

Notes

- 1 Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No. 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999. The text of the IUU Regulation is reproduced in Appendix 6 of this paper.
- 2 IUU fishing has been characterised as 'one of the most severe problems affecting world fisheries' and the 'main obstacle in achieving sustainable fisheries in both areas under national jurisdiction and the high seas'. See UN General Assembly, Fifty-fourth Session, Agenda Items 40(a) and (c), Oceans the Law of the Sea; Law of the Sea; Results of the Review by the Commission on Sustainable Development of the Sectoral Theme of 'Oceans and Seas', Oceans and the Law of the Sea, Report of the Secretary-General, A/54/429, 30 September 1999, para. 249; and UN General Assembly, Fifty-ninth Session, Item 50(b) of the Provisional Agenda, Oceans and the Law of the Sea, Sustainable Fisheries, Including Through the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Related Instruments, Report of the Secretary-General, A/59/298, 26 August 2004, para. 36.
- 3 The EC is the leading importer of fish and has fishing fleets in every ocean in the world. While the EC considers itself as having a major responsibility in taking a lead in preventing, deterring and eliminating IUU fishing, it also has an economic interest in combating IUU fishing. Given the high levels of support (including subsidies to the EU fleet), the EC and EU fishing interests must be concerned that IUU fish is a source of price competition.
- 4 See IUU Regulation, Article 56.
- 5 See note 1.
- 6 See note 2.
- 7 See, generally, Christopher Delgado et al., *Fish to 2020: Supply and Demand in Changing Global Markets*, International Food Policy Research Institute, 2003.
- 8 *Global Fishing Fleet Statistics*, FAO, Sofia, 2006, pp. 25–29, <http://www.fao.org/fishery/statistics/global-fleet/en>
- 9 BJ Cudahy, *Box Boats: How Container Ships Changed the World*, 2006; Theo Notteboom and Jean-Paul Rodrigue, 'Containerisation, Box Logistics and Global Supply Chains: The Integration of Ports and Liner Shipping Networks', *Maritime Economics & Logistics*, 10 (152–174), 2008.
- 10 *Annual Reefer Shipping Market Review and Forecast 2007/08*, <http://bharatbook.wordpress.com/2008/01/28/annual-reefer-shipping-market-review-and-forecast-200708/>
- 11 FAO, *A Study into the Effect of Energy Costs in Fisheries*, FAO Fisheries Circular No. 1022, Rome, 2007.
- 12 See Mahfuz Ahmed, 'Market Access and Trade Liberalisation in Fisheries, Natural Resources, International Trade and Sustainable Development', Issue Paper no. 4, June 2006.
- 13 UN, FAO, Fact Sheet, 'The International Fish Trade and World Fisheries', June 2008, www.fao.org
- 14 FAO, *The International Fish Trade and World Fisheries*, p. 1.
- 15 Ibid.
- 16 FAO, Committee on Fisheries, Sub-committee on Fish Trade, Eleventh Session, Bremen, Germany, 2–6 June 2008, 'Status and Important Recent Events Concerning International Trade in Fishery Products', COFI-FT/XI/2008/3, FAO, Rome, 2008, para. 12.
- 17 Ibid.
- 18 DJ Agnew and CT Barnes, *Economic Aspects and Drivers of IUU Fishing: Building a Framework*, 2004, <http://www.oecd.org/dataoecd/17/7/29468002.PDF>; MRAG, Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries, report prepared for the High Seas Task Force and the Department for International Development, UK, 2005, www.high-seas.org; MRAG, *Illegal, Unreported and Unregulated Fishing on the High Seas: Impacts on Ecosystems and Future Science Needs*, Report prepared for the High Seas Task Force and the Department for International Development, UK, 2005, www.high-seas.org; CA Roheim, *Seafood Supply Chain Management: Methods to Prevent Illegally-Caught Product Entry into the Marketplace*, 2008.
- 19 MRAG, *Illegal, Unreported and Unregulated Fishing on the High Seas*, 2005, op. cit.
- 20 Carl-Christian Schmidt, 'Economic Drivers of Illegal, Unreported, and Unregulated (IUU) Fishing', *International Journal of Marine and Coastal Law*, 2005, pp. 479–507; B. Le Gallic and A Cox, 'An Economic Analysis of Illegal, Unreported and Unregulated (IUU) Fishing: Key Drivers and Possible Solutions', 2005, *Marine Policy*, 30, p. 689.

