Articles 20 and 22.
2. By way of derogation to paragraph 1, importers who have been granted the status of approved economic operator may advise the competent authorities of the Member State of the arrival of the products within the deadline referred to in paragraph 1 and keep the validated catch certificate and related documents as referred to in Article 14 available to the authorities for the purposes of checks in accordance with paragraph 1 of this Article or verifications in accordance with Article 17.
3. The criteria for granting the status of approved economic operator to an importer by the competent authorities of a Member State shall include:
 - (a) the establishment of the importer on the territory of that Member State;
 - (b) a sufficient number and volume of import operations to justify the implementation of the procedure referred to in paragraph 2;
 - (c) an appropriate record of compliance with the requirements of conservation and management measures;
 - (d) a satisfactory system of managing commercial and, where appropriate, transport and processing records, which enables the appropriate checks and verifications to be carried out for the purposes of this Regulation;
 - (e) the existence of facilities with regard to the conduct of those checks and verifications;
 - (f) where appropriate, practical standards of competence or professional qualifications directly related to the activities carried out; and
 - (g) where appropriate, proven financial solvency.

Member States shall communicate to the Commission the name and address of the approved economic operators as soon as possible after having granted this status. The Commission shall make available this information to the Member States by electronic means.

The rules relating to the status of approved economic operator may be determined in accordance with the procedure referred to in Article 54(2).

Article 17

Verifications

1. The competent authorities of the Member States may carry out all of the verifications they deem necessary to ensure that the provisions of this Regulation are correctly applied.

2. Verifications may, in particular, consist in examining the products, verifying declaration data and the existence and authenticity of documents, examining the accounts of operators and other records, inspecting means of transport, including containers and storage places of the products and carrying out official enquiries and other similar acts, in addition to the inspection of fishing vessels at port under Chapter II.
3. Verifications shall be focused towards risk identified on the basis of criteria developed at national or Community level under risk management. Member States shall notify to the Commission their national criteria within 30 working days after [date of entry into force] and update this information. The Community criteria shall be determined in accordance with the procedure referred to in Article 54(2).
4. Verifications shall be carried out, in any case, where:
 - (a) the verifying authority of the Member State has grounds to question the authenticity of the catch certificate itself, of the validation seal or of the signature of the relevant authority of the flag State, or
 - (b) the verifying authority of the Member State is in possession of information that questions the compliance by the fishing vessel with applicable laws, regulations or conservation and management measures, or the fulfilment of other requirements of this Regulation, or
 - (c) fishing vessels, fishing companies or any other operators have been reported in connection with presumed IUU fishing, including those fishing vessels which have been reported to a regional fisheries management organisation under the terms of an instrument adopted by that organisation to establish lists of vessels presumed to have carried out illegal, unreported and unregulated fishing, or
 - (d) flag States or re-exporting countries have been reported to a regional fisheries management organisation under the terms of an instrument adopted by that organisation to implement trade measures vis-à-vis flag States, or
 - (e) an alert notice has been published pursuant to Article 23(1).
5. Member States may decide to carry out verifications at random, in addition to the verifications referred to in paragraphs 3 and 4.
6. For the purpose of a verification, the competent authorities of a Member State may request the assistance of the competent authorities of the flag State or of a third country other than the flag State as referred to in Article 14, in which case:
 - (a) the request for assistance shall state the reasons why the competent authorities of the Member State in question have well-founded doubts as to the validity of the certificate, of the statements contained therein and/or the compliance of the products with conservation and management measures. A copy of the catch certificate and any information or documents suggesting that the information on the certificate is inaccurate shall be forwarded in support of the request for assistance. The request shall be sent without delay to the competent authorities of the flag State or of a third country other than the flag State as referred to in Article 14;
 - (b) the procedure for verification shall be completed within 15 days of the date of the verification request. In the event that the competent authorities of the flag State concerned

cannot meet the deadline, the verifying authorities in the Member State may, on request by the flag State or by a third country other than the flag State as referred to in Article 14 grant an extension of the deadline to reply, which shall not exceed a further 15 days.

7. The release of the products onto the market shall be suspended while awaiting the results of the verification procedures referred to in paragraphs (1) to (6). The cost of storage shall be borne by the operator.
8. Member States shall notify to the Commission their competent authorities for the checks and verifications of the catch certificates in accordance with Article 16 and paragraphs (1) to (6) of this Article.

Article 18

Refusal of importation

1. The competent authorities of the Member States shall, where appropriate, refuse the importation into the Community of fishery products without having to request any additional evidence or send a request for assistance to the flag State where they become aware that:
 - (a) the importer has not been able to submit a catch certificate for the products concerned or to fulfil his obligations under Article 16(1) or (2);
 - (b) the products intended for importation are not the same as those mentioned in the catch certificate;
 - (c) the catch certificate is not validated by the public authority of the flag State referred to in Article 12(3);
 - (d) the catch certificate does not indicate all the required information;
 - (e) the importer is not in a position to prove that the fishery products comply with the conditions of Article 14(1) or (2);
 - (f) a fishing vessel figuring on the catch certificate as vessel of origin of the catches is included in the Community IUU vessel list or in the IUU vessel lists referred to in Article 30;
 - (g) the catch certificate has been validated by the authorities of a flag State identified as a non-cooperating State in accordance with Article 31.
2. The competent authorities of the Member States shall, where appropriate, refuse the importation of any fishery products into the Community, following a request for assistance pursuant to Article 17(6), where:
 - (a) they have received a reply according to which the exporter was not entitled to request the validation of a catch certificate; or,
 - (b) they have received a reply according to which the products do not comply with the conservation and management measures, or other conditions under this Chapter are not met; or,
 - (c) they have not received a reply within the stipulated deadline; or,

- (d) they have received a reply which does not provide pertinent answers to the questions raised in the request.
3. In the event that the importation of fishery products is refused pursuant to paragraphs 1 or 2, Member States may confiscate and destroy, dispose of or sell such fishery products in accordance with national law. The profits from the sale may be used for charitable purposes.
 4. Any person shall have the right to appeal against decisions taken by the competent authorities pursuant to paragraphs 1, 2 or 3 which concern him. The right of appeal shall be exercised according to the provisions in force in the Member State concerned.
 5. The competent authorities of the Member States shall notify the flag State and, where appropriate, the third country other than the flag State as referred to in Article 14 of refusals of importation. A copy of the notification shall be sent to the Commission.

Article 19

Transit and transshipment

1. Where, at the point of entry into the territory of the Community, fishery products are placed under a transit procedure and transported to another Member State where they shall be placed into another customs procedure, the provisions of Articles 17 and 18 shall be implemented in that Member State.
2. Where, at the point of entry into the territory of the Community, fishery products are placed under a transit procedure and transported to another place in the same Member State where they shall be placed under another customs procedure, that Member State may implement the provisions of Articles 16, 17 and 18 at the point of entry or at the place of destination. Member States shall, as soon as possible, notify to the Commission the measures adopted for the implementation of this paragraph and update this information. The Commission shall publish these notifications on its website.
3. Where, at the point of entry into the territory of the Community, fishery products are transhipped and transported by sea to another Member State, the provisions of Articles 17 and 18 shall be implemented in that Member State.
4. The Member States of transshipment shall communicate to the Member States of destination the information taken from the transport documentation on the nature of the fishery products, their weight, the port of loading and the shipper in the third country, the names of the transport vessels and the ports of transshipment and destination, as soon as possible this information is known and prior to the anticipated date of arrival in the port of destination.

