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Using trade management
to combat IUU fishery
in African developing countries

- The EC regulation no 1005/2008
and its practical effects -

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Contents

SUMMARY	1
SAMMANFATTNING	3
ABBREVIATIONS	5
1 INTRODUCTION	6
1.1 Presentation of the subject	6
1.2 Purpose	6
1.3 Delimitations	7
1.4 Methodology	7
1.5 Material	7
1.6 Disposition	8
2 IUU FISHERY IN AFRICAN DEVELOPING COUNTRIES	9
2.1 Definition of IUU fishery	9
2.2 IUU fishing activities	10
2.2.1 <i>The present situation</i>	10
2.2.2 <i>Methods and outcomes</i>	11
2.3 MCS	13
2.3.1 <i>Definition</i>	13
2.3.2 <i>The present situation</i>	14
2.4 Governments, authorities and awareness	15
3 FRAMEWORK DEVELOPMENTS REGARDING HINDRANCE OF IUU FISHERY	17
3.1 General introduction	17
3.2 WTO rules on non-discrimination	17
3.3 The U.S. Lacey Act	18
3.4 The IPOA-IUU	19
3.5 The EC regulation no 1005/2008 on IUU fishery	20
3.5.1 <i>General background</i>	20
3.5.2 <i>Intended products</i>	21
3.5.3 <i>Traceability and certification requirements</i>	21
3.5.4 <i>Listing of vessels and States</i>	22
3.5.5 <i>Sanctions and port State measures</i>	23
3.5.5.1 Import refusal and seizure	23

3.5.5.2	Port access denial and designated ports	24
3.5.6	<i>Cooperative measures regarding developing countries</i>	24
4	TRADE MANAGEMENT IN THE LIGHT OF THE EC REGULATION AND NECESSARY MEASURES THEREOF	26
4.1	General introduction	26
4.2	Measures required by African flag States	27
4.2.1	<i>Fulfilment of traceability schemes and catch certification</i>	27
4.2.2	<i>Administrative and technical improvements needed</i>	29
4.2.2.1	Country examples	29
4.2.2.1.1	<i>Morocco</i>	30
4.2.2.1.2	<i>Senegal</i>	31
4.2.2.1.3	<i>Namibia</i>	31
4.2.2.1.4	<i>Mauretania</i>	32
4.2.2.1.5	<i>Mauritius</i>	33
4.2.2.2	Conclusions	34
4.3	EU's support to African developing countries concerning the new requirements	35
4.3.1	<i>General background</i>	35
4.3.2	<i>Comparisons with other areas</i>	36
4.3.2.1	Timber products	36
4.3.2.1.1	<i>Legislative situation</i>	36
4.3.2.1.2	<i>Pros and cons</i>	37
4.3.2.2	Food health provisions	38
4.3.2.2.1	<i>Legislative situation</i>	39
4.3.2.2.2	<i>Pros and cons</i>	40
4.3.3	<i>Import ban and WTO compliance</i>	41
4.3.3.1	Accepted discriminatory measures	41
4.3.3.2	Illustrative case	42
4.3.4	<i>Supportive measures needed to avoid trade barriers</i>	43
4.3.4.1	The present situation	43
4.3.4.2	Necessary measures and assistance	44
4.3.4.3	Conclusions	45
5	CONSEQUENCES FOR AFRICAN DEVELOPING COUNTRIES DUE TO THE EC REGULATION	47
5.1	Negative effects	47
5.2	Positive effects	48
5.3	Conclusions	48

6 FINAL REMARKS	50
BIBLIOGRAHPY	51
TABLE OF CASES	58

Summary

IUU fishery is an issue with global consequences, having severe impacts in several areas such as economy, environment and social well-being. The size of the problem is due to its nature hard to determine, but estimations has shown that the amount of IUU fish that circulate in trade is considerable.

African developing countries have poor economical possibilities to control and survey their waters and the authorities are often badly organized with high levels of corruption. Because of this, African developing countries suffer hard from IUU fishing activities and they are among the countries in the world that have most difficult to fight this problem.

Several legislative attempts have been made to try to combat IUU fishery, most of them focusing on trade management in different perspectives. The European Union has developed a new regulation in the area, EC regulation no 1005/2008, entering into force January 1, 2010. The intention with this regulation is to hinder fish and fish products with origin from IUU fishing activities to enter the European trade market. To achieve this, states and companies that wish to export products to the Union must have catch certificates and traceability schemes that ensure the legal origin of the products.

The extent of fish trade with the European Union varies widely between African developing states. Countries that have a large amount of vessels fishing for trade with the Union will have more costs for certifying all the catch than countries with less trade. The implementation of the new requirements will however have effects on all of these countries since barely any of them have sufficient systems and methods for certification and traceability, or for the validation of the same.

Having in mind the poor economy and technical situation in African developing countries, the new requirements set up in the regulation may create unjustifiable trade barriers regarding the trade with their legally caught fish since these countries may find it difficult to implement the provisions. The European Union may need to give extra support to these states regarding the implementation of the requirements in order to avoid that the provisions will function as trade barriers. The support should not only constitute of financial means, but also of education, technical assistance and perhaps extended implementation periods.

The provisions in the new regulation also have positive effects in African developing countries. Improvements have been noticed in both authority structure and cooperation, and in monitoring, control and surveillance. Above all, improvements have been noticed regarding the awareness of the severe consequences of IUU fishery. The intentions are that there eventually also will be improvements in areas of environment and fish sustainability.

Time will tell whether the requirements in the regulation will have mostly positive or mostly negative effects on African developing countries. The negative effects mainly refer to the difficulties with fulfilling the requirements. In general, these difficulties could be limited by supportive measures. The positive effects may show over time when practicing the requirements, but the intentions are that IUU fishing will be decreased and thereby improve economy, environment and social well-being.

Sammanfattning

IUU-fiske är ett problem med globala konsekvenser och som har allvarliga effekter inom flera områden, såsom ekonomi, miljö och socialt välbefinnande. På grund av dess natur är problemets omfattning svårt att klarlägga, men uppskattningar har visat att mängden IUU-fisk som cirkulerar inom internationell handel är enorm.

Afrikanska utvecklingsländer har få ekonomiska möjligheter att kontrollera och övervaka sina vatten och deras myndigheter är ofta dåligt organiserade med mycket korruption. På grund av detta drabbas afrikanska utvecklingsländer hårt av IUU-fiske och de är bland de länder i världen som har allra svårast att bekämpa detta problem.

Flera rättsliga försök har gjorts för att försöka bekämpa IUU-fiske, de flesta med fokus på handelsreglering i olika perspektiv. Europeiska Unionen har utvecklat en ny förordning inom området, EG-förordning nr 1005/2008, som trädde i kraft den 1 januari 2010. Avsikten med förordningen är att hindra att fisk och fiskprodukter med ursprung från IUU-fiske kommer in på den europeiska marknaden. För att uppnå detta måste länder och företag som önskar exportera varor till unionen ha fångstcertifikat och system för spårbarhet som säkerställer att varorna kommer från legala källor.

Omfattningen på fiskhandel med den Europeiska Unionen varierar stort mellan olika afrikanska utvecklingsländer. Länder som har ett stort antal fartyg vars fiskfångst transporteras till Unionen har större kostnader för att certifiera fångsten än länder med mindre omfattning på handeln. Fullgörandet av de nya kraven kommer dock att ha effekter på alla dessa länder eftersom knappt någon av dem har tillräckliga system och metoder varken för certifiering eller spårbarhet, eller för godkännandet av de samma.

Med tanke på den dåliga ekonomin och tekniska situationen i afrikanska utvecklingsländer, kan de nya kraven som ställts i förordningen skapa omotiverade handelshinder när det gäller handeln med lagligt fångad fisk, eftersom dessa länder kan ha svårt att implementera bestämmelserna. För att undvika att bestämmelserna fungerar som handelshinder kan Europeiska Unionen behöva ge extra stöd till dessa länder när det gäller fullgörandet av kraven. Stödet bör inte bara utgöras av ekonomiska medel, utan också av utbildning, tekniskt bistånd och möjligtvis längre tidsfrister för genomförandet.

Bestämmelserna i den nya förordningen har också positiva effekter i afrikanska utvecklingsländer. Förbättringar har noterats både i myndigheters struktur och samarbete, och i övervakning och kontroll. Framför allt har förbättringar noterats när det gäller medvetenheten om de allvarliga konsekvenser som följer av IUU-fiske. Förhoppningarna är att det efter hand även märks förbättringar i områden som miljö och hållbarhet för fiske.

Tiden måste avgöra om kraven i förordningen har mest positiva eller mest negativa effekter för afrikanska utvecklingsländer. De negativa effekterna innebär främst svårigheterna att uppfylla kraven och kan i allmänhet begränsas genom stödjande åtgärder. De positiva effekterna kan visa sig efter hand som kraven utövas, men avsikterna är att IUU-fiske ska minska och därmed förbättra ekonomi, miljö och socialt välbefinnande.

Abbreviations

EC	European Community
EEZ	Exclusive Economic Zone
EG	Europeiska Gemenskapen
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FLEGT	Forest Law Enforcement, Governance and Trade
FPA	Fisheries Partnership Agreement
GATT	General Agreement on Tariffs and Trade
ICCAT	International Commission for the Conservation of Atlantic Tunas
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
IUU	Illegal, Unreported and Unregulated (Fishing)
MCS	Monitoring, Control and Surveillance
NPOA-IUU	National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
SFP	Strengthening Fishery Product Health Conditions
SPS Agreement	WTO Agreement on the Application of Sanitary and Phytosanitary Measures
U.S.	United States of America
U.S.C.	United States Code
VPA	Voluntary Partnership Agreement
WTO	World Trade Organisation

1 Introduction

1.1 Presentation of the subject

Fish and products based upon fish are the world's most traded commodity in the food sector. Over 72% of the fish and fish products are exported to markets in Japan, the European Union and the United States of America, and approximately half of these traded products are harvested in developing countries.¹

Illegal, unreported and unregulated² fishing is a widespread issue that has severe impacts on global environment, economy and social well-being. It is in many views regarded as an international environmental and economic crime, involving trespassing and theft.³ IUU fishing is one of the most serious threats for the achievement of sustainability for fish resources. It undermines all international and national efforts taken to address this type of issue, and it challenges the survival of those who fish in accordance with existing conservation measures and other adopted requirements.⁴ It brings enormous profits to the operators, but only if the products are being traded. There are many controls and special requirements in aspects of safety and health of foods, but very few regarding the legal origin of fish and how it was harvested.

The initiative by the European Union in introducing the new regulation, EC regulation no 1005/2008,⁵ is one of the major measures taken to hinder trade with fish and products originating from IUU fishing. The regulation has negative consequences for all trading partners, in particular developing countries, when it comes to the implementation of the requirements. Hopefully, it will also bring positive effects regarding improvement and achievement of sustainability, welfare and development.

1.2 Purpose

This essay aims at clarifying the current situation of IUU fishery in African developing countries and what consequences the new EC regulation will have for these countries. The main purpose is to discuss and analyse whether the regulation will help African developing countries to combat IUU fishery, or if it creates trade barriers that hinder their trade with legally caught fish.

In order to achieve this purpose, the following issues are discussed throughout this thesis:

¹ State of WFA (2009), p. 95

² Hereafter IUU

³ Blue Book (2009), p. 242

⁴ IUU fishing regulation, foreword (3) & Le Gallic (2004), p. 2

⁵ Hereafter EC regulation – Note that the same regulation is referred to as IUU fishing regulation when used in footnotes!

- the current IUU fishery situation in African developing countries,
- the requirements in the EC regulation that need to be fulfilled,
- the current situation in African developing countries regarding the need of improvement in order to reach the requirements, and
- the need of support and the character of these measures.

The supportive measures that the EU might need to take in order to avoid the provisions from functioning as trade barriers, are discussed in a comparative manner. Other areas where trade restrictions and supportive measures have been implemented, together with a case where the use of import restrictions was tried, are discussed in order to elucidate necessary supportive measures and possible solutions.

1.3 Delimitations

The scope is limited to a discussion only including African developing countries, how they are affected by the new regulation and what the EU must do to hinder the regulation from becoming a trade barrier. The term ‘African developing countries’ does not refer to all countries in Africa with this status, but only to coastal States that may be affected by IUU fishery.

There will be no focus on IUU fishing or fish trade as such, except for the information given in the two following chapters, or any focus on the execution of the requirements in Member State ports in the Union. The discussion and analysis is based upon the EC regulation no 1005/2008, but only regarding the parts that are of relevance for the purpose of this thesis. Other legislations mentioned are not exhaustive in regard of trade management for IUU fishery, but relevant as examples in this paper.

1.4 Methodology

This thesis is primarily based upon a judicial discipline, and structured as a combination between description and analysis, having in mind the novelty of the subject. Gathered materials have been critically evaluated and then used to support the discussions, analyses and conclusions throughout the paper. In chapter 4, a minor comparative study is made with other areas to enable a better analysis of the support measures needed to avoid trade barriers.

Considering the nature of the scope, this thesis also includes disciplines derived from the environmental, political and scientific sectors, which are needed in order to provide necessary facts and background information.

1.5 Material

Given the freshness of the subject and issue, not much relevant material is available. There is some doctrine containing general background on the subject, but for deeper knowledge and information, one has to rely on reports, articles and field studies. Many of these sources do however not contain any discussion on the impacts of the EC regulation, which made

comparative studies and illustrative cases necessary in order to elucidate possible outcomes and required measures.

1.6 Disposition

The following chapter provides a general introduction to IUU fishing and its presence in African territory. Thereafter, in chapter 3, some brief developments in the framework regarding trade management to hinder the existence of IUU fishing products on markets are presented. These legal frameworks are not exhaustive in the area, but only mentioned since they do have some relevance for the discussion in this essay.

After these two chapters of general presentation of the issues and the legislations, chapter 4 will follow, containing deeper discussion and analysis of the intended purpose of the thesis. This chapter is outlined with comparative studies and exemplifying cases that will give substance to the analysis of the need of support regarding the implementation of the provisions in the new regulation and the required measures for African developing countries that may follow thereof. Chapter 5 contains statements and conclusions of the consequences for African developing countries that can be drawn from the discussion and analysis in chapter 4.

Finally, chapter 6 briefly summarises the IUU fishing issues discussed throughout the thesis, and contains some statements regarding the future.

2 IUU Fishery in African Developing Countries

2.1 Definition of IUU fishery

The term IUU fishery contains three different types of fishing activities:⁶

“Illegal fishing refers to activities:

(1) conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations,

(2) conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law, or

(3) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.”