- 21 'Frozen Fish Narcotics Export Ring Busted in Montevideo Port', 17 August 2008, available at <http://www.mercopress.com/vernorticia.do?id=14270&formato=html>
- 22 'Australia Links Organised Crime to Illegal Fishing', 26 May 2008, available at <http://www.iht.com/articles/2008/05/26/asia/fish.php>
- 23 See Food and Agriculture Organisation, *The State of World Fisheries and Aquaculture*, FAO, Rome, 2006, www.fao.org
- 24 See UN General Assembly, Fifty-fourth Session, Agenda Items 40(a) and (c), Oceans the Law of the Sea; Law of the Sea; Results of the Review by the Commission on Sustainable Development of the Sectoral Theme of 'Oceans and Seas', Oceans and the Law of the Sea, Report of the Secretary-General, A/54/429, 30 September 1999, para. 249.
- 25 See UN General Assembly, Fifty-ninth Session, Item 50(b) of the Provisional Agenda, Oceans and the Law of the Sea, Sustainable Fisheries, Including Through the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Related Instruments, Report of the Secretary-General, A/59/298, 26 August 2004, para. 36.
- 26 Marine Resource Assessment Group Ltd, *Review of Impacts of IUU Fishing on Developing Countries*, 44.
- 27 MRAG and Fisheries Ecosystems Restoration Research, *The Global Extent of IUU Fishing*, Final Report, Fisheries Centre, University of British Columbia, www.illegal-fishing.info/uploads/MRAGExtentGlobalIllegalFishing.pdf
- 28 Environmental Justice Foundation, *Pirates and Profiteers*, 3, www.ejfoundation.org/pdf/pirates_and_profiteers.pdf.
- 29 DJ Agnew and CT Barnes, 'Economic Aspects and Drivers of IUU Fishing: Building a Framework', Workshop on Illegal, Unreported, and Unregulated (IUU) Fishing Activities, Organisation for Economic Co-operation and Development, Tour Europe, La Défense, 19–20 April 2004, AGRI/FI/IUU(2004)2, www.oecd.org
- 30 FAO, Fisheries Department, 'Implementation of the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing', FAO Technical Guidelines for Responsible Fisheries, No. 9, FAO, Rome, 2002, para. 16.
- 31 See Appendix 2.
- 32 See <http://www.ccsbt.org/>. South Africa, an ACP member, is a 'cooperating non-member' of the CCSBT and as such has agreed to adhere to the management and conservation objects of the Commission.
- 33 See <http://www.nafo.int/>. Cuba is a member of the ACP and NAFO.
- 34 See <http://www.neafc.org/>. The Bahamas and Belize are members of the ACP which participate in the NEAFC in the capacity of cooperating non-contracting members.
- 35 See <http://www.ccamlr.org/>. Namibia and South Africa are members of the ACP and members of CCAMLR. Cook Islands, Mauritius and Vanuatu are ACP members and parties to the CCAMLR Convention, but are not members of the Commission.
- 36 See <http://www.iotc.org/>. The following ACP members are members of the IOTC: Belize, Comoros, Eritrea, Guinea, Kenya, Madagascar, Seychelles, Sudan, Tanzania and Vanuatu.
- 37 See <http://www.iattc.org/>. Vanuatu is a member of the ACP and IATTC. Belize and Cook Islands are ACP members and cooperating non-parties to the IATTC Convention.
- 38 See <http://www.wcpfc.int/>. The following ACP members are members of the WCPFC: Cook Islands, Fiji Islands, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.
- 39 See <http://www.iccat.int/>. The following ACP members are members of ICCAT: Angola, Barbados, Belize, Cape Verde, Côte d'Ivoire, Equatorial Guinea, Gabon, Ghana, Guinea, Guyana, Namibia, Nigeria, St Vincent and the Grenadines, Sao Tome and Principe, Senegal, South Africa, Trinidad and Tobago, and Vanuatu. Guyana is an ACP member and participates in ICCAT in the capacity of a cooperating non-contracting party.
- 40 Members of the RFMOs are under obligation to give effect to these measures at the domestic level.
- 41 European Commission, Community Action Plan for the Eradication of Illegal, Unreported and Unregulated Fishing, Brussels, 28 May 2002, COM(2002) 180 final; Lake Victoria Fisheries Organisation, Regional Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing on Lake Victoria and Its Basin, Bagamoyo, Tanzania, 27 May 2004.