Article 20

Flag State notifications and cooperation with third countries

1. The acceptance of catch certificates validated by a given flag State for the purposes of this Regulation shall be subject to the condition that the Commission has received a notification from the flag State concerned certifying that:
 - (a) it has in place national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels;

- (b) its public authorities are empowered to attest the veracity of the information contained in catch certificates and to carry out verifications of such certificates on request from the Member States. The notification shall also include the necessary information to identify those authorities.
- 2. The information to be given in the notification laid down in paragraph 1 is set forth in Annex III.
- 3. The Commission shall inform the flag State of the receipt of the notification sent pursuant to paragraph 1. If all elements mentioned in paragraph 1 are not provided by the flag State, the Commission shall indicate to the flag State which elements are missing and request that it provide a new notification.
- 4. The Commission shall, where appropriate, cooperate administratively with third countries in areas pertaining to the implementation of the catch certification provisions of this Regulation, including the use of electronic means to establish, validate or submit the catch certificates and, where appropriate, documents referred to in Article 14(1) and 14(2).

Such cooperation shall aim to:

- (a) ensure that fishery products imported into the Community originate from catches made in compliance with applicable laws, regulations or conservation and management measures;
 - (b) facilitate the accomplishment by flag States of the formalities linked to the access to ports of fishing vessels, the importation of fishery products and the verification requirements of catch certificates established in Chapter II and this Chapter;
 - (c) provide for the conduct of on-the-spot audits by the Commission or a body designated by it to verify the effective implementation of the cooperation arrangement;
 - (d) provide for the establishment of a framework for the exchange of information between the two sides in support of the implementation of the cooperation arrangement.
5. The cooperation laid down in paragraph 4 shall not be construed as a precondition for the application of this Chapter to imports originating from catches made by fishing vessels flying the flag of any State.

Article 21

Re-exportation

- 1. The re-exportation of products imported under a catch certificate in accordance with this Chapter shall be authorised through the validation by the competent authorities of the Member State from which the re-exportation is to take place of the section "re-export" of the catch certificate or a copy thereof where the fishery products to be re-exported are a part of the products imported.
- 2. The procedure defined in Article 16(2) shall apply mutadis mutandis where the fishery products are re-exported by an approved economic operator.
- 3. Member States shall notify to the Commission their competent authorities for the validation and the verification of the section "re-export" of catch certificates in accordance with the procedure defined in Article 15.

Article 22

Record keeping and dissemination

1. The Commission shall keep a record of States and their competent authorities notified in accordance with this Chapter which shall include:
 - (a) Member States which have notified their competent authorities to validate, check and verify catch certificates and re-export certificates in accordance with Articles 15, 16, 17 and 21, respectively;
 - (b) flag States for which notifications have been received in accordance with Article 20(1), indicating those for which cooperation with third countries has been established in accordance with Article 20(4).
2. The Commission shall publish on its website and in the Official Journal of the European Union the list of States and their competent authorities referred to in paragraph 1, and shall regularly update this information. The Commission shall make the details of the flag States authorities in charge of the validation and the verification of catch certificates available by electronic means to the authorities in the Member States responsible for the validation and verification of catch certificates.
3. The Commission shall publish on its website and in the Official Journal of the European Union the list of the catch documentation schemes which are recognised in accordance with Article 13 and shall update it on a regular basis.
4. Member States shall keep originals of the catch certificates submitted for importation, the catch certificates validated for exportation and the validated re-export sections of catch certificates for a period of three years or longer, in accordance with national rules.
5. Approved economic operators shall keep the original of the documents referred to in paragraph 4 for a period of three years or longer, in accordance with national rules.

CHAPTER IV

COMMUNITY ALERT SYSTEM

Article 23

Issuance of alerts

1. Where information obtained in accordance with Chapters II, III, V, VI, VII, VIII, X or XI raises well-founded doubt as to the compliance, by fishing vessels or fishery products from certain third countries, with applicable laws or regulations, including applicable laws or regulations communicated by third countries under the administrative cooperation referred to in Article 20(4), or with international conservation and management measures, the Commission shall publish an alert notice on its website and in the Official Journal of the European Union to warn operators and to ensure that Member States take appropriate measures in respect of the third countries concerned pursuant to this Chapter.
2. The Commission shall communicate the information referred to in paragraph 1 without delay to the Member States' authorities and to the flag State concerned and, where appropriate, to a third country other than the flag State as referred to in Article 14.

Article 24

Action following issuance of alerts

1. Upon receipt of the information communicated pursuant to Article 23(2), Member States shall, where appropriate, and in accordance with risk management:
 - (a) identify the on-going consignments of fishery products to be imported which fall within the scope of the alert notice and carry out a verification of the catch certificate and, where appropriate, of the documents referred to in Article 14, in accordance with the provisions laid down in Article 17;
 - (b) take measures to ensure that the future consignments of fishery products intended for importation which fall within the scope of the alert notice be submitted to the verification of the catch certificate, and, where appropriate, of the documents referred to in Article 14, in accordance with the provisions laid down in Article 17;
 - (c) identify the previous consignments of fishery products which fall under the scope of the alert notice and carry out the appropriate verifications, including the verification of previously submitted catch certificates;
 - (d) submit the fishing vessels which fall within the scope of the alert notice, in accordance with the rules of international law, to the necessary enquiries, investigations or inspections at sea, in ports or any other landing places.
2. Member States shall communicate to the Commission as soon as possible the conclusions of their verifications and requests for verification and the actions taken where non compliance with applicable laws, regulations or international conservation and management measures has been established.
3. Where the Commission decides that in light of the conclusions of verifications carried out pursuant to paragraph 1, the well-founded doubt which motivated the alert notice no longer exists, it shall, without delay:
 - (a) publish a notice to that effect on its website and in the Official Journal of the European Union annulling the earlier alert notice;
 - (b) advise the flag State and, where appropriate, the third country other than the flag State as referred to in Article 14 of the annulment; and
 - (c) advise Member States through appropriate channels.
4. Where the Commission decides that in light of the conclusions of verifications carried out pursuant to paragraph 1, the well-founded doubt which motivated the alert notice remains, it shall, without delay:
 - (a) update the alert notice by a new publication on its website and in the Official Journal of the European Union;
 - (b) advise the flag State and, where appropriate, the third country other than the flag State as referred to in Article 14;
 - (c) advise Member States through appropriate channels; and

- (d) where appropriate, refer the matter to the regional fisheries management organisation whose conservation and management measures might have been violated.
5. Where the Commission decides that in light of the conclusions of verifications carried out pursuant to paragraph 1, there are sufficient grounds to consider that the facts established might constitute a case of non compliance with applicable laws, regulations or international conservation and management measures, it shall, without delay:
- (a) publish a new alert notice to their effect on its website and in the Official Journal of the European Union;
 - (b) advise the flag State and undertake the appropriate proceedings and demarches in accordance with Chapters V and VI;
 - (c) where appropriate, advise the third country other than the flag State as referred to in Article 14;
 - (d) advise Member States through appropriate channels; and
 - (e) where appropriate, refer the matter to the regional fisheries management organisation whose conservation and management measures might have been violated.