Illegal fishing activities are usually practiced in two ways: either the operator is fishing in the territory of a State without having any licence, or the operator is fishing with a legal licence but is contravening the terms of this licence, for example by using illegal gears or fishing specific species in the wrong season.⁷

“Unreported fishing refers to fishing activities:

(1) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations, or

(2) undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.”

This type of fishing activity, namely unreported fishing, usually takes place within the territory of a coastal State where there is an obvious legislation

⁶ The three definitions are taken directly from IPOA-IUU, chapter II(3.1-3.3). The definition of IUU fishery that is to be found in the IUU fishing regulation, article 2, is based upon the definition in IPOA-IUU and is therefore not used as source here.

⁷ MRAG (2005), p. 10

and sovereignty that covers the fishing rights. However, it may take place on the high seas, if the area is covered by international arrangements or agreements for the conservation of fish resources.⁸

“Unregulated fishing refers to fishing activities:

(1) in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization, or

(2) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.”

The definition of unregulated fishing is rather clear. It includes fishing vessels that are not part of any regional agreements or that do not fulfil the requirements established by such agreements. Fishing on the high seas is also included, even if there are no agreements for that specific area, since States have obligations to use resources in a sustainable manner, both under customary law and under the United Nations Convention on the Law of the Sea, 1982.⁹

2.2 IUU fishing activities

2.2.1 The present situation

Countries that are most affected by IUU fishing are often those that do not have enough resources to handle the problems. African developing countries suffer hard from IUU fishing, especially regarding the number of non-licensed – and thereby non-reporting – vessels fishing in their exclusive economic zones¹⁰. It is estimated that the IUU fishing costs approximately \$1 billion a year for the Sub-Saharan African countries,¹¹ and the IUU fishing activities are almost of the same size as the legal fishing activities in these countries.¹²

One of the main reasons for developing countries being target to IUU fishery is their lack of capacity and lack of financial abilities to take measures against these kinds of activities. A great issue regarding implementation and enforcement of legal regulations in African countries is that they do not yet have any regulations to follow. If they do, most of them do not have the resources to finance simple equipment like vehicles or

⁸ MRAG (2005), p. 10

⁹ *Ibid.*, p. 11

¹⁰ Hereafter EEZ

¹¹ DFID/Defra (2007)

¹² Cullberg/Lövin (2009), p. 15

binoculars – many States do not have any patrol boats at all, and many of those that have it cannot afford the fuel – or to maintain trained personnel to do the patrolling and the legal work.¹³

The state and severity of IUU fishing in a country depends upon several factors. Firstly, the level of governance in the country plays a great role. Governance covers areas such as the state of human and political rights, bureaucracy, the regulative system and the level of corruption. The better these issues are taken care of, the lower are the risks of IUU fishing activities. Due to low economical capacities, most African countries are unfortunately suffering from high levels of corruption.¹⁴ Corruption can be defined as “Requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.”¹⁵, or more simply as “The abuse of public office for private gain.”¹⁶ Law enforcement personnel or patrol officers in African countries are often poorly paid and they may therefore easily do some ‘exceptions’ in return of some money. It has even been noticed by local organisations in Tanzania that patrolling officers are selling patrol boat fuel to IUU fishermen.¹⁷

Secondly, the value of the fish resources that exist in the waters has impact on the IUU fishing. High value resources that are common for export, for instance tuna and shrimp, are resources that are more attractive for IUU fishing vessels than local consumed species.¹⁸ Most African countries are rich in many kinds of high value species.

Finally, the country’s monitoring, control and surveillance¹⁹ capacity and its number of international agreements also have great impact. The MCS capacity depends upon EU agreements, regional agreements and memberships in organisations, since all these measures bring better investments in MCS activities, more vessels that act responsible are fishing in the waters, and the developing country receives better information and resources to invest in the combating of IUU fishing activities. The MCS capacity also depends upon the country’s geographical type, the size of the coastline and the size of the continental shelf, since a bigger area requires more investments.²⁰

2.2.2 Methods and outcomes

Naturally, IUU fishing operators do not report their catches, both due to the illegal nature of the activity itself but also because they rarely have licenses and do not want to bring this to the surface. Therefore, the total scale of the

¹³ Frankcom *et al.* (2008), p. 7

¹⁴ Most African countries are in the bottom half of Transparency International’s Corruption Perceptions Index 2009, which lists the States in the world in order of corruption status.

¹⁵ Corruption Convention, article 2

¹⁶ World Bank (1997), p. 8 - For further discussion on corruption definitions, see SFP Programme (2008), p. 20

¹⁷ Frankcom *et al.* (2008), pp. 16-17

¹⁸ State of WFA (2009), p. 54

¹⁹ Hereafter MCS

²⁰ MRAG (2005), pp. 41-43

IUU fishing problem is hard to calculate.²¹ By gathering information from various sources, such as fishing management authorities, port authorities, fishing industries and media, one can in general estimate the impacts and levels of the problem. Even though great efforts have been made in order to estimate and calculate the global amount of IUU fishing, the results are still vague; since there are no official statistics over IUU fishery, the spread of it is hard to assess.²²

When discussing the methods of IUU fishery, one must not only include the initial harvesting activity. The IUU fishery process includes several other aspects such as financing and provision of vessels, and landing and distribution of the products. The vessel that harvests the fish is seldom, or never, the vessel that arrives in port to unload the products. The catch is usually transferred at sea from the fishing vessels onto other cargo vessels and mother ships, which then are heading for port. During this process, it is not rare that illegally caught fish are mixed with legally caught fish, which makes the process of eliminating and tracking IUU fishery even harder. It is therefore important to not only get hold of the vessels and operators, but to also achieve some sort of documentation on the products, which is a rather new perspective in the fight against these activities.²³

When fish are mixed in the process and IUU fish are sold in the same final markets and at the same prices as legally caught fish, law-abiding fishermen suffer economically since they have higher costs than IUU fishermen, due to licences and report procedures.²⁴ As the situation has been, the operators of IUU fishery have not met enough hurdles and have practically been able to run their business without resistance or troubles. They have been taking advantage of a convenient flag registration and have thereafter been helped by insufficient cooperation between international bodies at all levels when it comes to MCS.

The catches made from IUU fishery are often shipped and distributed through complex chains, so that the origin of the products are more difficult to track. This type of organized, complex and large-scale activities is in some instances considered an international cross-border crime.²⁵ China is one example of a state where this type of activity passes; a large amount of IUU fish is exported to China, where the raw material is processed into fish products that are then re-exported internationally as legal Chinese products.²⁶

The fishing situation in African countries has in many ways taken new turns compared to some decades ago. The big industrial trawlers are a huge problem. Not only do they come into the close shore fishing area where the locals fish, but they also use huge nets taking extreme quantities of fish in short time leading to the areas being over-fished. Sometimes they even run over, cut or take fishing nets that the locals have put out. In Sierra Leone, one length of net costs about 300,000 leone and at least three lengths are

²¹ HSTF (2006), pp. 18 & 23

²² Le Gallic (2004), p. 1

²³ COFI (2007), p. 2

²⁴ HSTF (2006), p. 20

²⁵ COM (2007), pp. 5-6

²⁶ Roheim (2008), p. 4

needed to get enough fish to sell and live upon. The poor local fishermen are desperate and buy new nets on credit. They are then being demanded to pay the debts, but since the new nets also are destroyed, they have no income to pay off the loans with. The situation is so bad that the amount of fish that the locals get in their nets is so small that the income for that fish does not cover the costs for the fuel that was used to catch it, meaning that it is better to not fish at all since it brings losses instead of incomes.²⁷

In Mozambique, the Health Ministry distributes mosquito nets for protection against malaria. Instead of using these nets for their intended purpose, poor fishermen use the mosquito nets for fishing since they cannot afford to replace fishing gear that has been stolen or destroyed. The use of these fine nets does not only have effects on the sustainability of fish stocks, but one catches more or less everything in the waters that is necessary for the aquaculture.²⁸

As the water is being over-fished, the size of the remaining fish is becoming smaller, leading to the locals having to use nets with smaller holes. This is not only affecting the livelihood of the people who are getting less and smaller fish to eat and sell, but since the small fish is caught, there are no longer any juvenile fish that help the stocks to grow.²⁹

The IUU fishing activities in African waters do not only affect the fish sustainability but also the survival and social well-being of the local population that are dependant upon the fishery to survive. IUU fishing vessels are often armed in case of surveillance ships coming after them, and the type of business they are engaged in make them willing to take risks both in order to defend themselves and to eliminate competition.³⁰

The IUU fishery affects the artisanal fishermen in different ways; there are urgent conflicts going on between IUU fishing vessels and local artisanal vessels both in the aspect that the amount of fish possible to catch is decreasing and in the aspect of vessels running down each other. The outcomes of this are that the local population suffers economical and social losses due to lower incomes, since there are less fish available to catch and since they have broken equipment that they cannot afford to replace, and due to personal injuries or even loss of lives.

2.3 MCS

2.3.1 Definition

MCS can be defined as follows:³¹

“*Monitoring* involves the collection, measurement and analysis of fishing activity including, but not limited to: catch, species composition, fishing effort, by-catch, discards and area of operations. This information is primary

²⁷ Frankcom *et al.* (2008), pp. 8-11

²⁸ Fauvet (2008)

²⁹ Frankcom *et al.* (2008), p. 9

³⁰ MRAG (2005), p. 58

³¹ Flewwelling *et al.* (2002), pp. 7-8

data that fisheries managers use to arrive at management decisions. If this information is unavailable, inaccurate or incomplete, managers will be handicapped in developing and implementing management measures.

Control involves the specification of the terms and conditions under which resources can be harvested. These specifications are normally contained in national fisheries legislation and other arrangements that might be nationally, subregionally, or regionally agreed. The legislation provides the basis for which fisheries management arrangements, via MCS, are implemented.

Surveillance involves the regulation and supervision of fishing activity to ensure that national legislation and terms, conditions of access and management measures are observed. This activity is critical to ensure that resources are not overexploited, poaching is minimised and management arrangements are implemented.”

2.3.2 The present situation

In general, MCS in African countries has improved over the last years, with fisheries legislation and with inspectors having knowledge and training in the area. Even though the necessary equipment also has improved over the years, the lack of maintenance has hindered it from becoming useful.³² The most important and urgent need in the MCS sector is however human resources with knowledge and skills to take measures and to educate new people.³³ Without competent human resources, most material resources will be useless since nobody will have the knowledge on how to operate and maintain the equipment.

In Mozambique, one has acknowledged that the capacities to survey and control IUU fishing are very limited. The government has just one modern patrol boat for the entire 2,500km coastline, while ideally, there should be four vessels – three covering the coastline and one bigger patrolling the EEZ.³⁴

Due to poor and non-homogeneous MCS capacities there are believes that there are a number of ports of convenience along the African coastline, where IUU fishing operators may land their catches.³⁵ For this reason, it is important for African countries to cooperate in this issue in order to combat IUU fishery. However, due to wide differences in their MCS systems, capacities and situations, regarding for instance economy, bureaucracy and politics, sufficient cooperation and communication have been hard to achieve.³⁶

Most States have legislations that give the ports authority to take measures against the landing of IUU fish. Still, there are some challenges that most countries face, for instance the lack of trained inspectors and poor

³² Frankcom *et al.* (2008), p. 62

³³ *Ibid.*, p. 63

³⁴ Fauvet (2008)

³⁵ Frankcom *et al.* (2008), pp. 16-17

³⁶ *Ibid.*, pp. 59-60

communication between different national departments responsible for trade and fisheries. The States themselves have stated that they need to coordinate the port activities better, and to share their knowledge and equipment resources amongst each other.³⁷

The MCS efforts in African countries have, as mentioned, improved during the last years. With better knowledge and better cooperation, they may improve even more. The MCS may have improved, but so have the IUU fishing methods, and to fight IUU fishery one has to be a step ahead.³⁸

2.4 Governments, authorities and awareness

When studying the present legal situation in Africa, it is clear that most countries lack sufficient penalties and sanctions for the engagement in IUU fishery that may act as a deterrent. Few cases seem to end up in court and if they do, the sanctions are not sufficient to make the operators suffer economical losses. This gives the impression that IUU fishing is of low importance in the legal and criminal systems in many African countries.³⁹

The governments and authorities in African developing countries need education in order to get a changed attitude and behaviour. By improving the corruption situation and the knowledge about the impacts of IUU fishing activities, the governments might see the long-term benefits, both economical and environmental, by having a legal production in this sector.⁴⁰ The legislations and measures need to be transparent and public for reaching success, considering that non-public and confidential information often increases and facilitates corruption in, for instance, fisheries management.⁴¹ The countries need to scrutinize their governmental systems, so that fisheries administrations cooperate with trade, customs and sanitary authorities when it comes to sharing information and highlighting assumed illegality.⁴²

Except from educating the governments and the authorities, one also needs to educate the fishermen. The poor social and economical situation in African developing countries render low financial costs for the operators of IUU fishery, since the costs of crew, safety and working standards are low when people are desperate to get an income and therefore accept to work under bad conditions. One of the main problems that governments and authorities have with solving the situation in African countries is that there are disagreements over the decided management measures. Many fishermen, at all levels, do not agree with the rules since they do not see any individual gains and do therefore not follow them. This is most due to their lack of knowledge and understanding regarding the background and necessity of the

³⁷ Frankcom *et al.* (2008), p. 74

³⁸ *Ibid.*, p. 64

³⁹ *Ibid.*, p. 18

⁴⁰ *Ibid.*, p. 83

⁴¹ Standing (2009), p. 22

⁴² Report FPA 15/IUU/08 (2009), p. 121

legislations. The gap that exists between the legal decisions and the abidance of the rules needs to decrease.⁴³

In general, developing countries have tight budgets that do not allow any further education to make people and authorities aware of the seriousness of IUU fishery and its impacts on future fishing possibilities. This puts the implementation of legal frameworks and MCS systems low in priority.

If comparing efforts and measures taken to prevent, deter and eliminate IUU fishing all over the world, one can conclude that less action is taken in African countries in general compared to other continents, especially regarding the development of legal frameworks and the improvements of cooperative systems:⁴⁴

Region (number of specified responses in brackets)	Improvement of MCS (77.6%*)	Licensing system and vessel register (22.4%*)	Legal framework improvement (16.3%*)	Cooperation between countries & authorities (16.3%*)	NPOA-IUU development / Compliance Agreement (14.3%*)
Africa (12)	45.0	25.0	10.0	10.0	5.0
Asia (4)	60.0	20.0	20.0	20.0	
Europe (3)	100		33.3	66.7	
Latin America & Caribbean (13)	71.4	28.6		7.1	14.3
Near East (3)	66.7	33.3	33.3		
North America (2)	100		100	100	100
Southwest Pacific (2)	33.3		33.3	33.3	66.7

* The value in brackets indicates the percentage of countries that reported to have used this specific measure as a method to combat IUU fishing activities.