- 42 *Regional Plan of Action (RPOA) to Promote Responsible Fishing Practices Including Combating IUU Fishing in the Region*, Bali, Indonesia, 5 May 2007. The members of the RPOA are: Republic of Indonesia, Australia, Brunei Darussalam, Cambodia, Malaysia, Papua New Guinea, Philippines, Singapore, Thailand, Timor-Leste and Vietnam.

- 43 The SADC IUU Statement of Commitment will become a SADC Declaration when endorsed by its Council of Ministers. SADC aims to finalise a regional action plan by June 2009 and a review of progress on implementation of the Statement of Commitment is set for the end of 2011. See TRAFFIC News, 'Southern African states move to eradicate "pirate" fishing', <http://www.traffic.org/home/2008/7/11/southern-african-states-move-to-eradicate-pirate-fishing.html>. At this early stage of implementation, Mozambique has already signified its commitment under the SADC IUU Statement by undertaking immediate enforcement actions against a Namibian-flagged vessel *Antillas Reefer* and taking further investigation of its two sister vessels *Paloma V* and *Aoster*, which are believed to have conducted IUU fishing in Mozambique waters. See Agencia de Informacao de Mocambique (Maputo), Mozambique, 'Country Seizes Namibian Pirate Fishing Ship *Antillas Reefer*', 18 July 2008. Available at <http://allafrica.com/stories/200807180938.html>
- 44 New Zealand, Fisheries Act 1996; Amendment Act (No. 2) 1999, Article 113A.
- 45 Australia, Fisheries Management Act 1991, Division 5A, Subdivision AA.
- 46 16 USC 1826k HSDFMFA §609(d)(1) and §610(a).
- 47 16 USC 1826(a), (b)(3), and (b)(4).
- 48 See generally on the EU's access agreements regime: K Mfodwo, *Negotiating Equitable Fisheries Access Agreements – A Capacity-Building and Reference Manual for Developing Coastal States*, IUCN Project, Capacity Building for Negotiating Fisheries and Fisheries Partnership Agreements in SRFC Member Countries, December 2006, <http://www.csrsp.org/documents/doctechique/CSRP%20manuel%20en%20smv.pdf>; K Mfodwo, K and M Tsamenyi, *Responsible Fishing and Access Agreements in the Western Central Pacific*, Report commissioned by the Forum Fisheries Agency, Honiara, Solomon Islands, May 2002; K Mfodwo and M Tsamenyi, *The bilateral fisheries agreements of the African Atlantic Region: An Analysis of Opportunities for Intervention by WWF(US)*, Report to WWF(US) July 1999.
- 49 See http://ec.europa.eu/trade/issues/bilateral/regions/acp/index_en.htm
- 50 See http://www.acpsec.org/en/about_us.htm
- 51 See http://www.acpsec.org/en/about_us.htm
- 52 See http://ec.europa.eu/development/geographical/cotonou/lomegen/lomeitoiv_en.cfm
- 53 See International Trade Centre, *Rules of Origin in the Context of International Trade*, 2, <http://www.intracen.org/tfs/docs/publications/ruleori2.pdf>
- 54 The first Lomé Convention, concluded in 1975 following the accession of the United Kingdom into the European Economic Community, established a comprehensive framework of trade relations between EC Members and 46 ACP states. Three subsequent Lomé Conventions, concluded in 1979, 1984 and 1989, extended preferential trade access to a total of 70 ACP states. See http://ec.europa.eu/development/geographical/cotonou/lomegen/lomeitoiv_en.cfm
- 55 UK Kleih and SF Walmsley, *The Impact of EU Commercial Fisheries Policies and Practice on International Trade in Fisheries Products*, 2007, pp. 20–21.
- 56 See http://ec.europa.eu/development/geographical/cotonou/cotonou2005_en.cfm
- 57 This term refers collectively to the 25 members of the EU who acceded to the Union on or before 1 May 2004.
- 58 EC, *Trade Issues, Trade in Agricultural Goods and Fishery Products, Fisheries: Trade-partners*, http://ec.europa.eu/trade/issues/sectoral/agri_fish/fish/tp_en.htm
- 59 Ibid.
- 60 Ibid.
- 61 See Council Regulation (EC) No. 2505/96 of 20 December 1996, opening and providing for the administration of Community tariff quotas for certain agricultural and industrial products and amending Regulation (EC) No 3059/95, opening and providing for the administration of Community tariff quotas for certain agricultural and industrial products (first series, 1996).
- 62 EC COM(2007) 289 final, 'Proposal for a Council Regulation opening and providing for the management of autonomous Community tariff quotas for certain fishery products for the period 2007 to 2009', Brussels, 4 June 2007.