CHAPTER V

IDENTIFICATION OF FISHING VESSELS ENGAGED IN IUU FISHING

Article 25

Alleged IUU fishing

1. The Commission, or a body designated by it, shall compile and analyse:
- (a) all information on IUU fishing obtained in accordance with Chapters II, III, IV, VIII, X and XI, and/or
 - (b) any other relevant information, as appropriate, such as:
 - (i) the catch data;
 - (ii) trade information obtained from national statistics and other reliable sources;
 - (iii) vessel registers and databases;
 - (iv) regional fisheries management organisation catch documents or statistical document programmes;
 - (v) reports on sightings or other activities of fishing vessels presumed to be engaged in IUU fishing as referred to in Article 3 and IUU vessel lists reported or adopted by regional fisheries management organisations;
 - (vi) reports under the terms of Regulation (EEC) n° 2847/93 on fishing vessels presumed to be engaged in IUU fishing as referred to in Article 3;

- (vii) any other relevant information obtained inter alia in the ports and on the fishing grounds.
- 2. Member States may, at any time, submit to the Commission any additional information which might be relevant for the establishment of the Community IUU vessel list. The Commission, or a body designated by it, shall circulate the information, together with all the evidence provided, to the Member States and to the flag States concerned.
- 3. The Commission, or a body designated by it, shall keep a file in respect of each fishing vessel reported as allegedly involved in IUU fishing which shall be updated as new information is obtained.

Article 26

Presumed IUU fishing

1. The Commission shall identify fishing vessels for which sufficient information has been obtained in accordance with Article 25 to presume that such fishing vessels may be engaged in IUU fishing, warranting an official enquiry with the flag State concerned.
2. The Commission shall notify flag States whose fishing vessels are identified pursuant to paragraph 1 of an official request for an enquiry into the alleged IUU fishing of their flagged vessels concerned. The notification shall:
 - (a) provide all information gathered by the Commission on alleged IUU fishing;
 - (b) issue an official request to the flag State that it takes all the necessary measures to investigate the alleged IUU fishing and share the results of this investigation with the Commission on a timely basis;
 - (c) issue an official request to the flag State to take immediate enforcement action should the allegation formulated against the fishing vessel concerned be proven to be founded, and to inform the Commission of the measures taken;
 - (d) ask the flag State to notify the owner and, where appropriate, the operator of the fishing vessel concerned of the detailed statement of reasons for the intended listing and of the consequences which would result should the fishing vessel be included in the Community IUU vessel list, as laid down in Article 37. Flag States shall also be requested to provide information to the Commission as to the fishing vessel's owners and, where appropriate, operators so as to ensure that such persons can be heard, in accordance with Article 27(2);
 - (e) advise the flag State on the provisions in Chapters VI and VII.
3. The Commission shall notify flag Member States whose fishing vessels are identified pursuant to paragraph 1 of an official request for an enquiry into the alleged IUU fishing of their flagged vessels concerned. The notification shall:
 - (a) provide all information gathered by the Commission on alleged IUU fishing;
 - (b) include an official request to the flag Member State to take all the necessary measures, in accordance with Regulation (EEC) No 2847/93 to investigate the alleged IUU fishing or, where appropriate, to report on all the measures already taken to investigate it and to share the results of this investigation with the Commission on a timely basis;

- (c) issue an official request to the flag Member State to take timely enforcement action should the allegation formulated against the fishing vessel concerned be proven to be founded, and to inform the Commission of the measures taken;
 - (d) ask the flag Member State to notify the owner and, where appropriate, the operator of the fishing vessel concerned of the detailed statement of reasons for the intended listing and of the consequences which would result should the vessel be included in the Community IUU vessel list, as laid down in Article 37. Flag Member States shall also be requested to provide information to the Commission as to the fishing vessel's owners and, where appropriate, operators so as to ensure that such persons can be heard, in accordance with Article 27(2).
4. The Commission shall circulate the information on fishing vessels presumed to be engaged in IUU fishing to all Member States in order to facilitate the implementation of Regulation (EEC) No 2847/93.

Article 27

Establishment of the Community IUU vessel list

1. The Commission shall, in accordance with the procedure referred to in Article 54(2), establish a Community IUU vessel list. The list shall include the fishing vessels in relation to which, further to the measures taken pursuant to Articles 25 and 26, the information obtained in accordance with this Regulation establishes that they are engaged in IUU fishing and whose flag States have not complied with the official requests referred to in Article 26(2)(b) and (c) and Article 26(3)(b) and (c), in response to such IUU fishing.
2. Before placing any fishing vessel on the Community IUU vessel list, the Commission shall provide the owner and, where appropriate, the operator of the fishing vessel concerned with a detailed statement of reasons for the intended listing and with all elements supporting the suspicion that the fishing vessel has carried out IUU fishing. The statement shall mention the right to ask for or to provide additional information, and give the owner, and, where appropriate, the operator the possibility of being heard and to defend their case, leaving them adequate time and facilities.
3. When a decision is taken to place a fishing vessel on the Community IUU vessel list, the Commission shall notify that decision, and the reasons for it, to the owner and, where appropriate, the operator of the fishing vessel.
4. The obligations imposed on the Commission by paragraphs 2 and 3 shall apply without prejudice to the primary responsibility of the flag State over the fishing vessel, and only insofar as the relevant information on the identification of the fishing vessel owner and operator is at the disposal of the Commission.
5. The Commission shall notify the flag State of the inclusion of the fishing vessel on the Community IUU vessel list and shall provide the flag State with the detailed reasons for listing.
6. The Commission shall request flag States with fishing vessels on the Community IUU vessel list to:
 - (a) notify the owner of the fishing vessel of its inclusion on the Community IUU vessel list, of the reasons justifying this inclusion and of the consequences resulting from it, as laid down in Article 37; and

- (b) take all the necessary measures to eliminate IUU fishing, including, if necessary, the withdrawal of the registration or the fishing licences of the fishing vessels concerned, and to inform the Commission of the measures taken.
- 7. This Article shall not apply to Community fishing vessels if the flag Member State has taken action in accordance with paragraph 8.
- 8. Community fishing vessels shall not be included in the Community IUU vessel list if the flag Member State has taken action pursuant to this Regulation and Regulation (EEC) No 2847/93 against breaches constituting serious infringements as laid down in Article 3(2), without prejudice to the action taken by regional fisheries management organisations.

Article 28

Removal of fishing vessels from the Community IUU vessel list

1. The Commission shall remove a fishing vessel from the Community IUU vessel list, in accordance with the procedure referred to in Article 54(2), if the fishing vessel's flag State demonstrates that:
 - (a) the vessel did not engage in any of the IUU fishing activities for which it was placed on the list, or
 - (b) proportionate, dissuasive and effective sanctions have been applied in response to the IUU fishing activities in question, notably for the fishing vessels flying the flag of a Member State in accordance with the Regulation (EEC) No 2847/93.
2. The owner or, where appropriate, the operator of a fishing vessel placed on the Community IUU vessel list may submit a request to the Commission to review the status of that vessel in case of inaction by the flag State under paragraph 1.