⁴³ FAO Report No. 859 (2008), p. 3(point 21)

⁴⁴ COFI (2007), p. 4. All figures are in %.

3 Framework Developments Regarding Hindrance of IUU Fishery

3.1 General introduction

The framework that exists with purpose to hinder or fight IUU fishery is far from sufficient. Several aspects simplify, or ‘encourage’, IUU fishery by not offering enough risks and costs for the operators of these activities. The key driver for IUU fishery is the possibility to make profits since the risks are low and the penalties light. The sanctions and taxes are not sufficient, and the management and fiscal rules are inappropriate. One can say that IUU fishery is dependant upon two criteria: the lack of regulatory frameworks and a profitable economic situation, whereas changes in these two areas are necessary in the fight against IUU fishery.⁴⁵

The following rules and legislations include different aspects for the hindrance of trade with products originating from IUU fishery. There are several other efforts that have been made in the area, but they cannot all be mentioned here. These four legal frameworks were chosen since they are of relevance for the purpose of this thesis and bring substance to the coming discussions. The provisions in the EC regulation will get extra focus and examination since this is the legislation that is up for discussion in this paper.

3.2 WTO rules on non-discrimination

The World Trade Organization⁴⁶ was established in 1995 as a successor to the General Agreement on Tariffs and Trade⁴⁷. GATT and WTO have created a strong trading system that was developed through several negotiations held under GATT. One of the last negotiations, the Uruguay Round 1986-1994, led to the creation of the WTO.

The rules that exist under the WTO are agreed upon by the Member States. These rules oblige members to practice a non-discriminatory trade, ensuring each country that their exports will get fair treatment in other markets. The GATT, which was revised during the Uruguay Round, is since the start in 1995 the main agreement for trade in goods under the WTO.⁴⁸

One of the most important principles under the WTO is that trading should be non-discriminatory, meaning that a State is not allowed to give trading benefits to some States while other States have less favourable

⁴⁵ Le Gallic (2004), p. 4

⁴⁶ Hereafter WTO

⁴⁷ Hereafter GATT

⁴⁸ WTO in brief (2009), pp. 3-4

conditions.⁴⁹ Additionally, a State is not allowed to treat national products more favourable than imported products. However, this latter rule does not apply until the foreign product has entered the national market.⁵⁰ Another principle is that developing countries should be given more time to adjust to new rules and trade regulations.

Some exceptions from the non-discrimination rules are accepted. A State is for example allowed to set up special conditions for countries within a free trade area, to treat developing countries more favourable regarding for instance implementation periods, or to take special trade measures that benefit the conservation of exhaustible natural resources.⁵¹

3.3 The U.S. Lacey Act

The U.S. Lacey Act was developed in 1900 in the United States as an instrument to regulate the trade with birds, wild animals and wildlife products like plants or timber. The Act makes it a federal crime to use these products for commercial purposes if the products origin from an act that is in violation of the laws in a State. In 1926, similar trade rules for fish were addressed by the enactment of the Black Bass Act. The two acts were later joined under the so-called Lacey Act Amendments of 1981. This act is still one of the U.S.' primary laws regarding trade in illegally taken species.⁵²

The requirements of the act are implemented in the United States Code. The provision in 16 U.S.C. § 3372(a)(2)(A) states that “it is unlawful for any person to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or wildlife taken, possessed, transported or sold in violation of any law or regulation of any State or in violation of any foreign law.”⁵³ An example of this unlawfulness may be that the fishing vessel does not have a licence when this is required by the coastal State.⁵⁴ The term the act uses, “any law or regulation of any State or [...] any foreign law”, refers to all regional, national or international laws and treaties regarding fish trade and fish resource protection that the State has adopted.⁵⁵

The Lacey Act is a non-discriminatory regulation, giving the same treatment to all products and does not favour domestic products at the expense of foreign products.⁵⁶ Until the new EC regulation was developed, few States had any framework on trade restrictions for IUU fish that could be compared with the Lacey Act in the United States.⁵⁷

⁴⁹ GATT, article I

⁵⁰ *Ibid.*, article III

⁵¹ Understanding the WTO (2008), pp. 10-11 & GATT, article XX

⁵² Ortiz (2005), pp. 2-3

⁵³ *Ibid.*, p. 4

⁵⁴ MRAG (2005), p. 86

⁵⁵ Ortiz (2005), p. 31

⁵⁶ *Ibid.*, pp. 22-23

⁵⁷ HSTF (2006), p. 30

3.4 The IPOA-IUU

The International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing⁵⁸, adopted in 2001 by the Food and Agriculture Organization of the United Nations⁵⁹, was developed because of several failed global efforts in combating IUU fishery by creating trade restrictions. It was created in the context of the Code of Conduct for Responsible Fisheries that the FAO adopted in Rome 1995.⁶⁰ The measures in the IPOA-IUU are based upon four main strategies:⁶¹

- *flag State control*, meaning that all States shall monitor activities by vessels that fly their flag,
- *coastal State control*, meaning that all States shall monitor activities that take place in their waters,
- *port State control*, meaning that all States shall monitor and inspect the transit of goods in their ports, and
- *market control*, meaning that all States shall monitor goods traded to, from or on their territory.

The IPOA-IUU is a voluntary non-binding document,⁶² but it gives all States the possibility to implement additional regional, national or international restrictions and measures that may enable the combat of IUU fishing activities. The IPOA-IUU is considered the international instrument that in the best way handle IUU fishing problems.

Every State should implement a National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing⁶³ in order to fight these illegal activities.⁶⁴ States that have taken national measures to develop a NPOA-IUU have critical analysed their situation and then decided to tackle their IUU fishing situation by using transparent and comprehensive tactics.⁶⁵ Adopting a NPOA-IUU is an essential strategy for any government who wishes to combat IUU fishery. It should be the core measure in all MCS systems and activities, and it facilitates the implementation of other legal frameworks for fishery management.⁶⁶

However, it is clear that all implemented measures must follow the requirements that are set up by the WTO and that they are clear and non-discriminatory for individual States. The initial purpose with the development of the IPOA-IUU was to enable trade restrictions that may hinder trade with IUU fish, without creating any discriminatory trade barriers for legally harvested fish.⁶⁷

⁵⁸ Hereafter IPOA-IUU

⁵⁹ Hereafter FAO

⁶⁰ IPOA-IUU, chapter II(4)

⁶¹ Report FPA 15/IUU/08 (2009), p. 2

⁶² IPOA-IUU, chapter II(4)

⁶³ Hereafter NPOA-IUU

⁶⁴ IPOA-IUU, chapter IV(25)

⁶⁵ Frankcom *et al.* (2008), p. 61

⁶⁶ *Ibid.*, p. 82

⁶⁷ Implementation of IPOA-IUU (2002), pp. 47-48

3.5 The EC regulation no 1005/2008 on IUU fishery

3.5.1 General background

The former existing regulations in the European Union could not guarantee that fish with origin from countries other than Member States was caught in a legal way. As the world's largest market for fish and fish products, the EU concluded that it had a responsibility to hinder IUU fish products from circulating in its territory.⁶⁸ For this reason, a new legal framework was introduced which entered into force January 1, 2010.⁶⁹ The intention with the new regulation is to hinder IUU fishing from being a profitable business by putting up two main requirements for the import of fish and fish products. Firstly, exporters must have certificates that indicate the origin of the fish and the manner in which it was caught, and secondly, flag States and operators that do not fulfil their obligations under international laws will get sanctions.⁷⁰

EU is one of the biggest players regarding international trade with fish and fish products, accounting for about one third of the global fish trade. About 19% of the fish that is consumed within the Union, representing approximately 800,000 tonnes, is imported from Africa.⁷¹ However, the legal framework on fish product origin has been weak. It is estimated that the annual quantity of IUU fish and fish products that are imported to the EU is about 500,000 tonnes to a worth of €1.1 billion.⁷²

The IUU fish enters EU through several different channels: it comes in directly from fishing vessels, it comes in through poorly controlled ports, it is transferred and mixed with other fish at sea, and it may be imported from non-harvesting countries.⁷³ The problems arising when importing the products from non-harvesting countries are that the country from where the import is made may be considered a good and reliable State, while the country from where the fish originates may be a notorious IUU fishing State. By using these middle-hand States, the traceability of the fish becomes more complicated and complex.⁷⁴

The main goal with the new regulation is for the Member States in the EU to have a legal framework that allow specific actions. What needs to be done is to trace and document fish origin and to ensure that EU ports only land and trade with fish that has been certified with reliable origin and is legally harvested.⁷⁵ The regulation aims at eliminating loopholes that have

⁶⁸ IUU fishing regulation, foreword (9)

⁶⁹ *Ibid.*, article 57

⁷⁰ State of WFA (2009), p. 73

⁷¹ DFID/Defra (2007)

⁷² COM (2007), pp. 7-8

⁷³ A non-harvesting country refers to a country that imports raw fish material from a State, then process it into a specific product, and then exports it to third countries. See further definition in the IUU fishing regulation, article 2(12), there referred to as 'indirect importation'.

⁷⁴ DFID/Defra (2007)

⁷⁵ HSTF (2006), p. 30 & DFID/Defra (2007)

existed in the fishing business and that IUU fishing operators have taken advantage of, for instance flag registration, profitability opportunities, lack of cooperation between States and organisations and poor MCS systems.⁷⁶

In contrast to the U.S. Lacey Act – and what the EC regulation has been criticised for – it will not make offences or sanctions for the import or selling of IUU fish, but will instead hinder the entrance of it into the EU market.⁷⁷ In this aspect, the EC regulation puts more focus on the hindrance of import by using import restrictions and barriers, than on directly preventing IUU fishing to occur in the first place.

The regulation aims at being non-discriminatory by applying equally to all States, including Member States of the Union. The regulation does not interfere with national organisations and existing laws and inspection regulations in third countries are not affected, only in the way that the national governments and authorities may need to apply them in order to fulfil the provisions in the EC regulation.⁷⁸

3.5.2 Intended products

Not all fish species and fish products are included in the certification requirements. The regulation excludes some specific species and processed products from the definition of fish and fishery products, which are listed in Annex 1 in the regulation.⁷⁹ This includes for instance fresh water fishery products, ornamental fish and mussels. What is not listed in Annex 1 is supposed to be regarded as subject to the regulated requirements.

3.5.3 Traceability and certification requirements

Everyone who wishes to export fish or fish products to the EU must ensure that valid certificates follow with the fish products.⁸⁰ The main goal with the certification and traceability systems is to ensure that port access only is authorised for third country fishing vessels that are able to provide sufficient information on the legal origin of their fish products.⁸¹

The exporting State must have in place “national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures”.⁸² The flag State must establish competent authorities that have the power and possibility to validate and attest the certificates’ accuracy in a way that the EU requires. However, there are no stated criteria for the status of the validating authority in that State. It is then up to the authority to validate that the catches of fishing vessels are made in accordance with current international conservation measures and other legislation.⁸³

⁷⁶ COM (2007), pp. 4-5

⁷⁷ Baumüller *et al.* (2009), pp. 7-8

⁷⁸ Report FPA 15/IUU/08 (2009), pp. 2-4 – See e.g. IUU fishing regulation, article 1(3), article 2(13) & foreword (26)

⁷⁹ IUU fishing regulation, article 2(8) & 12(5)

⁸⁰ *Ibid.*, article 12

⁸¹ *Ibid.*, foreword (10)

⁸² *Ibid.*, article 20(1)

⁸³ *Ibid.*, article 12(3-4)

The new EC regulation does not separate different types of fishing but uses a general definition that applies to all activities and situations. In developing countries, grand parts of the fish are caught by smaller, local fishing boats. Since these fishermen usually have no education in the necessity of catch certification, one may guess that these people find it difficult to fulfil the conditions needed to get valid certificates.⁸⁴ Since there are costs and technical needs for the implementation of traceability and catch certification systems that are not in relation to the amount of products that origins from these smaller businesses, there is a risk that these fishermen will not be able to fulfil the provisions.⁸⁵ However, the EU has considered this factor, and therefore there is a special condition for those fishing with smaller vessels, stating that they only need a simplified certificate.⁸⁶

The traceability requirement becomes clear regarding the re-exportation of fish products. If the fish products have been processed in a non-harvesting country, the catch certificate of the products' legal origin must also be accompanied by a document ensuring that the products have not been processed in a non-compliant manner.⁸⁷

3.5.4 Listing of vessels and States

One method that is used in order to categorise IUU fishing activities is to list both vessels and States that do not conform to international regulations or that in other terms commit illegal acts against fish conservation. Together with the catch certification, the lists of IUU fishing vessels⁸⁸ as well as the lists of non-cooperating States⁸⁹ will be important parts in order to achieve the intended purposes with the regulation. The listing may only take place required that there are sufficient suspicions for the vessel's engagement in IUU fishing activities, or that the flag State apparently has not taken enough action to get hold of the problem. The purpose with the listing is that everyone should be aware of non-complying vessels and States so that one can keep an extra eye on them, and finally force them to comply with agreements and legislations.⁹⁰

Before a fishing vessel is listed, the owner of the vessel and its operator have to be informed about the reasons for the listing. At the same time, the State where the vessel is flagged has to be informed that it has to take measures to stop the vessel from engaging in IUU fishing activities, for instance by withdrawing the vessel's registration or license.⁹¹ Under the listing stage, the flag State shall have the possibility to present measures that is taken in order to hinder the IUU fishing activity and to avoid the listing if the activity is stopped during the listing process.⁹²

⁸⁴ Diagne (2009)

⁸⁵ Report FPA 15/IUU/08 (2009), p. 115

⁸⁶ Implementation of IUU fishing regulation, article 6

⁸⁷ IUU fishing regulation, article 14(1-2)

⁸⁸ *Ibid.*, article 27

⁸⁹ *Ibid.*, article 33

⁹⁰ *Ibid.*, foreword (24-25)

⁹¹ *Ibid.*, article 27(2&6b)

⁹² *Ibid.*, foreword (28)

The removal of a vessel from the list requires measures taken from the flag State, the vessel operator or the vessel owner, and these requirements are very strict. To be removed from the list, any of the three above parties need to provide sufficient evidence that the IUU fishing activity no longer takes place.⁹³ What the evidence should consist of is not stated, but it is up to the one proving the legality of the vessel's activities to decide what evidence that is of value.