- 63 EC, *Trade Issues, Trade in Agricultural Goods and Fishery Products, Fisheries: Product Questions*, http://ec.europa.eu/trade/issues/sectoral/agri_fish/fish/tp_en.htm
- 64 The comments provided by Evelina Medin (Faculty of Health and Behavioural Sciences, University of Wollongong) in relation to this section of the report are gratefully acknowledged.
- 65 Due to data limitations presented in the EuroStat External Trade Database, the analysis in this section is limited to the type of fishery products according to nomenclature and does not identify the source of the fishery (e.g. marine, inland and aquaculture sectors).
- 66 EC, *Trade Issues, Africa, Caribbean, Pacific. Economic Partnership Agreements: A New Approach in EU-ACP Trade Relations*, http://ec.europa.eu/trade/issues/bilateral/regions/acp/index_en.htm
- 67 Ibid.

- 68 U Kleih, C Barnes, I Payne, P Greenhalgh, S Walmsley and C Howard, *The Impact of EU Commercial Fisheries Policies and Practice on International Trade in Fisheries Products*, ACP Consultative Process on a Trade and Sustainable Development Approach to Negotiation of Fisheries under the EPA, 22–24 January 2007.
- 69 Ibid.
- 70 The following HS product categories are analysed: HS0301 live fish, HS0302 fresh or chilled fish, HS0303 frozen fish, HS0304 fish fillets, HS0305 preserved fish, HS0306 crustaceans, HS0307 molluscs, HS1604 prepared or preserved fish, HS1605 prepared or preserved molluscs or crustaceans.
- 71 See L Campling, 'Direct and Indirect Preference Erosion and the Competitiveness of the ACP Tuna Processing Sector', in V Qalo (2008) (ed.), *Bilateralism and Development: Emerging Trade Patterns*, Cameroon May, London.
- 72 Ibid.
- 73 See L Campling, *FFA Fisheries Trade Briefing*, Vol. 1, Issues 8 and 9, July and August 2008).
- 74 Ibid.
- 75 See EC, *Trade Issues, India*, <http://trade.ec.europa.eu/doclib/html/120352.htm>
- 76 J Evans, 'EU Extends Maldives Trade Concessions to 2014', Malé, 10 June 2008, <http://www.minivannews.com/news/news.php?id=4577>
- 77 E Leonard, 'Unrealistic Rates Hit Seafood Exports', *Sunday Observer*, 25 September 2005, <http://www.lankabusinessonline.com/fullstory.php?mid=1314392935>
- 78 See FAO, *An Overview of the Impact of the Tsunami on Selected Coastal Fisheries Resources in Sri Lanka and Indonesia*, RAP Publication 2007/19, <ftp://ftp.fao.org/docrep/fao/010/ai000e/ai000e00.pdf>
- 79 Council Regulation No. 1436/2005 has advanced these preferential duties by some months for Thailand and other countries.
- 80 EC, *Trade Issues, Thailand*, <http://trade.ec.europa.eu/doclib/html/120352.htm>
- 81 The reduced tariff quota for canned tuna was a result of a WTO mediation between the EC and Thailand and the Philippines. The mediation resulted in the Community opening a quota of 25,000 tonnes at 12 per cent duty, which is a 50 per cent reduction from the MFN rate. The volume of the quota was subsequently increased on 1 July 2004 to 25,750 tonnes.
- 82 EC, *Trade Issues, China*, http://trade.ec.europa.eu/doclib/docs/2006/may/tradoc_120346.pdf
- 83 Ibid.
- 84 EC, *Trade Issues, Argentina*, <http://trade.ec.europa.eu/doclib/html/120352.htm>
- 85 EC, *Trade Issues, Brazil*, <http://trade.ec.europa.eu/doclib/html/120352.htm>
- 86 EC, *Trade issues, Chile*, <http://trade.ec.europa.eu/doclib/html/120352.htm>
- 87 Ibid.
- 88 EC, *Trade Issues, Ecuador*, <http://trade.ec.europa.eu/doclib/html/120352.htm>
- 89 Unless otherwise specified, data for this section were obtained from the US Department of Agriculture, Foreign Agricultural Service, available at <http://www.fas.usda.gov>
- 90 HS0301 live fish, HS0302 fresh or chilled fish, HS0303 frozen fish, HS0304 fish fillets, HS0305 preserved fish, HS0306 crustaceans, HS0307 molluscs, HS1604 prepared or preserved fish, HS1605 prepared or preserved molluscs or crustaceans.