The Commission shall only consider removing the fishing vessel from the list if:

- (a) the owner or the operator provides evidence as to the fact that the fishing vessel is no longer engaged in IUU fishing or;
 - (b) the listed fishing vessel has sunk or has been scrapped.
3. In all other cases, the Commission shall only consider removing the fishing vessel from the list if the following conditions are fulfilled:
 - (a) at least two years have elapsed since the fishing vessel's listing during which no further reports of alleged IUU fishing by the vessel have been received by the Commission in accordance with Article 25; or
 - (b) the owner submits information relating to the current operation of the fishing vessel that demonstrates that it is operating in full conformity with laws, regulations and/or conservation and management measures that apply to any fisheries in which it is participating; or

- (c) the fishing vessel concerned, its owner or operator, maintain no operational or financial links, whether direct or indirect, with any other vessel, owner or operator presumed or confirmed to be engaged in IUU fishing.

Article 29

Content, publicity and maintenance of the Community IUU vessel list

1. The Community IUU vessel list shall contain the following details for each fishing vessel:
 - (a) name and previous names, if any;
 - (b) flag and previous flags, if any;
 - (c) owner and where relevant previous owners, including beneficial owners, if any;
 - (d) operator and where relevant previous operators, if any;
 - (e) call sign and previous call signs, if any;
 - (f) Lloyds/IMO number, where available;
 - (g) photographs, where available;
 - (h) date of first inclusion on it;
 - (i) summary of activities which justify inclusion of the vessel on it, together with references to all relevant documents informing of and evidencing those activities.
2. The Commission shall publish the Community IUU vessel list in the Official Journal of the European Union and shall take any measure necessary to ensure its publicity, including by placing it on its website.
3. The Commission shall update every three months the Community IUU vessel list and shall provide for a system to automatically notify updates to Member States, regional fisheries management organisations and any member of the civil society that should so request. Furthermore, the Commission shall transmit the list to the FAO and to regional fisheries management organisations for the purposes of enhancing co-operation between the Community and these organisations aimed at preventing, deterring and eliminating IUU fishing.

Article 30

IUU vessel lists adopted by regional fisheries management organisations

1. In addition to the fishing vessels referred to in Article 27, fishing vessels included in the IUU vessel lists adopted by regional fisheries management organisations shall be included in the Community IUU vessel list, in accordance with the procedure referred to in Article 54(2). Removal of such vessels from the Community IUU vessel list shall be governed by the decisions taken with regard to them by the relevant regional fisheries management organisation.
2. The Commission shall each year, on receiving from regional fisheries management organisations the lists of fishing vessels presumed or confirmed to be involved in IUU fishing, notify them to the Member States.

3. The Commission shall notify promptly to the Member States any addition to, any deletion from and/or any modification of the lists referred to in paragraph 2 of this Article at any time such changes occur. Article 37 shall apply in respect of the vessels appearing on the regional fisheries management organisations IUU vessel lists so modified as of the time of their notification to Member States.

CHAPTER VI

NON-COOPERATING THIRD COUNTRIES

Article 31

Identification of non-cooperating third countries

1. The Commission, in accordance with the procedure referred to in Article 54(2), shall identify the third countries that it considers as non-cooperating third countries in fighting IUU fishing.
2. The identification set out in paragraph 1 shall be based on the review of all information obtained pursuant to Chapters II, III, IV, V, VIII, X and XI, or, as appropriate, any other relevant information, such as the catch data, trade information obtained from national statistics and other reliable sources, vessel registers and databases, catch documents or statistical document programs and IUU vessel lists adopted by regional fisheries management organisations, as well as any other information obtained in the ports and on the fishing grounds.
3. A third country may be identified as a non-cooperating third country if it fails to discharge the duties incumbent upon it under international law as flag, port, coastal or market State, to take action to prevent, deter and eliminate IUU fishing.
4. For the purposes of paragraph 3, the Commission shall primarily rely on the examination of measures taken by the third country concerned in respect of:
 - (a) recurrent IUU fishing suitably documented as carried out or supported by fishing vessels flying its flag or by its nationals, or by fishing vessels operating in its maritime waters or using its ports, or
 - (b) access of fisheries products stemming from IUU fishing to its market.
5. For the purposes of paragraph 3, the Commission shall take into account:
 - (a) whether the third country concerned effectively cooperates with the Community, by providing a response to requests made by the Commission to investigate, provide feedback or follow-up to IUU fishing and associated activities;
 - (b) whether the third country concerned has taken effective enforcement measures in respect of the operators responsible for IUU fishing, and in particular whether sanctions of sufficient severity to deprive the offenders of the benefits accruing from IUU fishing have been applied;
 - (c) the history, nature, circumstances, extent and gravity of the manifestations of IUU fishing considered;
 - (d) for developing countries, the existing capacity of their competent authorities.
6. For the purposes of paragraph 3, the Commission shall also consider the following elements:

- (a) the ratification of, or accession of the third countries concerned to, international fisheries instruments, and in particular the UNCLOS, the UN Fish Stocks Agreement and the FAO Compliance Agreement;
 - (b) the status of the third country concerned as a contracting party to regional fisheries management organisations, or its agreement to apply the conservation and management measures adopted by them;
 - (c) any act or omission by the third country concerned that may have diminished the effectiveness of applicable laws, regulations or international conservation and management measures.
7. Where appropriate, specific constraints of developing countries, in particular in respect to monitoring, control and surveillance of fishing activities, shall be duly taken into consideration in the implementation of this Article.

Article 32

Demarches in respect of countries identified as non-cooperating third countries

1. The Commission shall, without delay, notify countries concerned of the possibility of being identified as non-cooperating third countries in accordance with the criteria laid down in Article 31. It shall include in the notification the following information:
 - (a) the reason or reasons for the identification with all available supporting evidence;
 - (b) the opportunity to respond to the Commission in writing with regard to the identification decision and other relevant information, for example, evidence refuting the identification or, where appropriate, a plan of action to improve and the measures taken to rectify the situation;
 - (c) the right to ask for, or to provide, additional information;
 - (d) the consequences of its identification as non-cooperating third country, as provided in Article 38.
2. The Commission shall also include in the notification referred to in paragraph 1 a request that the third country concerned take any necessary measures for the cessation of the IUU fishing activities in question and the prevention of any future such activities, and rectify any act or omission referred to in Article 31(6)(c).
3. The Commission shall, by more than one means of communication, transmit its notification and request to the third country concerned. The Commission shall seek to obtain confirmation from that country that it has received the notification.
4. The Commission shall give to the third country concerned adequate time to answer the notification and a reasonable time to remedy the situation.

Article 33

Establishment of a list of non-cooperating third countries

1. The Council, acting by qualified majority on a proposal from the Commission, shall decide on a list of non-cooperating third countries.
2. The Commission shall, without delay, notify the third country concerned of its identification as a non-cooperating third country and of the measures applied in accordance with Article 38, and shall request it to rectify the current situation and to advise on the measures taken to ensure compliance with conservation and management measures by its fishing vessels.
3. Following a decision taken pursuant to paragraph 1 of this Article, the Commission shall, without delay, notify it to the Member States and shall request them to ensure the immediate implementation of the measures laid down in Article 38. Member States shall notify the Commission of any measures they have taken in response to this request.