The listing and removal of non-cooperating States is more or less based upon the same methods and criteria as the listing of non-cooperating vessels.⁹⁴

3.5.5 Sanctions and port State measures

The ground for IUU fishing operations is the profitability, and experts generally agree that one important tool that may hinder this is the application of sanctions.⁹⁵ The level and the nature of the sanctions should be in appropriate relation to the crime committed, taking into account aspects as the value of the illegally caught fish, the repetition of the activity, and the harm caused to the fish resources and the environment.⁹⁶ Not only may direct monetary sanctions be used, several other effective tools are available.

The most important part of trade management in accordance with the EC regulation, is to ensure that IUU fish does not enter the EU territory, and the major players to ensure this are the port States. Port measures in combination with traceability and catch certification will render extra costs for those involved and will make it difficult to land IUU fish. The intentions are that this will lead to an inability to trade with IUU fish.⁹⁷

The port States have several tools available when it comes to the hindrance of trade for IUU fishing vessels:⁹⁸

- denial of port access altogether,
- prohibiting the landing, transshipment or processing of catch,
- seizure and forfeiture of catch,
- prohibiting the use of port services, such as refuelling, resupplying and repairs, and
- prohibiting the sale, trade, purchase, export or import of IUU fish.⁹⁹

3.5.5.1 Import refusal and seizure

One non-direct monetary sanction to be applied is import refusal. This sanction may be used if the exporter does not have sufficient certification in place, for instance if the certificate does not correspond with the products

⁹³ IUU fishing regulation, article 28

⁹⁴ *Ibid.*, article 33-34

⁹⁵ CFFA (2007)

⁹⁶ IUU fishing regulation, foreword (34)

⁹⁷ Blue Book (2009), p. 247

⁹⁸ IUU fishing regulation, article 4(2)

⁹⁹ COFI (2007), p. 6 – The measures mentioned are not exhausting, there are also measures regarding e.g. initiating of criminal law proceedings, but these measures are not discussed in this thesis.

that are intended to be exported or if it lacks required information, if the validation by an authority has not been correctly performed, or if the vessel or State is listed as non-cooperating.

The products that are hindered from being imported may be confiscated and then destroyed or sold and used for charity reasons.¹⁰⁰ Even though the possibility to seize and forfeit illegal catches is stated to be a more useful tool than monetary penalties, since the profit for the IUU fish often exceeds the penalties, it will not solemnly serve as a powerful tool to make IUU fishing operators follow legal frameworks. Concerning seizure, the most useful tool is perhaps the seizure of the IUU fishing vessel, since this will hinder the operators from continuing their business.¹⁰¹

3.5.5.2 Port access denial and designated ports

Another effective tool that port States may practice is to deny vessels engaged in IUU fishing to enter port.¹⁰² This will not only hinder the vessel from landing its fish, but it will also hinder the vessel from using services in port, such as communication device or maintenance and repair services, and it will hinder the vessel from filling up with supplies like fuel and food provisions or to change the crew onboard.¹⁰³ Port access denial will bring additional costs to the IUU fishing vessel, for instance extra fuel due to deviation to other ports, which may be a deterrent that will stop the operation of IUU fishing vessels.¹⁰⁴

What is of great importance in order to make this a valuable and effective tool in the fight against IUU fishing is that all States apply the rules and standards so that there will be no ports of convenience where denied IUU fishing vessels can land the fish. If vessels that are denied access to port easily can go elsewhere, the efforts made by complying port States will be undermined.¹⁰⁵ For this reason, third country fishing vessels who would like to export fish or fish products to the Union must use designated ports that the Member States of the Union have chosen.¹⁰⁶ To ensure a system without loopholes is necessary in order to fulfil the intended purposes with the EC regulation.¹⁰⁷

3.5.6 Cooperative measures regarding developing countries

The EC regulation states that one shall take into account the needs and capacities of developing countries regarding the implementation of the catch certification.¹⁰⁸

¹⁰⁰ IUU fishing regulation, article 18(1&3)

¹⁰¹ Ortiz (2005), p. 23

¹⁰² IUU fishing regulation, article 36(2)

¹⁰³ *Ibid.*, article 37(6-7)

¹⁰⁴ Le Gallic (2004), p. 9

¹⁰⁵ FAO Report No. 859 (2008), pp. 6(point 36) & 8(point 47)

¹⁰⁶ IUU fishing regulation, article 5(1-2)

¹⁰⁷ Gustafsson (2006), p. 6

¹⁰⁸ IUU fishing regulation, foreword (14)

When listing non-cooperating States, one should also consider developing countries and recognize their capacities regarding governmental efforts and possibilities.¹⁰⁹ Even though these countries are objects for the listing of non-cooperating States, one has to take into account their situation and consider how effective they use their means to stop IUU fishing activities.

The EU shall in accordance with the EC regulation, give developing countries appropriate administrative support that will facilitate their implementation of provisions and systems for traceability and catch certification. The cooperative measures shall for instance ensure that the developing country's imported fish and fish products comply with laws and regulations regarding conservative measures. They shall also facilitate the process with the development of traceability schemes and encourage the implementation of a system for information exchange between authorities.¹¹⁰ It is not stated how these cooperative measures are supposed to work in practice, which may be seen as a weakness in the regulation.

¹⁰⁹ IUU fishing regulation, article 31(5d&7)

¹¹⁰ *Ibid.*, article 20(4)

4 Trade Management in the Light of the EC Regulation and Necessary Measures Thereof

4.1 General introduction

It is a general international agreement that one of the strongest weapons for combating IUU fishery is to block illegally caught fish from entering international trade and thereby stopping the financial profits that are the motives for the business. Except from hinder IUU fishing, trade measures may also be a negotiating tool in order to make flag of convenience States to better comply with international rules and commitments.¹¹¹

One has not been able to calculate or gather any precise data on how much of the fish products that circulate in international trade that originate from IUU fishing activities. Tuna and shrimp are two of the most internationally traded high value species, and are thereby also known as popular targets for IUU fishing operators, as mentioned in chapter 2.2.1. For this reason, it can be assumed that the IUU fish quota in international trade is prominent for these specific species.¹¹² It is estimated that the worldwide value of IUU tuna each year reaches numbers of approximately \$548 millions.¹¹³ Due to its huge importation of fish and fish products, the EU represents an attractive market for all types of fish, legal as well as illegal. The European Commission has estimated that approximately 10% of the annual seafood imports can be sourced as illegally caught, representing about €1.1 billion.¹¹⁴

As the world's largest importer of fish and fish products, the European Union has taken one of the first steps by introducing the new regulation on IUU fishery. When developing such regulations, it is of great importance that the trade measures are based upon clear and well-defined criteria and that there is a transparency in the system so that all States are well aware of the rules and that the rules are carried out in a fair and proper manner.¹¹⁵

A burden falls on the port States to prevent the landing of IUU fish, to survey that there are valid certificates and to enforce sanctions. There will also be a burden on the flag States, to fulfil the requirements set up by the Union. This may be extra tough for developing countries that have limited financial and technical possibilities. Nevertheless, they must be able to

¹¹¹ Blue Book (2009), p. 242

¹¹² Implementation of IPOA-IUU (2002), p. 47

¹¹³ HSTF (2006), p. 18

¹¹⁴ DG Mare (2009) & COM (2007), pp. 7-8

¹¹⁵ Le Gallic (2004), p. 10

ensure that the certificates are trustworthy in order to continue to trade with legally caught fish.¹¹⁶

Since the purpose with this thesis is to discuss the EC regulation and its practical effects and impacts on African developing countries, this chapter will not involve any burden or duties for port States in the EU.

4.2 Measures required by African flag States

When developed countries establish legal frameworks that will hinder import of illegally caught fish, by requiring traceability and certification of the catches, developing countries will, at least initially, suffer economical losses from their trade with legal fish. This is due to their incapacity to handle the new requirements that their trade partners have initiated.¹¹⁷

This subchapter aims at discussing the specific needs and issues that African developing countries may face when implementing trustworthy catch certification systems and traceability schemes.

4.2.1 Fulfilment of traceability schemes and catch certification

EU's requirements, namely that fishing vessels must have trustworthy traceability schemes and catch certificates over the origin of the landed fish, have in practice two sides for African developing countries: the possibility to fight IUU fishery on the one hand, and the issues with ensuring sufficient documentation on the other hand.

To import fish and fish products to the EU, there must be certificates that declare the initial origin of products and raw materials. Except making it possible for importers to ensure the legal origin of products, the certificates may also enable for distributors and consumers to make responsible choices for the products they sell or buy. If the legal origin of the products can be ensured by catch certification, the products can also be labelled as 'fair', which help consumers to choose better products. In this way, the amount of IUU fish products that exist on the market will decrease.¹¹⁸

Data and management measures over artisanal fishing vessels, such as the registration of numbers of vessels and their type of catches, are usually poor or incomplete in African developing countries. Even though the EC regulation only requires simplified catch certification for smaller vessels,¹¹⁹ their catches still need to be certified and traceable if the fish is intended for the European market. It may be costly and difficult to find an effective system to get hold of this problem, but still, it is necessary.¹²⁰

There are several different types of certification systems. A catch-oriented system, like the bluefin tuna catch documentation programme of

¹¹⁶ State of WFA (2009), p. 71

¹¹⁷ *Ibid.*, p. 73

¹¹⁸ Blue Book (2009), pp. 396-397

¹¹⁹ Implementation of IUU fishing regulation, article 6

¹²⁰ Standing (2009), p. 24

the International Commission for the Conservation of Atlantic Tunas¹²¹, is used primarily to ensure that the harvesting of the fish is made in accordance with existing regulations and conservation measures.¹²² The EC regulation seems to be based upon ICCAT schemes and similar methods.¹²³ It is not stated in the regulation that the catch certificate must be made in a specific way. As long as it contains the required information and is validated by a competent authority in the flag State, it should be sufficient.

To guarantee the legal origin in the catch certificates, there must be trustworthy traceability schemes available. EU has adopted a regulation on food safety and health, stating that traceability is the ability to “trace and follow a food, feed, food producing animal or substance intended to be, or expected to be incorporated in a food or feed, through all stages of production, processing and distribution”.¹²⁴ One issue with using trade restrictions to hinder IUU fishing is to ensure a correct traceability over the products. To enable authorities to identify shipments and harvesting areas, the product must be distinct and one has to be certain of its origin. The most troublesome issues will be that many products are similar, which may make them hard to distinguish in the process.¹²⁵

In general, three critical issues need to be solved in order for a traceability system to work smoothly. There need to be compatibility and communication between all authorities and administrations for a successful transfer of data. There need to be a standardization of collected data in order to enable storage and preservation of information for future identification. Finally, there need to be a method for tracing units, both whole fish and processed fish. This means that if whole fish is processed the data over the origin must be stored under the data of the new processed unit so that the traceability for the individual contents is not lost.¹²⁶ To be able to solve these issues, there is a need of technical knowledge and financial possibilities and in many African developing countries this is a great problem at present.

Due to severe corruption in many African countries, there is a risk that a black or secondary market develops for catch certificates, where valid certificates that ‘transform’ IUU fish into legally harvested fish can be bought. The existence of this risk must be taken into consideration by national governments and authorities, and they need to come up with a strategy or a plan on how to hinder potential misuse of valid catch certificates.¹²⁷

The EC regulation does not require that there are any developed MCS systems in the flag State, but such systems will definitely simplify the traceability and the validation of the certificates. Most African developing countries do have some type of legislation handling fishery activities, but due to governmental priorities and poor financial and technical capacities,

¹²¹ Hereafter ICCAT

¹²² Clarke (2009), p. 48

¹²³ *Ibid.*, p. 72

¹²⁴ Food safety regulation, article 3(15) & Blue Book (2009), p. 395

¹²⁵ MRAG (2005), pp. 85-86

¹²⁶ Roheim (2008), p. 6

¹²⁷ Report FPA 15/IUU/08 (2009), p. 115

the enforcement of these legal frameworks is poor or even non-existing. The gap between theory and practice has to be closed, and in these countries, investments in MCS will most likely be necessary.¹²⁸

The impacts of IUU fishery in African developing countries are widespread in several areas, as discussed in chapter 2. The hard issue for African developing countries is to fulfil the EU requirements in order to be able to trade with their legally caught fish. Most of these countries already struggle with tight budgets and there are few financial possibilities, both to strengthen the MCS capacities in order to stop IUU fishing vessels, and to implement technical methods of ensuring trustworthy catch certificates and traceability schemes. If the latter requirement cannot be reached, the State will suffer loss of incomes because of hindered trade with the legal catches.¹²⁹

Most of the countries lack administrative, technical and scientific capacities and have troublesome issues with infrastructure and authorities. This may have the consequence that the costs to fulfil the requirements exceed the profits that may be made from legal exports.¹³⁰

4.2.2 Administrative and technical improvements needed

4.2.2.1 Country examples

Generally speaking, there are three measures that countries need to take to fulfil the certification requirements in the EC regulation: to define a control system, to define a catch certification system and to ensure resources for the validation.¹³¹

For African developing countries, these measures and issues complicate the implementation of the requirements. Firstly, the MCS capacities are already over-loaded or non-existing. Secondly, the traceability in the distribution chain is complex due to much onshore distribution because of local and artisanal small-scale fishermen. Thirdly, the authorisation is poor, with few competent authorities that seldom are located where the catch and landing are taking place.¹³² According to the EC regulation, the flag State must have competent authorities that can attest the accuracy of fish and fish product certificates, as well as national arrangements that enable the enforcement of the requirements.¹³³ For African developing countries, this may take some time to reach since the fisheries control is poorly developed from the beginning.

The following subchapters will illuminate the situation in some African countries and clarify the need of improvement together with troublesome issues that may follow thereof. These specific African countries were

¹²⁸ Report FPA 15/IUU/08 (2009), p. 104

¹²⁹ Blue Book (2009), p. 251

¹³⁰ *Ibid.*, p. 409

¹³¹ Roheim (2008), p. 6

¹³² Report FPA 15/IUU/08 (2009), pp. iv-v

¹³³ IUU fishing regulation, article 20

chosen since they have different fish trade perspectives with the EU and since they show a variety of societies and IUU fishing issues.