- 91 Data for this section were obtained from the UN Commodity Trade Statistics Database, available at <http://comtrade.un.org>
- 92 HS0301 live fish, HS0302 fresh or chilled fish, HS0303 frozen fish, HS0304 fish fillets, HS0305 preserved fish, HS0306 crustaceans, HS0307 molluscs, HS1604 prepared or preserved fish, HS1605 prepared or preserved molluscs or crustaceans.
- 93 Council Regulation (EC) No. 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, Article 2.
- 94 The principal EC regulations adopted to implement these measures are: EC Regulation No. 2847/93 establishing a control system applicable to the Common Fisheries Policy; EC Regulation No. 1093/94, setting the terms under which fishing vessels of a third country may land directly and market their catches at Community ports; EC Regulation No. 1447/1999, establishing a list of types of behaviour which seriously infringe the rules of the Common Fisheries Policy; EC Regulation No. 2371/2002, establishing conditions for the marketing of fish products; EC Regulation No. 2371/2002, requiring Member States to co-operate with third countries and provide necessary assistance to ensure compliance with the rules of the Common Fisheries Policy; and EC Regulation No. 768/2005, establishing a Community Fisheries Control Agency.
- 95 Commission of the European Communities, Communication from the Commission, Community Action Plan for the Eradication of Illegal, Unreported and Unregulated Fishing, COM(2002) 180 final, Brussels, 28 May 2002.

- 96 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the new strategy for the Community to prevent, deter, and eliminate Illegal, Unreported and Unregulated Fishing, Brussels, 17.10.2007, COM(2007) 601 final.
- 97 Consultation on the Elaboration of a New Strategy against IUU Fishing by the European Community, Response document resulting from a stakeholder consultation meeting, Brussels, 20 February 2007, 16 March 2007, 4.
- 98 Ibid.
- 99 Proposal for a Council Regulation Establishing a Community System to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (presented by the Commission), Brussels, 17 October 2007, COM(2007) 602 final, 2007/0223(CNS).
- 100 European Parliament Draft Report on the Proposal for a Council Regulation Establishing a Community System to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (COM(2007)0602 – C6-0454/2007 – 2007/0223(CNS)), 10 March 2008, 2007/0223(CNS).
- 101 See European Parliament Press Release, 'Community System against Illegal, Unreported and Unregulated Fishing', 5 June 2008.
- 102 Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No. 2847/93, (EC) No. 1936/2001 and (EC) No. 601/2004, and repealing Regulations (EC) No. 1093/94 and (EC) No. 1447/1999. The text of the IUU Regulation is reproduced in Appendix 6.
- 103 IUU Regulation, Article 57.
- 104 See note 2.
- 105 The IUU Regulation adopts a categorisation of IUU fishing that is broadly similar to that used in the IPOA-IUU and to that adopted by RFMOs (see IUU Regulation, Articles 2 and 3).
- 106 IUU Regulation, Article 1(3).
- 107 IUU Regulation, Article 1(3). The territories listed in Annex II of the EC Treaty are: Greenland; New Caledonia and dependencies; French Polynesia; French Southern and Antarctic Territories; Wallis and Futuna Islands; Mayotte; Saint Pierre and Miquelon; Aruba; Netherlands Antilles: Bonaire, Curaçao, Saba, St Eustatius and St Maarten; Anguilla; Cayman Islands; Falkland Islands; South Georgia and the South Sandwich Islands; Montserrat; Pitcairn; St Helena and dependencies; British Antarctic Territory; British Indian Ocean Territory; Turks and Caicos Islands; British Virgin Islands; and Bermuda (see *Official Journal of the European Union*, C 310/400, 16 December 2004).
- 108 IUU Regulation, Article 2(5). This definition is similar to the definition in several international and regional fisheries instruments and national fisheries legislation. See, for example, Article 1(c), Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.
- 109 Fish and crustaceans, molluscs and other aquatic invertebrates.
- 110 Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs.
- 111 Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved.
- 112 IUU Regulation, Article 2(8). The products listed in Annex I of the IUU Regulation upon its adoption are: freshwater fishery products; aquaculture products obtained from fry or larvae; ornamental fish; live oysters; scallops, including queen scallops, of the genera *Pecten*, *Clamys* or *Placopecten*, live fresh or chilled; Coquilles St Jacques (*Pecten maximus*), frozen; other scallops, fresh or chilled; mussels; snails, 'others [sic] than those obtained from the sea'; and prepared and preserved molluscs.