Article 34

Removal from the list of non-cooperating third countries

1. The Council, acting by qualified majority on a proposal from the Commission, shall remove a third country from the list of non-cooperating third countries if the third country concerned demonstrates that the situation that warranted its listing has been rectified. A removal decision shall also take into consideration whether the identified third countries concerned have taken concrete measures capable of achieving a lasting improvement of the situation.
2. Following a decision taken pursuant to paragraph 1 of this Article, the Commission shall, without delay, notify Member States of the lifting of the measures laid down in Article 38 in respect of the third country concerned.

Article 35

Publicity of the list of non-cooperating third countries

The Commission shall publish the list of non-cooperating third countries in the Official Journal of the European Union and take any measure necessary to ensure publicity of this list, including placing it on its website. The Commission shall regularly update the list and shall provide for a system to automatically notify updates to Member States, regional fisheries management organisations and any member of the civil society that should so request. Furthermore, the Commission shall transmit the list of non-cooperating third countries to the FAO and to regional fisheries management organisations for the purposes of enhancing co-operation between the Community and those organisations aimed at preventing, deterring and eliminating IUU fishing.

Article 36

Emergency measures

1. If there is evidence that the measures adopted by a third country undermine the conservation and management measures adopted by a regional fisheries management organisation, the Commission shall be entitled to adopt, in line with its international obligations, emergency measures which shall last no more than six months. The Commission may take a new decision to extend the emergency measures for no more than six months.
2. The emergency measures referred to in paragraph 1 may include, inter alia, that:
 - (a) fishing vessels authorised to fish and flying the flag of the third country concerned shall not be granted access to the ports of Member States, except in case of force majeure or distress as referred to in Article 4(2) for services strictly necessary to remedy those situations;

- (b) fishing vessels flying the flag of a Member State shall not be authorised to engage in joint fishing operations with vessels flying the flag of the third country concerned;
 - (c) fishing vessels flying the flag of a Member State shall not be authorised to fish in maritime waters under the jurisdiction of the third country concerned, without prejudice to the provisions set out in bilateral fishing agreements;
 - (d) provision of live fish for fish farming in maritime waters under the jurisdiction of the third country concerned shall not be authorised;
 - (e) live fish caught by fishing vessels flying the flag of the third country concerned shall not be accepted for the purposes of fish farming in maritime waters under the jurisdiction of a Member State.
3. Emergency measures shall have immediate effect. They shall be notified to the Member States and to the third country concerned and published in the Official Journal of the European Union.
 4. The Member States concerned may refer the Commission's decision set out in paragraph 1 to the Council within 10 working days of receipt of the notification.
 5. The Council, acting by qualified majority, may take a different decision within one month of the date of receipt of the referral.

CHAPTER VII

MEASURES IN RESPECT OF FISHING VESSELS AND STATES INVOLVED IN IUU FISHING

Article 37

Action in respect of fishing vessels included in the Community IUU vessel list

The following measures shall apply to the fishing vessels included in the Community IUU vessel list ("IUU fishing vessels"):

- (1) flag Member States shall not submit to the Commission any requests for fishing authorisations in respect of IUU fishing vessels;
- (2) current fishing authorisations or special fishing permits issued by flag Member States in respect of IUU fishing vessels shall be withdrawn;
- (3) IUU fishing vessels flying the flag of a third country shall not be authorised to fish in Community waters and shall be prohibited to be chartered;
- (4) fishing vessels flying the flag of a Member State shall not in any way assist, engage in fish processing operations or participate in any transshipment or joint fishing operations with IUU fishing vessels;
- (5) IUU fishing vessels flying the flag of a Member State shall only be authorised access to their home ports and to no other Community port, except in case of force majeure or distress. IUU fishing vessels flying the flag of a third country shall not be authorised to enter into a port of a Member State, except in case of force majeure or distress. Alternatively, a Member State may authorise the entry into its ports of an IUU fishing vessel on the condition that the catches on board and, where appropriate, fishing gear prohibited pursuant to conservation and

management measures adopted by regional fisheries management organisations, are confiscated. Member States shall also confiscate catches and, where appropriate, fishing gear prohibited pursuant to those measures, on board IUU fishing vessels which have been authorised to enter into its ports for reason of force majeure or distress;

- (6) IUU fishing vessels flying the flag of a third country shall not be supplied in ports with provisions, fuel or other services, except in case of force majeure or distress;
- (7) IUU fishing vessels flying the flag of a third country shall not be authorised to change the crew, except as necessary in case of force majeure or distress;
- (8) Member States shall refuse the granting of their flag to IUU fishing vessels;
- (9) the importation of fishery products caught by IUU fishing vessels shall be prohibited, and accordingly catch certificates accompanying such products shall not be accepted or validated;
- (10) the exportation and re-exportation of fishery products from IUU fishing vessels for processing shall be prohibited;
- (11) IUU fishing vessels with no fish and crew on board shall be authorised to enter a port for its scrapping, but without prejudice to any prosecutions and sanctions imposed against that vessel and any legal or natural person concerned.

Article 38

Action in respect of non-cooperating third countries

The following measures shall apply to non-cooperating third countries:

- (1) the importation into the Community of fishery products caught by fishing vessels flying the flag of such countries shall be prohibited, and accordingly catch certificates accompanying such products shall not be accepted. In the event that the identification of a non-cooperating third country pursuant to Article 31 is justified by the lack of appropriate measures adopted by this third country in relation to IUU fishing affecting a given stock or species, the prohibition of importation may only apply in respect of this stock or species;
- (2) the purchase by Community operators of a fishing vessel flying the flag of such countries shall be prohibited;
- (3) the reflagging of a fishing vessel flying the flag of a Member State to such countries shall be prohibited;
- (4) Member States shall not authorise the conclusion of chartering agreements with such countries for fishing vessels flying their flag;
- (5) the exportation of Community fishing vessels to such countries shall be prohibited;
- (6) private trade arrangements between nationals of a Member State and such countries in order for a fishing vessel flying the flag of that Member State to use the fishing possibilities of such countries shall be prohibited;
- (7) joint fishing operations involving fishing vessels flying the flag of a Member State with a fishing vessel flying the flag of such countries shall be prohibited;

- (8) the Commission shall propose the denunciation of any standing bilateral fisheries agreement or fisheries partnership agreement with such countries which provides for termination of the agreement in case of failure to comply with undertakings made by them with regard to combating IUU fishing;
- (9) the Commission shall not enter into negotiations to conclude a bilateral fisheries agreement or fisheries partnership agreements with such countries.

CHAPTER VIII

NATIONALS

Article 39

Nationals supporting or engaged in IUU fishing

1. Nationals subject to the jurisdiction of Member States ("nationals") shall neither support nor engage in IUU fishing, including by engagement on board or as operators or beneficial owners of fishing vessels included in the Community IUU vessel list.
2. Without prejudice to the primary responsibility of the flag State, Member States shall cooperate amongst themselves and with third countries and take all appropriate measures, in accordance with national and Community law, in order to identify nationals supporting or engaged in IUU fishing.
3. Without prejudice to the primary responsibility of the flag State, Member States shall take appropriate action, subject to and in accordance with their applicable laws and regulations with regard to nationals identified as supporting or engaged in IUU fishing.
4. Each Member State shall notify to the Commission the names of the competent authorities responsible for coordinating the collection and verification of information on activities of nationals referred to in this Chapter and for reporting to and cooperating with the Commission.