4.2.2.1.1 Morocco

EU is the main export destination for Moroccan fish and fish products, representing 52% of the total exported value.¹³⁴ The Moroccan fishing fleet that needs catch certifications for trade with EU includes a large amount of vessels; there are about 330 active vessels in the industrial sector, about 1,800 active vessels in the coastal fleet, and about 14,200 small-scale vessels. Many small-scale vessels only supply EU with fresh fish. The vessels land the catches in Moroccan ports and the fish is then transported to the Union by road. The catch certification needs to be effective and fast, since much fresh fish is coming into the Union.¹³⁵

Morocco should not face any major difficulties concerning the conformation to the new requirements. There are already tools available to enable the authorities to verify certificates.¹³⁶ Morocco does have MCS systems that can provide necessary tools and information to the competent authorities that shall validate certificates. Vessel registration and fishing licensing system exist. When fish catches are landed in ports, there are frequent inspections of catch logbooks and landing declarations.¹³⁷

However, there is a need to develop better and more effective administrative systems for the catch certification regarding the validation and the investigation of suspected crimes. It is also necessary to ensure that the authorities are included in the entire product procedure before exportation. As the situation is today, the responsible authorities have no specific legal rights to trace products that once have been sold abroad, why it is important that they have these opportunities before exportation. As a party to regional arrangements, Morocco has procedures for control measures, for instance regarding octopus. Ensuring similar systems that cover all fish products would require that every company that process fish keeps records over the income and outcome of material. In general, one can conclude that the exchange of information between different administrative bodies needs to be improved.¹³⁸

Regarding the re-exportation of fish products, when Morocco has imported raw material, processed it and then exports it to the EU, Morocco needs to develop better traceability systems in order to ensure and control the legality of imported materials. This may for instance mean that imported products must be landed in Moroccan ports with a legal catch certificate. This type of system is not yet in place.¹³⁹

¹³⁴ Report FPA 15/IUU/08 (2009), Annex 7, p. 4

¹³⁵ *Ibid.*, pp. 57 & 60-62

¹³⁶ *Ibid.*, Annex 7, pp. 11-12

¹³⁷ *Ibid.*, pp. 60-62

¹³⁸ *Ibid.*, pp. 60-62

¹³⁹ *Ibid.*, pp. 60-62

4.2.2.1.2 Senegal

The EU is the main market for Senegal fish and fish product exports.¹⁴⁰ The fishing fleet in Senegal is divided between two bigger categories: the industrial fleet and the artisanal fleet. In 2007, the number of licensed vessels in the industrial fleet reached approximately 130. The dimension of the artisanal fleet is not certain, but one has estimated that it comprises between 13,000-15,000 vessels of different sizes.¹⁴¹ The fishing activities of artisanal vessel operators are therefore largely unregulated.¹⁴² The vessels in the artisanal fleet use more primitive catch methods and they do not have any sanitary conservation methods except for salt or ice.

The Senegalese re-exportation of processed fish products is yet very limited. However, this market may increase in the future, if the fish supply from domestic sources becomes limited due to overfishing.¹⁴³

The MCS responsibilities in Senegal are shared amongst four directorates. Two of them control the compliance and application of rules, one controls and issues licences and collects data for statistics, and one controls and surveys the fishing fleets' activities.

There are no clear decisions upon which one of these four directorates that should be in charge of validating catch certificates. At the moment, none of the authorities are at any point involved in the process of validating certificates over fish origin.¹⁴⁴ These four directorates do not communicate or exchange information between each other, which means that there are no central sources that may be used to validate or trace activities of the national fishing vessels. The biggest challenge in Senegal is to structure the organisation of the authorities in order to facilitate the tracing of fish catches and to make the procedures shorter and more effective regarding the control of the national fishing fleet.¹⁴⁵ To clarify and organise the structure of the authorities is one of the measures that Senegal needs to carry out.¹⁴⁶

4.2.2.1.3 Namibia

Next after minerals, fish products are Namibia's most important trade commodity with foreign countries. EU is the most important export market; in 2007, the EU accounted for two thirds of the revenues from fish exports.¹⁴⁷ The fishing fleet in Namibia that harvests fish for export to the EU is exclusively industrial. In 2008, about 230 vessels were licensed as commercial fishing vessels operating in Namibian waters, whereof 70% were flying the flag of Namibia.¹⁴⁸

Compared to most African countries, Namibia has a well developed system for MCS with good capacities of human resources and equipment, including aircraft, patrol vessels and observers. The main focus is on

¹⁴⁰ Report FPA 15/IUU/08 (2009), Annex 9, p. 5

¹⁴¹ *Ibid.*, Annex 9, pp. 2-3

¹⁴² *Ibid.*, pp. 77-78

¹⁴³ *Ibid.*, pp. 77-78

¹⁴⁴ *Ibid.*, Annex 9, p. 10

¹⁴⁵ *Ibid.*, pp. 77-78

¹⁴⁶ *Ibid.*, pp. 77-78

¹⁴⁷ *Ibid.*, Annex 4, pp. 4-6

¹⁴⁸ *Ibid.*, Annex 4, pp. 1-2

surveillance, but there are inspectors that monitor all landings in port, which is simplified by the fact that there is a well developed declaration system for fish landings. With all these assets and efforts in place, Namibian waters are rather spared from IUU fishing.

Namibia has one of the best bases for implementing a validation system for traceability and catch certification and should be able to fulfil the EU regulation requirements without much difficulty.¹⁴⁹

What Namibia lacks is a system for ensuring the legality of re-exported products. Since imported raw materials often are mixed with raw materials caught in Namibian waters, tracking and recording of fish imports is needed. Once materials are imported and one has ensured that the fish is legally caught, there are no further attempts to keep the origin of the units traceable and identifiable. It is not rare that processed products are sold as originating from Namibia, even if most raw materials have been imported.

The Namibian authorities are not able to track and certify the origin of processed products, not even if there are vessels suspected of IUU fishing activities and the EU demands for an investigation in accordance with the new EC regulation.¹⁵⁰ This far, this is more or less the only concern for Namibia.¹⁵¹

4.2.2.1.4 Mauretania

The Mauritanian fishing fleet trading with the EU includes approximately 250 industrial and coastal vessels. On top of that, numerous small-scale vessels are also targets for catch certification. The small-scale vessels reach a number of about 3,600, but not all of these are included in the EU trade.¹⁵²

In Mauretania, there is a system for log booking and monitoring of landings. For the industrial and coastal fleet, the implementation of certificate validation should therefore not be too complicated. However, certification of small-scale fishing vessels is worse, since many of these vessels are not registered, and a better system that includes these vessels needs to be developed.¹⁵³ The lack of capacities and technical and administrative resources for controlling and monitoring fish from small-scale vessels will probably have the effect that Mauretania will have difficulties with extending any validation system beyond national industrial and coastal vessels.¹⁵⁴

Mauretania needs to develop an official record for traceability. The present business strategy makes the task even more complex; processors of fish may receive containers loaded with fish originating from up to 25 different vessels and one cannot say what fish origins from which vessel.¹⁵⁵

Re-exportation from Mauretania is still rare since most raw materials are locally or regionally caught. The Mauritanian authorities have capacities to implement a traceability system that fulfils the requirements in regard of the

¹⁴⁹ Report FPA 15/IUU/08 (2009), pp. 24-26

¹⁵⁰ IUU fishing regulation, article 26(2b)

¹⁵¹ Report FPA 15/IUU/08 (2009), pp. 24-26

¹⁵² *Ibid.*, pp. 88-89

¹⁵³ *Ibid.*, pp. 88-89

¹⁵⁴ *Ibid.*, pp. 88-89

¹⁵⁵ *Ibid.*, pp. 88-89

industrial and coastal fleet, for Mauritanian vessels as well as for foreign vessels transshipping in Mauritanian waters. The lack of traceability systems makes it hard for the authorities to validate catch certificates and origins from non-Mauritanian raw materials.¹⁵⁶

Two main authorities are intended to be responsible for the implementation and fulfilment of the new certification requirements.¹⁵⁷ It has been concluded that Mauretania probably will have some difficulties in fulfilling the required validations as a whole despite its existing log booking and monitoring over landings. The high number of exportation to the EU and the lack of information exchange between the authorities will bring obstacles to the verification of information from operators. The authorities in Mauretania would perhaps need better information concerning the requirements and support with the development of better internal communication amongst authorities.¹⁵⁸

4.2.2.1.5 Mauritius

Compared to other African countries, Mauritius has one of the best economies. The export of fish products to the EU has been estimated to represent 57% in weight and 69% in value of the country's total fish exports.¹⁵⁹ The fishing fleet that catches fish for trade with EU is small, only including about 35 industrial vessels and 1,600 small-scale vessels. However, the exported quantities from small-scale fisheries are negligible. This greatly simplifies the fulfilment of the certification requirements regarding national catches.¹⁶⁰

Realizing that the dimension of the national fishing fleet is small, the amount of fish with Mauritian origin is limited. Consequently, processing activities are larger, and are dependent upon approximately 95% imported raw materials, which are then mixed with 5% of national harvested fish.¹⁶¹

Mauritius have a legal framework regarding certification for import and export of fish, providing that everyone that wish to import or export fish products must turn to the responsible authorities who then decide if the trading shall be granted. The provided document then needs to follow with the product and be shown in custom at both import and export.¹⁶² What Mauritius will have to improve is the traceability and certification of re-exported products, in particular for tuna caught by vessels flying the flag of Spain, Seychelles and France. The re-exportation of processed tuna accounts for about 95% of Mauritius' annual value of fish trade to the EU.¹⁶³

The main part of the fishery sector is controlled by one head authority, which then has responsibility over several bodies with different tasks, such as implementation of the new EU requirements, and monitoring and

¹⁵⁶ Report FPA 15/IUU/08 (2009), pp. 88-89

¹⁵⁷ *Ibid.*, Annex 11, p. 15

¹⁵⁸ *Ibid.*, Annex 12, p. 12

¹⁵⁹ *Ibid.*, Annex 10, p. 6

¹⁶⁰ *Ibid.*, p. 81 & 83

¹⁶¹ *Ibid.*, Annex 10, p. 5

¹⁶² *Ibid.*, Annex 10, pp. 8-9

¹⁶³ *Ibid.*, p. 83

verification.¹⁶⁴ The validation of catch certificates will mainly be a responsibility for the customs services. Since most fish products that are exported to the EU is processed with imported raw materials, the customs in Mauritius will have an important part in ensuring and controlling that the imported materials have a correct certification of origin that will simplify the re-exportation to the EU.¹⁶⁵

Due to the relatively good economy, the small amount of vessels fishing for EU trade and a rather well developed legislation, Mauritius should not have any major problems with implementation of systems, neither for verification of certificates, nor for traceability of re-exported products. However, studies have shown that Mauritian authorities would need some information on technical needs in order to better conform to the rules.¹⁶⁶

4.2.2.2 Conclusions

As has been noticed in the discussions regarding the different countries, the size of the national fishing fleet, the amount of fish trade with EU, the amount of domestic catches in comparison with imported material, and the existing governmental system are issues that may differ widely between African countries. All of these issues do have impacts on the country's possibilities and needs regarding the implementation of the new requirements set up in the EC regulation. A large fleet fishing for trade with EU requires more efforts and financial needs for the development of certification systems, while a large processing business requires efforts regarding the development of trustworthy traceability systems.

What is a common aspect in all of these countries is that they, even though they have good opportunities to implement catch certification for nationally caught fish, may find obstacles for the traceability and certification of imported, processed and re-exported fish products.

In general, it may be concluded that the traceability and certification situation in a country is much influenced by the status of the national authorities, whether they are well organized or not. Well organized authorities are then dependant upon the national economy. All of the above mentioned countries need some improvements in the governmental sector in order to better comply with the EC regulation, but the countries that have better economical possibilities, such as Mauritius, do have better organized authorities and thereby more effective controls. What is to remember is that the Mauritian fish trade with the EU is rather limited, compared with for example Morocco or Senegal, and that makes the costs for fulfilling the certification requirements smaller. The country's possibilities and capacities have to be put in perspective with the scale of efforts that is required in order to reach compliance with the regulation.

¹⁶⁴ Report FPA 15/IUU/08 (2009), Annex 10, p. 7

¹⁶⁵ *Ibid.*, Annex 10, p. 10

¹⁶⁶ *Ibid.*, Annex 10, p. 12

4.3 EU's support to African developing countries concerning the new requirements

The following subchapters contain analytical discussions of the level and nature of supportive measures taken into account in the EC regulation. Other trade perspectives are used as exemplifying tools in order to compare the EC regulation with support solutions in other areas. This discussion is intended to bring substance and perspectives to the analysis of the consequences and practical effects that the EC regulation has for African developing countries.