- 113 IUU Regulation, Articles 4 and 5.
- 114 The information to be provided includes vessel identification; name of the designated port of destination and the purposes of the call, landing, transhipment or access to services; fishing authorisation or, where appropriate, authorisation to support fishing operations or to tranship fishery products; dates of the fishing trip; estimated date and time of arrival at port; the quantities of each species retained on board or, where appropriate, a negative report; the zone or zones where the catch was made or where transhipment took place, whether in Community waters, in zones under the jurisdiction or sovereignty of a third country or on the high seas; the quantities for each species to be landed or transhipped (see IUU Regulation, Article 6(1)). Masters of third country fishing vessels are exempted from providing certain information specified in Article 6(1) where a catch certificate for the full catch to be landed or transhipped in EC territory has been validated in accordance with Chapter III of the IUU Regulation.
- 115 IUU Regulation, Article 6(2).
- 116 IUU Regulation, Article 17.

- 117 IUU Regulation, Articles 7(1) and 7(2).
118 IUU Regulation, Article 7(3).
119 Ibid.
120 Ibid.
121 IUU Regulation, Article 8(1).
122 IUU Regulation, Articles 8(2) and 8(4).
123 IUU Regulation, Article 9(1).
124 IUU Regulation, Article 9(2).
125 IUU Regulation, Article 10(1).
126 IUU Regulation, Article 11.
127 IUU Regulation, Article 11(3).
128 IUU Regulation, Article 11(4).
129 IUU Regulation, Article 4(2).
130 IUU Regulation, Article 2(5) broadly defines a fishing vessel as ‘any vessel of any size used for or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, fish processing vessels, and vessels engaged in transhipment and carrier vessels equipped for the transportation of fishery products, except container vessels’.
131 Article 18 of the Draft Agreement on Port State Measures provides for appeals against port inspections while Article 19 provides for compensation.
132 IUU Regulation, Article 4(2).
133 IUU Regulation, Article 9(1) and 17(3).
134 See Proposal for a Council Regulation Establishing a Community System to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (presented by the Commission), Brussels, 17 October 2007, COM(2007) 602 final, 2007/0223(CNS), Article 11(1).
135 IUU Regulation, Article 12(1).
136 This catch certificate specimen has similar content to the standard *Dissostichus* catch document form used by CCAMLR and the statistical document forms used by IOTC, ICCAT, IATTC and CCSBT.
137 IUU Regulation, Articles 14 and 15.
138 IUU Regulation, Article 14(1).
139 IUU Regulation, Article 14(2).
140 In existing RFMO, catch certification and statistical documentation regimes are only established for some species of tuna, swordfish, and toothfish.
141 IUU Regulation, Article 13(1).
142 IUU Regulation, Article 17.
143 IUU Regulation, Article 17(2).
144 IUU Regulation, Article 17(6).
145 IUU Regulation, Article 16. This requirement may be adapted according to the type of fishery product, distance to the place of entry, and the transport used.
146 IUU Regulation, Article 16(2).
147 IUU Regulation, Article 18.
148 These include that the importer has not been able to submit a catch certificate for the products concerned; the products intended for importation are not the same as those mentioned in the catch certificate; the catch certificate is not validated by the public authority of the flag state; the catch certificate does not indicate all the required information; the importer is not in a position to prove that the fishery products comply with the conditions set out in Article 14(1) or 14(2) regarding certification requirements for indirect importation of fishery products; a fishing vessel figuring on the catch certificate as vessel of origin of the catches is included in the Community IUU vessel list or in the IUU vessel lists of RFMOs; the catch certificate has been validated by the authorities of a flag state identified as a non-cooperating third country in accordance with Article 31; the competent authorities have received a reply to a request for assistance from a third country, according to which the exporter was not entitled to request the validation of a catch certificate; the competent authorities have received a reply according to which the products do not comply with the conservation and management measures or other conditions are not met; the competent authorities have received no reply within the stipulated deadline; the competent authorities have received a reply which does not provide pertinent answers to the questions raised in the request for assistance.
149 IUU Regulation, Articles 12(3) and 12(4).
150 IUU Regulation, Article 25.

- 151 IUU Regulation, Article 30.
- 152 IUU Regulation, Article 37.
- 153 IUU Regulation, Article 31(3).
- 154 IUU Regulation, Articles 31(4), 31(5), and 31(6) and 31(7).
- 155 IUU Regulation, Article 38.
- 156 IUU Regulation, Article 38(1).