Article 40

Prevention and sanction

1. Member States shall encourage nationals to notify any information pertaining to legal, beneficial or financial interests in, or control of, fishing vessels flagged to a third country which they hold and the names of the vessels concerned.
2. Nationals shall not sell or export any fishing vessel to operators involved in the operation, management or ownership of fishing vessels included in the Community IUU vessel list.
3. Without prejudice to other provisions laid down in Community law pertaining to public funds, Member States shall not grant any public aid under national aid regimes or under Community funds to operators involved in the operation, management or ownership of fishing vessels included in the Community IUU vessel list.
4. Member States shall endeavour to obtain information on the existence of any arrangement between nationals and a third country allowing the reflagging of fishing vessels flying their flag to such third country. They shall inform the Commission thereof by submitting a list of the fishing vessels concerned.

CHAPTER IX

IMMEDIATE ENFORCEMENT MEASURES, SANCTIONS AND ACCOMPANYING SANCTIONS

Article 41

Scope

This Chapter shall apply in relation to:

- (1) serious infringements committed within the territory of Member States to which the Treaty applies, or within maritime waters under the sovereignty or jurisdiction of the Member States, with the exception of waters adjacent to the territories and countries mentioned in Annex II of the Treaty;
- (2) serious infringements committed by Community fishing vessels or nationals of Member States;
- (3) serious infringements detected within the territory or within waters as referred to in point 1 of this Article but which have been committed on the high seas or within the jurisdiction of a third country and are being sanctioned pursuant to Article 11(4).

Article 42

Serious infringements

1. For the purpose of this Regulation, serious infringement means:
 - (a) the activities considered to constitute IUU fishing in accordance with the criteria set out in Article 3;
 - (b) the conduct of business directly connected to IUU fishing, including the trade in/or the importation of fishery products;
 - (c) the falsification of documents referred to in this Regulation or the use of such false or invalid documents.
2. The serious character of the infringement shall be determined by the competent authority of a Member State taking into account the criteria set out in Article 3(2).

Article 43

Immediate enforcement measures

1. Where a natural person is suspected of having committed or is caught in the act while committing a serious infringement or a legal person is suspected of being held liable for such an infringement, Member States shall start a full investigation of the infringement and, in conformity with their national law and depending on the gravity of the infringement, take immediate enforcement measures such as in particular:
 - (a) the immediate cessation of fishing activities;
 - (b) the rerouting to port of the fishing vessel;
 - (c) the rerouting of the transport vehicle to another location for inspection;
 - (d) the ordering of a bond;

- (e) the seizure of fishing gear, catches or fisheries products;
 - (f) the temporary immobilisation of the fishing vessel or transport vehicle concerned;
 - (g) the suspension of the authorisation to fish.
2. The enforcement measures shall be of such nature as to prevent the continuation of the serious infringement concerned and to allow the competent authorities to complete its investigation.

Article 44

Sanctions for serious infringements

1. Member States shall ensure that a natural person having committed or a legal person held liable for a serious infringement is punishable by effective, proportionate and dissuasive administrative sanctions.
2. The Member States shall impose a maximum sanction of at least five times the value of the fishery products obtained by committing the serious infringement.

In case of a repeated serious infringement within a 5-year period, the Member States shall impose a maximum sanction of at least eight times the value of the fishery products obtained by committing the serious infringement.

In applying these sanctions the Member States shall also take into account the value of the prejudice to the fishing resources and the marine environment concerned.

3. Member States may also, or alternatively, use effective, proportionate and dissuasive criminal sanctions.

Article 45

Accompanying sanctions

The sanctions provided for in this Chapter may be accompanied by other sanctions or measures, in particular:

- (1) the sequestration of the fishing vessel involved in the infringement;
- (2) the temporary immobilisation of the fishing vessel;
- (3) the confiscation of prohibited fishing gear, catches or fishery products;
- (4) the suspension or withdrawal of authorisation to fish;
- (5) the reduction or withdrawal of fishing rights;
- (6) the temporary or permanent exclusion from the right to obtain new fishing rights;
- (7) the temporary or permanent ban on access to public assistance or subsidies.
- (8) the suspension or withdrawal of the status of approved economic operator granted pursuant to Article 16(3).

Article 46

Overall level of sanctions and accompanying sanctions

The overall level of sanctions and accompanying sanctions shall be calculated in such way as to make sure that they effectively deprive those responsible of the economic benefits derived from their serious infringements without prejudice to the legitimate right to exercise a profession. For this purpose, account shall be also taken of immediate enforcement measures taken pursuant to Article 43.

Article 47

Liability of legal persons

1. Legal persons shall be held liable for serious infringements where such infringements have been committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, and having a determining position within the legal person, based on:
 - (a) a power of representation of the legal person, or
 - (b) an authority to take decisions on behalf of the legal person, or
 - (c) an authority to exercise control within the legal person.
2. A legal person may be held liable where the lack of supervision or control, by a natural person referred to in paragraph 1, has made possible the commission of a serious infringement for the benefit of that legal person by a natural person under its authority.
3. Liability of a legal person shall not exclude proceedings against natural persons who are perpetrators, instigators or accessories in the infringements concerned.

CHAPTER X

IMPLEMENTATION OF PROVISIONS ADOPTED WITHIN CERTAIN REGIONAL FISHERIES MANAGEMENT ORGANISATIONS PERTAINING TO FISHING VESSEL SIGHTINGS

Article 48

Sighting at sea

1. The provisions of this Chapter shall apply to fishing activities subject to the rules on sightings at sea adopted within regional fishery management organisations which are binding to the Community.
2. In the event that a Member State's competent authority responsible for inspection at sea sights a fishing vessel engaged in activities that may be considered as IUU fishing, it shall forthwith issue a report of the sighting. Such report and the results of investigations carried out on that fishing vessel by that Member State shall be considered evidence for use in the implementation of the identification and enforcement mechanisms provided in this Regulation.
3. In the event that the master of a Community or a third country fishing vessel sights a fishing vessel engaged in activities referred to in paragraph 2, the master may document as much information as possible on such sighting, for instance:
 - (a) the name and description of the fishing vessel;

- (b) the fishing vessel's call sign;
 - (c) the registration number and, if appropriate, the Lloyds IMO number of the fishing vessel;
 - (d) the flag State of the fishing vessel;
 - (e) the position (latitude, longitude) at the time when first identified;
 - (f) the date/time UTC when first identified;
 - (g) a photograph or photographs of the fishing vessel to support the sighting;
 - (h) any other relevant information regarding the observed activities of the fishing vessel concerned.
4. Sighting reports shall be sent without delay to the competent authority of the flag Member State of the sighting fishing vessel, which shall transmit them as soon as possible to the Commission or to the body designated by it. The Commission or the body designated by it shall then immediately inform the flag State of the fishing vessel sighted. The Commission or a body designated by it shall thereupon transmit the sighting report to all the Member States and, as appropriate, to the Executive Secretary of the relevant regional fisheries management organisations for further action in accordance with the measures adopted by those organisations.
 5. A Member State which receives a sighting report reporting the activities of a fishing vessel flying its flag from the competent authority of a contracting party of a regional fisheries management organisation shall notify the report and all relevant information as soon as possible to the Commission or to the body designated by it, which shall thereupon forward this information to the Executive Secretary of the regional fisheries management organisation concerned for further action in accordance with the measures adopted by this organisation, as appropriate.
 6. This Article shall apply without prejudice to stricter provisions adopted by regional fisheries management organisations to which the Community is a contracting party.