4.3.1 General background

As a main player on the market, EU must cooperate with and support the African developing countries with the implementation of the new requirements.¹⁶⁷ Both large- and small-scale producers are in need of extra support in order to be able to comply with the new requirements set up by the EU.¹⁶⁸

Except for the few articles for cooperation, the EC regulation does not have any concrete capacity building assistance regarding the implementation of catch certification and traceability system requirements in developing countries, in comparison with similar efforts that have been made regarding for instance the combat against trade with illegal timber.¹⁶⁹ In the EC regulation, there are no given periods under which African developing countries have time to adapt to the new provisions, or any concrete and specific efforts for the support to these States. The only concrete concern that the new EC regulation gives the implementation in developing countries is that smaller vessels only are in need of a simplified catch certificate,¹⁷⁰ and that the Union must take into account the capacities of developing countries when listing non-cooperating states.¹⁷¹

The European Commission has organized a number of seminars in developing countries due to the new regulation, as an effort to clarify the rules and to help regional authorities to understand the need of improvement. However, nothing has been stated about giving further practical assistance to developing countries.¹⁷² To ensure that the new regulation does not impede the developing countries' possibilities to trade with legally harvested fish, EU must carry out training programmes and other measures to give the developing countries a chance to systematically implement the new routines.¹⁷³ Some financial and technical support has

¹⁶⁷ IUU fishing regulation, article 20(4)

¹⁶⁸ Frankcom *et al.* (2008), p. 53

¹⁶⁹ *Ibid.*, p. 57

¹⁷⁰ Implementation of IUU fishing regulation, article 6

¹⁷¹ IUU fishing regulation, article 31(5d&7)

¹⁷² Baumüller *et al.* (2009), p. 8

¹⁷³ COM (2007), pp. 10-11

been offered to African developing countries, but the question is if this is enough.¹⁷⁴

4.3.2 Comparisons with other areas

4.3.2.1 Timber products

As with IUU fishing activities, the trade with illegal timber causes severe damages to developing countries, such as corruption, environmental damage, and lost revenue. One major difference between illegal fishing and illegal logging is that the issues with logging are more concrete and visible. Timber is produced in a specific place whilst fish is moving over borders, making the precise amount of resources and the consequences of the illegal activities harder to estimate and control compared to logging. The mark where the timber is produced usually has a specific owner that is liable, which make it easier to target illegal operators. The logging industry is generally easier to survey and it is harder to make people aware of something that they cannot see, like the impacts that IUU fishing activities have on fish resources.¹⁷⁵

4.3.2.1.1 Legislative situation

The legislation regarding combat of trade with illegal timber is based upon the EU Action Plan for Forest Law Enforcement, Governance and Trade¹⁷⁶, which aims at improving governance in timber producing countries and encouraging operators to trade with legal timber. To achieve this there are measures to facilitate trade with legal timber and to eliminate trade with illegal timber. Some of these measures include for instance support to the producing States, support to the application of existing legislations or the development of new legislation, and educational support.¹⁷⁷

In similarity with the catch certification system in the EC regulation, the FLEGT plan uses a licensing system to ensure that only legally produced timber is imported to the Union.¹⁷⁸ A FLEGT licence is a document that proves the products compliance with agreed requirements and a competent authority in the exporting State shall validate it.¹⁷⁹

To achieve the intentions with the licensing system, countries may enter into Voluntary Partnership Agreements^{180, 181} which are bilateral agreements between the EU and a trade partner. The aim is to cooperate against illegal timber trade by achieving for instance better legal reforms, better governmental transparency and improvements of the control over legal compliance. The VPA's are voluntary, but once an agreement is signed it is binding between the two parties. It gives the parties legally binding

¹⁷⁴ Blue Book (2009), p. 416

¹⁷⁵ SOU (2006), p. 18

¹⁷⁶ Hereafter FLEGT

¹⁷⁷ Forest and Illegal Logging

¹⁷⁸ Timber regulation, foreword (2-4)

¹⁷⁹ *Ibid.*, article 2(5)

¹⁸⁰ Hereafter VPA

¹⁸¹ Timber regulation, article 1(2)

obligations to implement licensing systems within the given time periods that the parties have agreed upon.¹⁸²

The VPA's include capacity building support systems to help developing countries improve their governance and enforcement systems and to facilitate the establishment of mechanisms for the licensing. The VPA's incorporate a national legal system that define legal timber, traces products from forest to export, grant licenses and check system chains. Some developing countries may find it hard to reach these requirements due to lack of institutional strength and capacity, but the VPA's will give support in the identification of weak links where there is a need of technical or financial support.¹⁸³

Timber producing countries that have a VPA with the EU will be granted a FLEGT license for legally logged or legally imported timber. All timber products that origin from VPA countries must have a valid FLEGT license in order to be granted access to the EU market.¹⁸⁴

The funding for the system is a responsibility for the exporting State. The efforts that EU provides by the VPA's are only designated to give assistance with the establishment of a licensing system and to develop forestry governance that reduces illegal activities, and thereby increases tax incomes for the State.¹⁸⁵

This far, several VPA's have been agreed upon and they all include:¹⁸⁶

- an analysis of the State's existing legislation, where the gaps are identified and the needed reforms are stated,
- agreements that the State independently shall monitor the fulfilment of the legality systems and the licensing systems, and that the results shall be public available,
- agreements that the State shall improve its transparency, by giving annual reports on the outcomes and functioning of the systems and in some cases provide more information on forest governance, such as details on production and finances, and
- a commitment to national stakeholder involvement in joint committees to oversee the process.

With all these agreed requirements, EU get a view over the results and a guarantee that efforts and measures that are provided give positive effects. EU also gets a guarantee that the trade partner takes its own responsibility to keep up with the standards so that it can manage when one decides that there is no longer any need for support.

4.3.2.1.2 Pros and cons

The system developed for the trade with timber certainly has positive effects but it also has loopholes that need to be eliminated. The combination

¹⁸² Stancich (2008) & Timber regulation, article 3(2) & foreword (5)

¹⁸³ Forest and Illegal Logging

¹⁸⁴ Timber regulation, article 4(1)

¹⁸⁵ Baumüller *et al.* (2009), p. 8

¹⁸⁶ *Ibid.*, p. 8

between a regulation and agreements offering support and ensuring compliance with the regulation is perhaps an effective method over time.

The VPA's may be compared to the listing of States in the EC regulation on IUU fishery, in the perspective that States with a VPA will have advantage in the trade with EU, since they have ensured that the measures are followed. What can be said in favour of the VPA's compared to the listing of non-cooperating States is that with the VPA's, the developing country has had an opportunity to take part in the process. In the EC regulation it is stated that the EU should take into consideration the status of developing countries and their regional efforts before listing them,¹⁸⁷ without stating that the developing country itself gets possibilities to take part in this. By making an agreement, one put up an implementing plan for developing countries that do not have sufficient capacities to fulfil the requirements at once. Thereby one certifies that the State is willing to cooperate and is taking necessary measures to fulfil the requirements.

The negative side of the VPA's is that there still is a risk that States without a VPA, and thereby without the possibility to receive a FLEGT license, may export illegal timber to the EU. According to requirements set up by the WTO, EU cannot discriminate trade with these other States, by for instance only permitting imports of timber if there is a valid FLEGT license.¹⁸⁸ As discussed in the coming chapter 4.3.3, trade discrimination is accepted as measures against States that do not comply with international agreements. However, it is up to prove that States without VPA's that wish to export timber products to the EU fail in this aspect.

In general, there would be a need of some extra legislation for the timber system to be effective.¹⁸⁹ However, having in mind the EC regulation on IUU fishery and its vague support to developing countries regarding the implementation of the new requirements, one should perhaps learn some from the timber solution. The EU does have Fisheries Partnership Agreements¹⁹⁰ with African countries regarding fishing activities, but these do not focus on support in this aspect, but rather on efforts concerning fishing and sustainability of fish stocks.

The advantage the timber industry licensing has compared to the fishing industry licensing is lower costs and efforts needed to trace products, since timber is easier to trace due to its obvious visibility.

4.3.2.2 Food health provisions

WTO has established the Agreement on the Application of Sanitary and Phytosanitary Measures,¹⁹¹ from which the EU has derived standards concerning food safety and health.¹⁹² The aim with these measures is to protect members and consumers within the Union from sanitary risks associated with for example fish and fish products. However, it has been noticed that these sorts of standards could raise potential trade barriers for

¹⁸⁷ IUU fishing regulation, article 31(5-7)

¹⁸⁸ Erixon/Hindley (2009), pp. 9 & 19-20

¹⁸⁹ EIA/Telapak (2007)

¹⁹⁰ Hereafter FPA

¹⁹¹ Hereafter SPS Agreement

¹⁹² Food safety regulation

developing countries.¹⁹³ Different countries have different standards for determining what is sanitary and what is not. In general, developing countries have lower standards than developed countries and the sanitary requirements may therefore be tough to reach for developing countries, since developed countries set the limits.¹⁹⁴

4.3.2.2.1 Legislative situation

The methods used to regulate sanitary requirements for food imports are based upon technical specification or process specification. Technical specification means that products will be imported only if they fulfil technical requirements, which can be specific standards concerning the breeding, cultivation and slaughter, or specific standards on the final product such as lack of salmonella. If this is the required method, the producer may freely choose how to reach the requirements.¹⁹⁵ Process specification means that the complete producing chain must fulfil the stated requirements. Most developed countries, and the EU, prefer using the process method since the control is stronger.¹⁹⁶

If a product does not reach the processing standards that EU has set up, the product will be stopped at the border.¹⁹⁷ There are no statistics over how much of the stopped products that are hindered for pure sanitary reasons, but it has been estimated that less than 1% of agricultural products from developing countries are denied import. Among the products that have been denied import, more than half have been fish and shellfish.¹⁹⁸

As with the new requirements regarding import hindrance of IUU fish products, the sanitary requirements for products create the same disadvantages and problems for African developing countries. Due to for instance the lack of technical and administrative resources, many of these countries have difficulties in reaching the requirements for sanitary standards. The issues are in general the same as for the EC regulation on IUU fishery: non-compliance with legislations, poor administration and governmental systems, and poor technical equipment.¹⁹⁹ At the same time, the sanitary provisions create better standards and possibilities in developing countries regarding the environment and the human health.²⁰⁰

With the implementation of the SPS Agreement, one finds it hard to argue against the rights of developed countries to protect their citizens. If the provisions lead to trade disadvantages for developing countries, one can at the same time argue that in order to avoid problems that regulations may create, the developed countries should be obliged to help and assist developing countries to reach the required standards.²⁰¹

¹⁹³ Fishy Business

¹⁹⁴ Johansson (2005), p. 8

¹⁹⁵ *Ibid.*, p. 11

¹⁹⁶ Food safety regulation, article 4(1), 3(16) & 18

¹⁹⁷ *Ibid.*, article 11

¹⁹⁸ Johansson (2005), p. 26

¹⁹⁹ Report FPA 15/IUU/08 (2009), Annex 3, p. 12

²⁰⁰ Johansson (2005), pp. 13-14

²⁰¹ Stevens/Kennan (2003), p. 28

4.3.2.2.2 Pros and cons

What has been discussed about these provisions and how they affect developing countries, is also relevant regarding the new EC regulation on IUU fishery. For the health provisions, it has been argued that EU should compensate developing countries for losses due to unfair competition, since these countries have poor possibilities to fulfil the standards. EU should make loans available for developing countries to enable for small-scale fish producers to fulfil the sanitary requirements and EU should make efforts regarding capacity building in the exporting country.²⁰²

It has been concluded that there is a need of better and more favourable transition periods for developing countries regarding several aspects and agreements, among them the SPS Agreement.²⁰³ In order to create trade restrictions concerning health requirements, there must be capacity building efforts in developing countries. These may for instance focus on education in packaging and conservation of products, or on support in infrastructure and distribution.²⁰⁴

A capacity building attempt was made by the project for Strengthening Fishery Product Health Conditions²⁰⁵, focusing on improvement of knowledge for staff and institutions. The project helped in the training of inspectors and in the education on the standards applied to exported products, ensuring that developing countries have the technical knowledge needed to comply with the requirements for food safety.²⁰⁶

Some results that have been achieved by the SFP project are:²⁰⁷

- the health conditions and standards in general and the control capacity over the same has improved, together with the practical application of legal frameworks,
- the technical support has resulted in laboratories and scientific institutes for better monitoring and compliance,
- the number of industries and operators that comply with the requirements has increased, and
- the small-scale fishing industry has developed a method to comply with the requirements.

The traceability and catch certification in the new EC regulation on IUU fishery is based upon similar methods and systems as the sanitary provisions for food commodities. The arguments and conclusions in the sanitary sector are also relevant in the IUU fishing sector.

What the food health provisions give light to is that even though there are troublesome issues for developing countries regarding provision implementation and compliance to the requirements, they forces developing countries to improve their standards. Improvements in aspects of food safety

²⁰² Fishy Business

²⁰³ Stevens/Kennan (2003), p. 27

²⁰⁴ *Ibid.*, pp. 30-31

²⁰⁵ Hereafter SFP

²⁰⁶ Report FPA 15/IUU/08 (2009), Annex 3, p. 13

²⁰⁷ *Ibid.*, Annex 3, p. 13

and health as well as improvement in the area of IUU fishing activities are both resulting in better economy, environment and social well-being.

4.3.3 Import ban and WTO compliance

4.3.3.1 Accepted discriminatory measures

The agreements set up by the WTO regulate various aspects of trade related issues, such as tariffs and border measures for goods and services.²⁰⁸ The rules intend to hinder trade barriers and trade discrimination.²⁰⁹ It is though allowed with positive discrimination to free trade areas and customs unions,²¹⁰ and to developing countries, by taking into account their need of help with progress and compliance.²¹¹

There is one exception from the discrimination rules: Member States may impose an import ban if they can justify the measures as necessary for the conservation of exhaustible resources,²¹² as long as the measures does not discriminate a specific State. Nevertheless, it is stated that import restrictions aimed at individual countries or vessels that do not conform to or that do not apply international agreements, such as environmental conservation measures, is acceptable.²¹³

The EC regulation aims at hinder IUU fish to circulate in trade, and the IPOA-IUU declares that “IUU fishing undermines efforts to conserve and manage fish stocks in all capture fisheries”,²¹⁴ which can be interpreted as a justification of the measures. In this perspective, EU should be able to take advantage of the list over non-cooperating States. When there is a trustworthy and reliable list in place, higher tariffs can be applied for these States, since one has concluded that these States do not follow international agreements and do not make enough efforts to hinder IUU fishing activities. Higher tariffs would increase the final price on IUU fish to a level that consumers would find unattractive. This measure could be a way to limit the benefits for IUU fishing operators and to make registration in flag of convenience States difficult or even useless.

Today, IUU fishing is generally considered an international environmental and economic crime, since it involves trespassing, theft and illegal methods that have great negative effects on the environment and the fish sustainability. Since States consider IUU fish to be stolen, there is a common view that States should have the rights to ban import and trade with these illegal products. It has been concluded that these types of restrictions are not against the rules set up by the WTO or any impediments to international laws.²¹⁵

²⁰⁸ Baumüller (2010), pp. 3-4

²⁰⁹ Blue Book (2009), p. 400

²¹⁰ Baumüller (2010), pp. 3-4

²¹¹ Blue Book (2009), p. 401

²¹² GATT, article XX(g)

²¹³ MRAG (2005), pp. 85-86

²¹⁴ IPOA-IUU, chapter I(1)

²¹⁵ Blue Book (2009), p. 242

4.3.3.2 Illustrative case

The justification of trade measures for fighting activities that endanger the conservation and sustainability of marine resources conservation has been tried in a well-known dispute. The case concerned a conflict over an import ban in the United States for certain shrimp and shrimp products, when the harvesting methods endangered sea turtles.²¹⁶

In accordance with a regulation prohibiting import of shrimps that were harvested in a way that negatively affected the environment, the U.S. made an import ban on shrimp and shrimp products that originated from countries that were using harvesting methods and gears that except from catching shrimp also caught sea turtles. Imports were allowed only if the harvesting country had been certified by the U.S. for having a conservation programme or similar that prevented sea turtle mortality. The exporter of shrimp or shrimp products had to declare that the catches originated from a certified State or that they were made in accordance with conservatory measures.²¹⁷

India, Malaysia, Pakistan and Thailand were not included in these certified States and were thereby targets for the import ban. In 1997, they all made a complaint about this. The Appellate Body's decision was in favour of the Asian countries. The Appellate Body did not object to the existing regulation as such, but to the way the U.S. had applied the regulation and thereby discriminated specific WTO Member States.