- 157 IUU Regulation, Article 38(8) and (9).
- 158 See IUU Regulation, Article 56.
- 159 See section 7 of this report
- 160 See IUU Regulation, Article 51(1) and (2).
- 161 L Campling, *FFA Fisheries Trade Briefing*, Vol. 1, Issues 8 and 9, July and August 2008.
- 162 See the provisions in force until 31 December 2008: Council Regulation (EC) No. 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences, http://trade.ec.europa.eu/doclib/docs/2005/june/tradoc_123910.pdf and the proposal for the period 2009–2011: European Commission, Proposal for a Council Regulation applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No. 552/97, No. 1933/2006 and Commission Regulations (EC) No. 964/2007 and No. 1100/2006, 21 December 2007, <http://register.consilium.europa.eu/pdf/en/08/st05/st05177.en08.pdf>
- 163 See the provisions in force until 31 December 2008: Council Regulation (EC) No. 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences, http://trade.ec.europa.eu/doclib/docs/2005/june/tradoc_123910.pdf and the proposal for the period 2009–2011: European Commission, Proposal for a Council Regulation applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No552/97, No 1933/2006 and Commission Regulations (EC) No 964/2007 and No 1100/2006, 21 December 2007, <http://register.consilium.europa.eu/pdf/en/08/st05/st05177.en08.pdf>
- 164 For the period until 31 December 2008, GSP rules are to be found in Council Regulation (EC) No. 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences, http://trade.ec.europa.eu/doclib/docs/2005/june/tradoc_123910.pdf. For the period 2009–2011 the proposed GSP rules are to be found in European Commission, Proposal for a Council Regulation applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No. 552/97, No. 1933/2006 and Commission Regulations (EC) No. 964/2007 and No. 1100/2006, 21 December 2007, <http://register.consilium.europa.eu/pdf/en/08/st05/st05177.en08.pdf>. More generally, see L Bartels, 'The EU's GSP+ Arrangement as an Alternative to the EPA Process', November 2007; European Commission, 'Is GSP+ an Alternative to an Economic Partnership Agreement?', September 2007, http://trade.ec.europa.eu/doclib/docs/2007/september/tradoc_136097.pdf
- 165 The recipients must demonstrate that their economies are 'dependent and vulnerable', meaning that the five largest sections of its GSP-covered exports to the EC must represent more than 75 per cent of its total GSP-covered exports. In addition, GSP-covered exports from that country must also represent less than 1 per cent of total EU imports under GSP.
- 166 The 23 of the most important international conventions that must have been ratified before the end of October 2005 relate to core political, human and labour rights, including the elimination of discrimination against women; the prohibition of torture; the right to strike; the banning of child labour, protection of the environment, good governance; and the fight against drug production and trafficking. The remaining conventions which must be ratified within the lifetime of the regulations, i.e. by December 2008, include the Kyoto Protocol, the Convention on International Trade in Endangered Species and the UN Convention against Corruption.
- 167 EC Press Release, 'Trade Issues, Generalised System of Preferences: EU gives developing countries duty-free access with GSP+', Brussels, 9 December 2008, IP/08/1918, December 2008. Available at http://ec.europa.eu/trade/issues/global/gsp/pr091208_en.htm
- 168 Nigeria had requested entry to the GSP+ scheme, but was not granted this by the EC because it had not ratified the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, which is part of the requirements according to the GSP regulation. See European Centre for Development Policy Management, 'State of EPA Negotiations in January 2009', Briefing Note, prepared by ECDPM, Maastricht, the Netherlands, 09 January 2009. Available at http://www.acp-eu-trade.org/library/files/ECDPM_EN_090109_ECDPM_State-of-EPA-negotiations.pdf
- 169 These are contained in Articles 66–97, and Annexes 14–18 and 21 of Commission Regulation No. 2454/93

- implementing provisions of the Community Customs Code, as amended by Regulations (EC) Nos. 12/97, 1602/2000 and 881/2003.
- 170 EC Regulation No. 178/2002 only provides for the obligations of food and feed business operators and retailers in ensuring the safety of food in the market. Article 18 provides the general traceability requirements that food operators need to comply with under the regulation.
- 171 The WTO Agreements that are of particular relevance to the trade in fish and fisheries products are: Agreement on the Application of Sanitary and Phytosanitary Measures; Agreement on Technical Barriers to Trade; Agreement on Trade-related Investment Measures; Agreement on Pre-shipment Inspection; Agreement on Rules of Origin; Agreement on Safeguards; Agreement on Import Licensing Procedures; and Agreement on Subsidies and Countervailing Measures.