Article 49

Submission of information regarding sighted fishing vessels

1. Member States which obtain suitably documented information regarding sighted fishing vessels shall transmit this information without delay to the Commission or to the body designated by it with the format determined in accordance with the procedure referred to in Article 54(2).
2. The Commission or the body designated by it shall also examine suitably documented information regarding sighted fishing vessels submitted by citizens, civil society organisations, including environmental organisations, as well as representatives of fisheries or fish trade stakeholder interests.

Article 50

Investigation of sighted fishing vessels

1. Member States shall, as soon as possible, initiate an investigation on the activities of fishing vessels flying their flag which have been sighted in accordance with Article 49.

2. Member States shall notify, where possible by electronic means, to the Commission or the body designated by it the details of the initiation of the investigation and of any action taken or intended in respect of the sighted fishing vessels flying their flag, as soon as practicable and in any case within two months of the notification of the sighting report pursuant to Article 48(4). Reports on the progress of the investigations on the activities of the sighted fishing vessel shall be provided to the Commission or to the body designated by it at appropriate regular intervals. A final report on the outcome when the investigations are completed shall be provided to the Commission or to the body designated by it.
3. Member States other than the flag Member State concerned shall, where appropriate, verify whether the sighted fishing vessels reported have carried out activities in maritime waters under their jurisdiction or if fisheries products stemming from those vessels have been landed or imported into their territory and shall investigate their record of compliance with relevant conservation and management measures. Member States shall notify without delay to the Commission, or to the body designated by it, and to the flag Member State concerned the outcome of their verifications and investigations.
4. The Commission or the body designated by it shall communicate to all the Member States the information received in accordance with paragraphs 2 and 3.
5. This Article shall apply without prejudice to the provisions of Chapter V of Regulation (EC) No 2371/2002 and to the provisions adopted by regional fisheries management organisations to which the Community is a contracting party.

CHAPTER XI

MUTUAL ASSISTANCE

Article 51

Mutual assistance

1. The administrative authorities responsible for implementation of this Regulation in the Member States shall cooperate with each other, with administrative authorities of third countries and with the Commission in order to ensure compliance with this Regulation.
2. For the purposes of paragraph 1, a system for mutual assistance shall be established, which shall include an automated information system, the "IUU fishing information system", which shall be managed by the Commission or a body designated by it, to assist competent authorities in preventing, investigating and prosecuting IUU fishing.
3. Detailed rules for the application of this Chapter shall be adopted in accordance with the procedure referred to in Article 54(2).

CHAPTER XII

FINAL PROVISIONS

Article 52

Implementation

The measures necessary for implementing the provisions of this Regulation shall be adopted in accordance with the procedure referred to in Article 54(2).

Article 53

Financial support

Member States may require the operators concerned to contribute to the costs linked to the implementation of this Regulation.

Article 54

Committee procedure

1. The Commission shall be assisted by the Committee set up under Article 30 of Regulation (EC) No 2371/2002.
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply. The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

Article 55

Reporting obligations

1. Every two years, Member States shall transmit a report to the Commission on the application of this Regulation not later than 30 April of the following calendar year.
2. On the basis of the reports submitted by the Member States and its own observations, the Commission shall draw up a report every three years to be submitted to the European Parliament and to the Council.
3. An evaluation of the impact of this Regulation on IUU fishing shall be undertaken by the Commission by [date of entry into force + 5 years].

Article 56

Repeals

Articles 28b(2), 28e, 28f, 28g and Article 31(2)(a) of Regulation (EEC) No 2847/93, Regulation (EC) No 1093/94, Regulation (EC) No 1447/1999, Articles 8, 19a, 19b, 19c, 21, 21b, 21c of Regulation (EC) No 1936/2001 and Articles 26a, 28, 29, 30 and 31 of Regulation (EC) No 601/2004 shall be repealed with effect from 1 January 2010.

References to the repealed Regulations shall be construed as references to this Regulation.

Article 57

Entry into force

This Regulation shall enter into force on the day of its publication in the Official Journal of the European Union. It shall apply from 1 January 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council

The President

ANNEX I

List of products excluded from the definition of "fishery products" set out in point (8) of Article 2

- Freshwater fishery products
- Aquaculture products obtained from fry or larvae
- Ornamental fish
- Oysters, live
- Scallops including queen scallops, of the genera *Pecten*, *Chlamys* or *Placopecten*, live, fresh or chilled
- Coquilles St Jacques (*Pecten maximus*), frozen
- Other scallops, fresh or chilled
- Mussels
- Snails, others than those obtained from the sea
- Prepared and preserved molluscs

ANNEX II

European Community Catch Certificate and Re-Export Certificate

[...]

Appendix I

Transport Details

[...]

ANNEX III

Flag State notifications

[...]

ANNEX IV

Statement under Article 14(2) of Council Regulation (EC) No/2008 of ... establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

[...]

Bibliography

Agnew, DJ and Barnes, CT (2004). Economic Aspects and Drivers of IUU Fishing: Building a Framework. <http://www.oecd.org/dataoecd/17/7/29468002.PDF>.

Ahmed, Mahfuz (2006). Market Access and Trade Liberalisation in Fisheries, Natural Resources, International Trade and Sustainable Development, Issue Paper No 4, June 2006.

Agencia de Informacao de Mocambique (Maputo), Mozambique: Country Seizes Namibian Pirate Fishing Ship “Antillas Reefer”, 18 July 2008. Available at <http://allafrica.com/stories/200807180938.html>.

Annual Reefer Shipping Market Review and Forecast 2007/08, <http://bharatbook.wordpress.com/2008/01/28/annual-reefer-shipping-market-review-and-forecast-200708/>.

Australia Links Organised Crime to Illegal Fishing. 26 May 2008. Available at <http://www.iht.com/articles/2008/05/26/asia/fish.php>.

Campling, Liam (2007). Direct and Indirect Preference Erosion and the Competitiveness of the ACP Tuna Processing Sector, Paper prepared as a Commonwealth Trade Hot Topics, 10 August 2007.

Campling, Liam (2008). Economic Partnership Agreements (EPAs) and Pacific Fisheries, Revised paper prepared for the Joint Pacific ACP Trade and Fisheries Officials Meeting (PACPTOM / PACPFOM) and the Joint Pacific ACP Trade and Fisheries Ministers Meeting (PACPTMM / PACPFMM) Port Vila, Vanuatu, 13-14 November 2006 (May 2008 mimeo – copy with authors).

Campling, Liam; Havice, Elizabeth; and Ram-Bidesi, Vina (2007). Pacific Island Countries, The Global Tuna Industry and the International Trade Regime - A Guidebook 56-70.

Campling, Liam (2008). FFA Fisheries Trade Briefing, Volume 1: Issue 8 & 9 (July and August 2008).

Campling, Liam (2008). Fisheries Aspects of ACP-EU Interim Economic Partnership Agreements and their Implications for Future Negotiations: Market access and sustainable development issues (May 2008 mimeo – copy with authors).