Firstly, the U.S. had made agreements with some countries regarding the protection and the conservation measures for sea turtles before putting up an import ban, but not with these four complaining countries. Secondly, the U.S. had in some countries, but not in all, made efforts to introduce a fishing device that excluded the catch of sea turtles. The Appellate Body furthermore stated that the way in which the U.S. certified countries was not proper,²¹⁸ and that the regulation upon which the U.S. based their import ban did not provide exporting States with sufficient periods for implementing suitable programmes to ensure the required conservation of sea turtles.²¹⁹

This case gives some useful tools that the EU should take into consideration regarding the new regulation on IUU fishery, in order to follow WTO commitments:²²⁰

- any capacity building that is needed for the implementation of the requirements in the regulation should be made available for developing countries,
- before imposing sanctions or penalties, the EU should make efforts to engage bilaterally or multilaterally to support developing countries,

²¹⁶ Baumüller (2010), p. 4

²¹⁷ Shrimp Case (1998) & Baumüller (2010), p. 5

²¹⁸ Shrimp Case (1998), paragraph 181

²¹⁹ *Ibid.*, paragraph 173-175

²²⁰ Baumüller (2010), p. 5

- harvesting and exporting developing countries should be given sufficient periods to adapt and enforce national legislations in order to comply with the new requirements, and
- developing countries should get equal treatment and be offered the same support, even if they thereafter do not accept help.

This chapter can be concluded in two short comments. Firstly, EU's intentions to hinder import of IUU fish without valid certification and to list non-cooperating vessels and States are not to be regarded as trade barriers as such, since they aim at conserving the environment and to hinder international crime. Secondly, when creating regulations that hinder the import of specific products if they do not comply with the stated provisions, EU has to support and take into consideration the needs of developing countries, for instance by having sufficient implementing periods.

4.3.4 Supportive measures needed to avoid trade barriers

4.3.4.1 The present situation

As has been discussed earlier in chapter 4, developing countries are in need of support in order to facilitate the implementation of the new requirements. The need of support varies between States. Some States have technical equipment and knowledge regarding combat of IUU fishery, and good starting positions for the implementation of systems for certification and traceability, whilst others struggle with bad technical capacities, difficulties with developing certification systems and huge fleets to cover.

What more or less all African developing countries do have difficulties with, is the development of systems for traceability and certification of processed and re-exported fish products. Most countries do also have difficulties with the structure of the authorities. In general, these States need to improve in all aspects in order to better fulfil the requirements set up in the EC regulation. Some must make more effort than others must.

The EC regulation provides for special cooperative measures regarding developing countries. These are, as mentioned in chapter 3.5.6, taking into consideration the situation of developing countries before listing these States as non-cooperating, and encouraging and facilitating the implementation of catch certification.²²¹ The regulation also offers the right to file a complaint if a State considers that it has been mistreated.²²² The problem is that most developing countries have neither the money, nor the technical knowledge, to perform thorough research in order to back up a claim.²²³

To regulate the need of supportive measures for developing countries into a regulation is a difficult and ineffective method. Even though there are statements in the regulation regarding concern for developing countries, they are still too general due to the differences between different States.

²²¹ IUU fishing regulation, foreword (14), article 20(4) & article 31(5d&7)

²²² See e.g. IUU fishing regulation, article 18(4), 27(2) & 28(1a)

²²³ Fishy Business

However, the EC regulation is not missing sufficient statements about support to developing countries, since the regulation does have provisions covering support and special consideration. What the regulation lacks is statements on how these supportive measures are supposed to be carried out in practice. There are no concrete solutions for this and therefore, this is open for interpretation and invention.

4.3.4.2 Necessary measures and assistance

In order to reach the intended purposes with the regulation, the EU has recognized that there is a general need to integrate the communities in developing countries in the world economy.²²⁴ If one can succeed with this, their economy would improve and thereby their possibilities and capacities to hinder IUU fishing activities.

As was mentioned in chapter 4.3.2.2, there is a need of better transition periods for developing countries regarding food health provisions. This does not only refer to food health, it is also a need for the certification in the IUU fishing area.²²⁵ In the same chapter, it was also concluded that there is a need of capacity building efforts.

It has been stated that developing countries in the initial periods should be offered information regarding the administrative needs that is required for the catch certification and validation. This information should include for instance legislation, technical procedures for determining origin and identification and sourcing of non-compliant fishing vessels.²²⁶ This type of information was desired in several of the countries in chapter 4.2.2, for example in Mauritius. Some seminars have been held regarding the provisions in the new regulation, but nothing has been concluded about the outcomes and effects of these efforts.²²⁷

IUU fishery is not only dependent upon the ones catching the fish, but also upon the ones trading it. Not all importers in the Union trade with IUU fish or fish products deliberately, since they may not be aware of the characters of IUU fish. Therefore, it would be necessary to also illuminate these issues for traders and importers within the European Member States. The certification of fish and fish products will play a part in this, since it will put a label on the products, but it will not be exhaustive as information for importers. To import IUU fish is not a crime according to the EC regulation, as compared to the U.S. Lacey Act.²²⁸ While the U.S. Lacey Act intends to put the pressure and the sanctions on the buyer, the EC regulation puts the pressure and the sanctions on the seller. To put more pressure on the buyer could be a possible step if the EC regulation ever is revised.

Except from educating the traders, governments and authorities in African developing countries also need education in order to get a changed attitude and behaviour. As mentioned in chapter 2.4, if authorities can understand what widespread negative effects IUU fishing activities have in several areas, they will also see the benefits that a legal production in this

²²⁴ European Consensus, Part II, Chapter 3.2(point 72)

²²⁵ Stevens/Kennan (2003), p. 27

²²⁶ Report FPA 15/IUU/08 (2009), p. 121

²²⁷ Baumüller *et al.* (2009), p. 8

²²⁸ Frankcom *et al.* (2008), pp. 82-83

sector may result in. The EC regulation has been criticised for not giving developing countries enough support to enable and fulfil these legal developments.²²⁹ Support with legal production would not only be helpful for their trade with the EU, but also for the environment and its resources.

Most African developing countries are in need of strengthening their MCS capacities in order to be able to trace and validate fish origin. Some States have so poor financial possibilities that this may act as a trade barrier, and in these cases, the EU is recommended to support these States with the implementation of better systems. One way of achieving this is by setting up national or regional projects and educational programmes, like the SFP project mentioned in chapter 4.3.2.2.2. Some African countries do have FPA's with the EU and by that receive support in the fisheries sector regarding responsible fisheries and MCS capacities.²³⁰ However, the FPA's are not directly connected with the combat of IUU fishing activities, even though they bring positive effects in this area as well.

As the need of support varies between States, it may be hard to make general statements for supportive measures in a regulation. One way of achieving individual and more effective support could be by getting inspiration from the VPA solution that is used for the hindrance of trade with illegal timber. It would not be effective just to copy this method since it, as discussed, also has loopholes, but it might be effective to develop a similar system with the VPA solution in mind.

The EC regulation is in general an effective way of getting hold of the IUU fishing problems. As was stated in chapter 4.3.2.2 regarding food health provisions, there are positive effects resulting from these restrictions. Still, it was argued that developed countries should help and assist developing countries if they, due to the restrictions, face obstacles that weaken their trading position.²³¹

4.3.4.3 Conclusions

In order to reach the intended purposes with the regulation, to keep IUU fish off the EU market and to combat IUU fishery, it is of great importance that the implementation of the provisions is fair and transparent.²³²

To conclude the above discussion one can say that EU must support African developing countries to fulfil the new requirements, in order to avoid that the provisions end up as trade barriers. EU must help with improving the MCS capacities and efforts, so that the hindrance of IUU fishing operators will improve. EU must help to strengthen the legal framework regarding penalties and sanctions for IUU fishing operators. EU must help to improve the knowledge and skills concerning the impacts that IUU fishing activities have on social, economical and environmental aspects by enforcing educational programmes.²³³ EU must also help to fight corruption, poverty and legal resistance, since these issues are highly influencing the possibilities to enable trustworthy and effective certification

²²⁹ Frankcom *et al.* (2008), p. 83

²³⁰ Report FPA 15/IUU/08 (2009), p. 121

²³¹ Stevens/Kennan (2003), p. 28

²³² Baumüller (2010), p. 1

²³³ Le Gallic (2004), pp.4-5

systems. The regulation itself has no concrete and practical measures on how to achieve these effects, but without any support, the developing countries will face tough trade barriers.²³⁴

²³⁴ CFFA (2007)

5 Consequences for African Developing Countries due to the EC Regulation

5.1 Negative effects

The fulfilment of the requirements in the new EC regulation may impose difficulties for African developing countries. As has been discussed throughout chapter 4, these States have severe troubles in several sectors. This includes technical, administrative and educational issues. Most of all, it includes financial issues. Improvements in the economical sector would help in all other issues.

Even if some States do have good starting positions for the implementation of the requirements, all the above measures require economical efforts and these states already struggle with tight budgets. To use financial means to fulfil requirements that they have not agreed upon themselves may seem frustrating. It is estimated that developing countries will suffer financially in the initial implementation period.²³⁵ At the same time, if they are unable to provide traceability and valid certification for fish and fish products, the trade with EU will not continue and they will lose revenue, even though the non-certified fish has legal origin.

Regarding the listing of non-cooperating States, there is a risk that African developing countries will face troubles. In the regulation, it is clearly stated that the administrative situation in developing countries must be considered when listing States, but this is not further clarified.²³⁶ The structure of authorities is in some of these countries in bad condition, the waters are huge and the number of vessels active is so large, that even though great efforts are made to fight and hinder IUU fishing activities, it may take a while before any results are visible.

The EU must therefore ensure that the listing is up to date and facing the reality. If the list is not comprehensive, States that have improved in their lawfulness will be hindered from trading with legally harvested products.²³⁷ If the State believes that the listing is unfair, there are few economical and technical possibilities to file a complaint about the decision. Even if they do, the dispute would never be fair, since EU has good economy and many skilled lawyers.²³⁸

Even though there are special requirements for small-scale fishing vessels,²³⁹ the traceability and certification will have negative effects for these operators, at least in the beginning. They will suffer due to tougher rules and loss of incomes.

²³⁵ State of WFA (2009), p. 73

²³⁶ IUU fishing regulation, article 31(5d&7)

²³⁷ Le Gallic (2004), p. 6

²³⁸ Fishy Business

²³⁹ Implementation of IUU fishing regulation, article 6

The fulfilment of the requirements may constitute trade barriers for African developing countries. They will not be able to overcome the obstacles all by themselves, but with some help and support from the EU, these obstacles should be possible to limit or in some cases even avoid. The intentions with the regulation are good, and in order to achieve positive outcomes there will be some negative effects in the initial stages.

5.2 Positive effects

The positive outcomes of the requirements in the EC regulation is that African developing countries are forced to make efforts in legal production and to improve their standards. If legislations and measures are developed regarding hindrance of IUU fishing activities, the State will benefit and achieve better economy, environment and social health.²⁴⁰

The list that EU creates over non-cooperating States may be used in a way that hinder IUU fishing activities, since these States apparently do not make enough efforts to protect the environment.²⁴¹ If higher tariffs are used for imports from these States, there is no revenue for IUU fishing operators to flag vessels in those States, since it is no longer profitable. These flag of convenience States will then lose registration incomes, and this may encourage a better compliance.

The small-scale fishing operators will, as stated in the previous chapter, suffer some losses in the beginning. The expectations are that they eventually will have better working conditions and better revenues because of combated IUU fishing activities and increased fish stock sustainability.

The way the EC regulation is framed, by making all information and decisions public available, will restrict and limit the loopholes that enable corruption and bribes, since these activities are much more common when information is confidential. A lower level of corruption will help in economical aspects, but also regarding the efficiency and trustworthiness of authorities.

5.3 Conclusions

The provisions in the EC regulation, are not to be regarded as trade barriers for developing countries. What may create trade barriers are the ways that the provisions are applied and the developing countries' possibilities to reach the requirements.²⁴² The EC regulation provides efforts in order to facilitate for developing countries, but it is not stated how these efforts are supposed to work out in practice.

One serious problem that African developing countries face when it comes to solving the IUU fishing issues and complying with the new requirements, is that there are disagreements between authorities and fishing operators regarding management measures that have been adopted. Low law-abidance makes the implementation of the requirements even more

²⁴⁰ Johansson (2005), pp. 13-14

²⁴¹ MRAG (2005), pp. 85-86

²⁴² Baumüller (2010), p. 2

difficult. This problem is made far worse by the extended levels of corruption in these countries. Since some fishing operators use bribes as a way to easily free themselves from the obligations imposed on them, many other operators do not see the meaning with following the rules. The purpose with developing fishing legislation is, among other things, to prevent over-fishing, to improve the economy and to preserve the environment. It is difficult to make fishermen understand the importance of abiding the rules and the benefits that may follow thereof, if some operators apparently are free to do otherwise. The governments and authorities must have a uniform approach to these issues in order to reach success. By accepting bribes, and thereby supporting corruption, the country will have low trust and law-abidance within its territory. Eventually, it will also lose foreign supportive assistance, since supporting States may find the country untrustworthy regarding the use of the given financial means.

The EC regulation may help African developing countries to increase the awareness about the consequences of IUU fishery and the severe damages it causes, and to see what they can benefit by taking these issues seriously.²⁴³ IUU fishing is not just a national issue but also an international issue to the extent that it can be regarded as an international crime.

The impacts the new EC regulation will have on developing countries may vary widely between different States, depending on for instance their trade dimensions with the EU, the existing MCS capacities and the extent of the waters that need to be surveyed. If the trade with EU is extensive and includes a large amount of vessels, more efforts are needed to fulfil the traceability systems and validation of catch certificates that is required by the regulation. If the waters are huge and the potential and suspected IUU fishing business is extensive, more efforts are needed regarding MCS and criminal proceedings.²⁴⁴

As a conclusion, one can say that the new requirements in the EC regulation have two sides for African developing countries. They have positive effects in the perspective that these countries will have to improve their standards, legislation and societies and thereby get hold of the IUU fishing situation. They have negative effects in the perspective that these countries lack assets and capacities and will have difficulties with fulfilling the requirements without support, which in practice means that the requirements will function as trade barriers. What is needed to overcome the negative effects is more assistance and support from abroad, which has better and clearer defined methods and purposes.

²⁴³ Frankcom *et al.* (2008), p. 83

²⁴⁴ Report FPA 15/IUU/08 (2009), pp. 119-120

6 Final Remarks

The purpose with the first existing traceability systems was to enable the trace of the origin of products, if a health or safety issue occurred. Nowadays, the traceability systems are used to define areas like the path and distance the products have been transported from harvester to consumer, the harvesters' labour conditions, or the harvesting methods. They are no longer used solely for authorities to overview different aspects of health issues, but also for the final consumer to make an ethical and aware choice.²⁴⁵

It is generally accepted that the use of trade measures is a useful and effective method to combat IUU fishery, but the measures must not create unjustifiable trade barriers. By their nature, measures related to trade can only address IUU fishing activities of international character. It is necessary to better clarify the costs and profits of different trade measures in order to determine what tools or combination of tools that are the most effective regarding the hindrance of IUU fishing activities.²⁴⁶

The new EC regulation on IUU fishery is a major initiative in the area and many other States and trade communities will certainly follow the steps taken by the EU. However, the new regulation is not flawless and the provisions have consequences for African developing countries, both of negative and positive characters. The negative effects should however be possible to overcome with some support and education. Time will tell if the provisions are possible to fulfil, if they have the intended effects, and what other consequences that may follow from trade measures like these.

IUU fishing is an international concern that affects all countries, both developed and developing. In the future, there will perhaps be international discussions and agreements in the IUU fishing sector. Since developing countries would have the possibility to give their opinions in the development of the rules, this approach would probably be the best way to involve developing countries regarding law-abidance and effectiveness of the agreed provisions. This international engagement would perhaps be necessary in order to achieve improvements in the IUU fishing situation.²⁴⁷

²⁴⁵ Clarke (2009), p. 47

²⁴⁶ Le Gallic (2004), p. 10

²⁴⁷ Diagne (2009)

Bibliography

Doctrine

Frankcom, Sally; Pfothenauer, Linda; and Arya, Rarna (editors). *Stop Illegal Fishing in Southern Africa*. Stop Illegal Fishing Programme, Gaborone, May 2008. Cit: [Frankcom *et al.* (2008)]

Stevens, Christopher; and Kennan, Jane. *Special and Differential Treatment in Terms of Trade*. Institute of Development Studies, Sussex, IDS Bulletin, Volume 34 no 2, April 2003. Cit: [Stevens/Kennan (2003)]

Wramner, Per; Ackefors, Hans; and Cullberg, Mikael (editors). *Fisheries, Sustainability and Development – Fifty-two authors on coexistence and development of fisheries and aquaculture in developing and developed countries*. Royal Swedish Academy of Agriculture and Forestry (KSLA), October 2009. Cit: [Blue Book (2009)]

WTO. *Understanding the WTO*. World Trade Organization, 4th edition, December 2008. Cit: [Understanding the WTO (2008)]

Reports

EU

Commission of the European Communities. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – On a new strategy for the Community to prevent, deter and eliminate Illegal, Unreported and Unregulated fishing*. COM(2007) 601 final, Brussels, 17.10.2007 Cit: [COM (2007)]

Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0601:FIN:EN:PDF> [2010-04-20, 11.25]

Contrat Cadre Fish/2006/20, Specific Convention No.15. *Analysis of Expected Consequences for Developing Countries of the IUU Fishing Proposed Regulation and Identification of Measures Needed to Implement the Regulation – Phase 2*. Oceanic Développement and Megapesca Lda, Report FPA 15/IUU/08, Final Report, May 2009.

Cit: [Report FPA 15/IUU/08 (2009)]

Report available at:

http://ec.europa.eu/fisheries/publications/studies/iuu_consequences_2009_en.pdf [2010-03-24, 10.10]

Annexes available at:

http://ec.europa.eu/fisheries/publications/studies/iuu_consequences_annexes_2009_en.pdf [2010-03-24, 19.15]

European Parliament Council Commission. Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus'. *The European Consensus on Development*. 2006/C 46/01, Official Journal of the European Union of 24.2.2006. Cit: [European Consensus]

FAO

FAO Committee on Fisheries. *Combating Illegal, Unreported and Unregulated Fishing Through Monitoring, Control and Surveillance, Port State Measures and Other Means*. COFI/2007/7, 27th session, Rome, March 2007. Cit: [COFI (2007)]

FAO Fisheries and Aquaculture Department. *The State of World Fisheries and Aquaculture 2008*. FAO, Rome 2009. Cit: [State of WFA (2009)]

FAO Fisheries Department. *FAO Technical Guidelines for Responsible Fisheries 9 – Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*. FAO, Rome 2002. Cit: [Implementation of IPOA-IUU (2002)]

FAO Fisheries Report No. 859, FIEL/R859. *Report of the FAO Regional Workshop on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing*. Cape Town, January 2008. Cit: [FAO Report No. 859 (2008)]

Flewelling, P.; Cullinan, C.; Balton, D.; Sautter, R.P.; and Reynolds, J.E. *Recent Trends in Monitoring, Control and Surveillance Systems for Capture Fisheries*. FAO Fisheries Technical Paper, No. 415, FAO, Rome 2002. Cit: [Flewelling *et al.* (2002)]

Johansson, Helena. *Krav på säker mat – självklarhet eller handelshinder?*. Svenska FAO-kommitténs skriftserie nr 2/05, Jordbruksdepartementet, June 2005. Cit: [Johansson (2005)]

Other organisations

Clarke, Shelley. *Understanding China's Fish Trade and Traceability Systems*. TRAFFIC East Asia, Hong Kong, 2009. Cit: [Clarke (2009)]

Cullberg, Mikael; and Lövin, Isabella. *Ett skepp kommer lastat – Om EU:s fiskeriavtal i Västafrika*. Naturskyddsföreningen, Stockholm, 2009. Cit: [Cullberg/Lövin (2009)]

High Seas Task Force. *Closing the Net: Stopping Illegal Fishing on the High Seas*. Final report of the Ministerially-led Task Force on IUU Fishing on the High Seas. Governments of Australia, Canada, Chile, Namibia, New Zealand and the United Kingdom; WWF, IUCN and the Earth Institute at Colombia University, March 2006. Cit: [HSTF (2006)]

Marine Resources Assessment Group Ltd. *Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries*. Report prepared by MRAG for the UK's Department for International Development, with support from the Norwegian Agency for Cooperation, Final report, July 2005. Cit: [MRAG (2005)]

Standing, Andre. *The Growth in Certification of Marine Fisheries in Southern Africa – A Discussion on the Potential Benefits and Challenges*. Institute for Security Studies, Research Report, August 2009. Cit: [Standing (2009)]

World Bank. *Helping Countries Combat Corruption – The Role of the World Bank*. Poverty Reduction and Economic Management, Washington DC, September 1997. Cit: [World Bank (1997)]

SOU (Sweden)

Statens Offentliga Utredningar. *Memorandum on A Sustainable Fisheries Strategy*. Swedish Environmental Advisory Council 2006:1, Ministry of Sustainable Development, Edita Västra Aros, Stockholm 2006. Cit: [SOU (2006)]

Articles

Diagne, Abdoulaye. *A Unilateral Perspective on an International Concern – A Look at the EU's IUU Regulation*. International Centre for Trade and Sustainable Development, Trade Negotiations Insights, Volume 8, Number 1, February 2009. Cit: [Diagne (2009)]
Available at: <http://ictsd.org/i/news/tni/39387/> [2010-03-21, 11.43]

Fauvet, Paul. *Mozambique: Fisheries Ministry Has Just One Patrol Boat*. AllAfrica.com, 31 May 2008. Cit: [Fauvet (2008)]
Available at: <http://allafrica.com/stories/200806020065.html?viewall=1> [2010-04-21, 09.55]

Gustafsson, Mårten. *Regional workshop på Fiji om illegalt fiske och landningskontroll*. Fiskeriverket, Fjärran Vatten – Nytt om fiske, resurser och miljö, Årgång 7, Nummer 4, oktober 2006. Cit: [Gustafsson (2006)]
Available at: https://www.fiskeriverket.se/download/18.1cb5b8de10fc4b40c7480002158/fjavatt_06_4.pdf [2010-03-25, 12.32]

Stancich, Rikki. *Illegal Timber: Europe's Doors Still Wide Open*. Climate Change Corp, Climate News for Business, Policy, 7 August 2008.

Cit: [Stancich (2008)]

Available at:

<http://www.climatechangeCorp.com/content.asp?ContentID=5544>

[2010-03-20, 18.50]

Internet Sources

European Commission. Development and Relations with African, Caribbean and Pacific States. *Forest and Illegal Logging*.

Cit: [Forest and Illegal Logging]

Available at:

http://ec.europa.eu/development/policies/9interventionareas/environment/forest/forestry_intro_en.cfm [2010-03-20, 18.40]

Fair Politics Make Development Work. *Case: Fishy Business*. Autumn 2007. Cit: [Fishy Business]

Available at: http://www.fairpolitics.nl/europa/cases/fishy_business

[2010-03-21, 11.55]

Transparency International – The Global Coalition Against Corruption. *Corruption Perceptions Index 2009*.

Available at:

http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table [2010-02-16, 10.12]

Other Sources

Baumüller, Heike; Brack, Duncan; and Umpfenbach, Katharina. *Keeping Illegal Fish and Timber off the Market – A Comparison of EU Regulations*. Chatham House, Briefing Paper, EERG BP 2009/04, October 2009.

Cit: [Baumüller *et al.* (2009)]

Available at:

http://www.chathamhouse.org.uk/files/14974_bp1009_fishandtimber.pdf

[2010-04-13, 18.12]

Baumüller, Heike. *Combating Illegal Fishing in the EU: Interaction with WTO Rules*. Chatham House, Briefing Paper, EERG BP 2010/02, January 2010. Cit: [Baumüller (2010)]

Available at:

http://www.chathamhouse.org.uk/files/15725_bp0110baumuller.pdf

[2010-04-13, 16.05]

CFFA. *Proposal by the European Commission for Measures to Combat Illegal, Unreported and Unregulated (IUU) Fishing*. CFFA Preliminary Comments, 17 October 2007. Cit: [CFFA (2007)]

Available at: http://www.cape-cffa.org/pub_EU/CFFA%20position%20IUU%20package%20prop.doc [2010-04-20, 11.55]

DFID and Defra, Sustainable International Fisheries Team. *Grand Theft Oceans – Tackling Illegal, Unregulated and Unreported (IUU) Fishing*. Paper regarding an event at Portcullis House, House of Commons, Westminster, April 2007. Cit: [DFID/Defra (2007)]

Available at: <http://www.dfid.gov.uk/Documents/publications/Illegal-fishing-leaflet-final.pdf> [2010-03-12, 15.54]

DG Mare, Fisheries: *EU is ready to combat illegal fishing*. Press release, IP/09/1590, Brussels, 27 October 2009. Cit: [DG Mare (2009)]

Available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1590&format=HTML&aged=0&language=EN&guiLanguage=en> [2010-04-20, 15.11]

EIA and Telapak. *Blocking Loopholes with Law: Why FLEGT VPAS Require New EU Legislation*. 01/02/2007. Cit: [EIA/Telapak (2007)]

Available at: <http://www.eia-international.org/files/news367-1.pdf> [2010-03-30, 10.44]

Erixon, Fredrik; and Hindley, Brian. *New EU Trade Regulations to Combat Illegal Logging; A Critique*. European Centre for International Political Economy, November 2009. Cit: [Erixon/Hindley (2009)]

Available at: <http://www.ecipe.org/people/brian-hindley/other-publications/FINALTimber.pdf> [2010-03-02, 14.52]

Le Gallic, Bertrand. *Using Trade Measures in the Fight Against IUU Fishing: Opportunities and Challenges*. Paper prepared for IIFET 2004 Japan Conference Proceedings, July 2004. Cit: [Le Gallic (2004)]

Available at: <http://www.oecd.org/dataoecd/31/44/34227035.pdf> [2010-04-07, 14.37]

Ortiz, Paul A. *An Overview of the U.S. Lacey Act Amendments of 1981 and a Proposal for a Model Port State Fisheries Enforcement Act*. Paper prepared for the Ministerially Led Task Force on Illegal, Unreported and Unregulated Fishing on the High Seas, U.S. National Oceanic & Atmospheric Administration, November 2005. Cit: [Ortiz (2005)]

Available at: http://www.high-seas.org/docs/Lacey_Act_Paper.pdf [2010-04-25, 11.12]

Roheim, Cathy A. *Seafood Supply Chain Management: Methods to Prevent Illegally-Caught Product Entry into the Marketplace*. Paper prepared for IUCN World Conservation Union-US for the project PROFISH Law Enforcement, Corruption and Fisheries Work, January 2008. Cit: [Roheim (2008)]

Available at:

http://cmsdata.iucn.org/downloads/supply_chain_management_roheim.pdf
[2010-03-25, 09.12]

Secretariat of ACP Group of States and EU. *Guide on Designing and Implementing Measures to Promote Organisational Integrity and Address Corruption – Strengthening fishery products health conditions in ACP/OCT countries.* 8.ACP.TPS.137/8.ACP.PTN.REG.001/8ACP.PTU.REG.001, ULG International Limited, SFP Programme, 2008.

Cit: [SFP Programme (2008)]

Available at: http://www.sfp-acp.eu/SFP_PDF/GuidesManualsCatalogues/HandbooksManuals/Anti-Corruption_Guide_English.pdf [2010-04-20, 10.18]

WTO Brochure. *The World Trade Organization in Brief.* World Trade Organisation, 2009. Cit: [WTO in brief (2009)]

Available at: http://www.wto.org/english/res_e/doload_e/inbr_e.pdf
[2010-04-17, 13.15]

Legislation

Conventions

Civil Law Convention on Corruption, European Treaty Series – No. 174, Strasbourg, 4.XI.1999. Cit: [Corruption Convention]

Regulations

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.

Cit: [Food safety regulation]

Council Regulation (EC) No 2173/2005 of 20 December 2005, on the establishment of a FLEGT licensing scheme for imports of timber into the European Community. Cit: [Timber regulation]

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. Cit: [IUU fishing regulation]

Commission Regulation (EC) No 1010/2009 of 22 October 2009, laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

Cit: [Implementation of IUU fishing regulation]

Others

General Agreement on Tariffs and Trade (GATT 1947). Geneva, July 1986.
Cit: [GATT]

IPOA – International Plan of Action to Prevent, Deter and Eliminate Illegal,
Unreported and Unregulated Fishing. FAO, Rome 2001. Cit: [IPOA-IUU]

Table of Cases

WTO (1998). *United States – Import Prohibition of Certain Shrimp and Shrimp Products – Report of the Appellate Body*. WT/DS58/AB/R, 12 October 1998, 98-0000. Cit: [Shrimp Case (1998)]