Cudahy, BJ. (2006) Box boats: How container ships changed the world.

Delgado, C (2003) et al. Fish to 2020: Supply and Demand in Changing Global Markets International Food Policy Research Institute.

European Commission (EC). COUNCIL REGULATION (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999.

EC. Trade issues:

Argentina, <http://trade.ec.europa.eu/doclib/html/120352.htm>;

Brazil, <http://trade.ec.europa.eu/doclib/html/120352.htm>;

Chile, <http://trade.ec.europa.eu/doclib/html/120352.htm>;
Ecuador, <http://trade.ec.europa.eu/doclib/html/120352.htm>;
India, <http://trade.ec.europa.eu/doclib/html/120352.htm>;

EC. Trade Issues, Africa, Caribbean, Pacific. Economic Partnership Agreements: A New Approach in EU-ACP Trade Relations. http://ec.europa.eu/trade/issues/bilateral/regions/acp/index_en.htm.

EC. Trade Issues, Trade in agricultural goods and fishery products, Fisheries: Trade-partners, http://ec.europa.eu/trade/issues/sectoral/agri_fish/fish/tp_en.htm.

Environmental Justice Foundation (EJF), Pirates and Profiteers, 3, www.ejfoundation.org/pdf/pirates_and_profiteers.pdf.

Evans, Judith (2008). EU Extends Maldives Trade Concessions To 2014, Malé, 10 June 2008. <http://www.minivannews.com/news/news.php?id=4577>.

Food and Agriculture Organisation (FAO) (2007). A study into the effect of energy costs in fisheries, FAO Fisheries Circular No. 1022.

FAO (2007) An Overview of the Impact of the Tsunami on Selected Coastal Fisheries Resources in Sri Lanka and Indonesia, RAP Publication 2007/19 at [ftp://ftp.fao.org/docrep/fao/010/ai000e/ai000e00.pdf](http://ftp.fao.org/docrep/fao/010/ai000e/ai000e00.pdf).

FAO Global fishing fleet statistics <http://www.fao.org/fishery/statistics/global-fleet/en>.

FAO (2008). Committee on Fisheries, Sub-Committee on Fish Trade, Eleventh Session, Bremen, Germany, 2-6 June 2008, “Status and Important Recent Events Concerning International Trade in Fishery Products,” COFI:FT/XI/2008/3, Rome: FAO, 2008.

FAO. Status and Important Recent Events Concerning International Trade in Fishery Products.

FAO (2006). The State of World Fisheries and Aquaculture 2006, Rome: FAO. www.fao.org.

FFA Fisheries Trade Briefing (January) on EC proposed reform of GSP RoO at <http://www.ffa.int/node/1059>.

Frozen fish narcotics export ring busted in Montevideo port, 17 August 2008, available at <http://www.mercopress.com/vernoticia.do?id=14270&formato=html>.

International Trade Centre, Rules of Origin in the Context of International Trade, 2 at <http://www.intracen.org/tfs/docs/publications/ruleori2.pdf>.

Kleih, Ulrich; Barnes, Colin; Payne, Ian; Greenhalgh, Peter; Walmsley, Suzannah; and Howard, Charlotte (2007). The Impact of EU Commercial Fisheries Policies and Practice on International Trade in Fisheries Products, ACP Consultative Process on a Trade and Sustainable Development Approach to Negotiation of Fisheries under the EPA, 22-24 January 2007.

Le Gallic, Bertrand and Cox, Anthony (2006). ‘An Economic Analysis of Illegal, Unreported and Unregulated (IUU) Fishing: Key Drivers and Possible Solutions’ 30 Marine Policy 689.

Leonard, Elmo (2005). Unrealistic rates hit seafood exports, Sunday Observer, 25 September 2005, <http://www.lankabusinessonline.com/fullstory.php?nid=1314392935>.

Mfodwo, K and Tsamenyi, B. M. (2002). Responsible Fishing and Access Agreements in the Western Central Pacific (with B. M. Tsamenyi) – a report commissioned by the Forum Fisheries Agency, Honiara, Solomon Islands, May 2002, 130 pp.

Mfodwo, K and Tsamenyi, B. M. (1999). The bilateral fisheries agreements of the African Atlantic Region: an analysis of opportunities for intervention by WWF(US). A Report to WWF(US). July 1999, 65pp.

Mfodwo, K. (2006). Negotiating Equitable Fisheries Access Agreements – A Capacity-Building and Reference Manual for Developing Coastal States IUCN Project, Capacity Building for Negotiating Fisheries and Fisheries Partnership Agreements in SRFC Member Countries. December 2006. 420 pp.

<http://www.csrps.org/documents/doctechique/CSRP%20manuel%20en%20smv.pdf>.

Marine Resource Assessment Group (MRAG) (2005). Illegal, Unreported and Unregulated Fishing on the High Seas: Impacts on Ecosystems and Future Science Needs, report prepared for the High Seas Task Force and the Department for International Development, UK. Available at www.high-seas.org.

MRAG (2005). Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries, report prepared for the High Seas Task Force and the Department for International Development, UK. Available at www.high-seas.org.

MRAG and Fisheries Ecosystems Restoration Research, Fisheries Centre, University of British Columbia (2008). The Global Extent of IUU Fishing, Final Report, www.illegal-fishing.info/uploads/MRAGExtentGlobalIllegalFishing.pdf.

Notteboom, Theo and Rodrigue, Jean-Paul (2008). “Containerisation, Box Logistics and Global Supply Chains: The Integration of Ports and Liner Shipping Networks” Maritime Economics & Logistics 10 (152–174).

Results of the Review by the Commission on Sustainable Development of the Sectoral Theme of “Oceans and Seas”, Oceans and the Law of the Sea, Report of the Secretary-General, A/54/429, 30 September 1999.

Roheim, Cathy (2008). Seafood Supply Chain Management: Methods to Prevent Illegally-Caught Product Entry into the Marketplace.

Schmidt, Carl-Christian. (2005) “Economic Drivers of Illegal, Unreported, and Unregulated (IUU) Fishing.” 20 The International Journal of Marine and Coastal Law 479-507.

United Nations (2008). FAO. Fact Sheet: The International Fish Trade and World Fisheries, June 2008, www.fao.org.

UN General Assembly (UNGA) (1999). Fifty-fourth Session, Agenda Items 40(a) and (c), Oceans the Law of the Sea; Law of the Sea; Results of the Review by the Commission on Sustainable Development of the Sectoral Theme of “Oceans and Seas”, Oceans and the Law of the Sea, Report of the Secretary-General, A/54/429, 30 September 1999.

UNGA (2004). Fifty-ninth Session, Item 50(b) of the Provisional Agenda, Oceans and the Law of the Sea, Sustainable Fisheries, Including Through the Agreement for the Implementation of the

Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Related Instruments, Report of the Secretary-General, A/59/298, 26 August 2004.

Van den Bossche, P (2005). The Law and Policy of the World Trade Organisation: Text Cases and Materials. Cambridge University Press, 735pp.

Ward, JM, Kirkley, JE, Metzner, R, and Pascoe, S (2004). Measuring and Assessing Capacity in Fisheries. 1. Basic Concepts and Management Options, FAO Fisheries Technical Paper No. 433/1. Rome: FAO, 42pp.