- 172 See GATT provisions related to the importation of products, Articles VIII, X, XI and XIII.
- 173 GATT 1994, Preamble. See applicable principles such as the MFN and national treatment principles in Articles I, II and III of GATT.
- 174 FAO Code of Conduct, Article 11.2.5.
- 175 See Panel Report, Turkey – Textiles, para. 9.63: ‘The prohibition on the use of quantitative restrictions forms one of the cornerstones of the GATT system’. See also P Van den Bossche, *The Law and Policy of the World Trade Organization: Text Cases and Materials*, 2005, p. 444.
- 176 See GATT Panel Report, Japan – Semi-Conductors, para. 104. See also Van den Bossche, op. cit., p. 444.
- 177 See, for example, US – Section 337, GATT Panel Report, US – Section 337, para. 5.9.
- 178 Appellate Body Report, US – Shrimp (Article 21.5 – Malaysia), para. 144.
- 179 Van den Bossche, op. cit. See, specifically, Appellate Body Report, US – Shrimp (Article 21.5 Malaysia) paras 115–134.
- 180 A potential area of inconsistency between the IUU Regulation and the TBT Agreement, depending on how the Regulation is implemented, relates to the port inspection provisions of the IUU Regulation, discussed in section 9.1.
- 181 See, for example, IUU Regulation, preambular paragraph 14 and Article 31(7).
- 182 IUU Regulation, Chapter XI.
- 183 See Article 2.2 of the TBT Agreement (for technical regulations); Article 5.1.2 of the TBT Agreement (for conformity assessment procedures); and annex 3E to the TBT Agreement (for standards). See also Van den Bossche, op. cit., pp. 457–480.
- 184 See the list contained in Article 2.2 of the TBT Agreement. The list of legitimate objectives enumerated in Article 2.2 is not exhaustive. It will be up to the DSB to assess whether policy objectives other than those listed in Article 2.2 are, in a particular case, legitimate policy objectives.
- 185 Article 2.4 of the TBT Agreement. See also Annex 3F to the TBT Agreement (for standards) and Article 5.4 of the TBT Agreement (for conformity assessment procedures).
- 186 IUU Regulation, Article 9(2).
- 187 A summary of such efforts may be found at http://www.wto.org/english/tratop_e/envir_e/envir_e.htm
- 188 The most relevant principle is the MFN treatment obligation, which is set out in GATT Article 1 and Article 2.1 of the TBT Agreement. GATT Article 1 requires that ‘... with respect to all rules and formalities in connection with importation and exportation ... any advantage, favour, privilege or immunity granted by any [WTO Member] to any product originating in or destined for any other State shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other [WTO Members]’. Article 2.1 of the TBT Agreement requires WTO Members to ‘ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.’
- 189 There are no dispute settlement provisions set out in the IUU Regulation – this would be a matter for domestic law in each individual country, which may vary significantly, given the mix of civil and common law jurisdictions in the EC member states.
- 190 WTO website, Mexico, etc. versus US: ‘Tuna-Dolphin’. www.wto.org
- 191 WTO, Mexico etc versus US: ‘Tuna-Dolphin’, 2.
- 192 Van Den Bossche, op. cit., p. 444. See also Panel Report, US – Shrimp, paras 7.17 and 8.1.
- 193 Appellate Body Report, US–Shrimp, 164, 165 and 177.
- 194 Appellate Body Report, US–Shrimp (Article 21.5 – Malaysia). See also http://www.wto.org/english/tratop_e/envir_e/edis08_e.htm
- 195 For example, the US Food and Drug Administration Act, Title 3, Section 306, Maintenance and Inspection

of Records for Food, 9 December 2004; US, Public Health Security and Bioterrorism Preparedness Response Act of 2002; Japan, Food Sanitation Law, Law No 55 of 2003; Japan, Quality labelling Standard for Perishable Foods, notification No. 514 of the Ministry of Agriculture, Forestry and Fisheries of March 31, 2000.

- 196 JM Ward, JE Kirkley, R Metzner and S Pascoe, 'Measuring and Assessing Capacity in Fisheries. 1. Basic Concepts and Management Options', FAO Fisheries Technical Paper No. 433/1, FAO, Rome, 2004, p. 33; ICCAT, Supplemental Resolution by ICCAT to Enhance the Effectiveness of the ICCAT Measures to Eliminate Illegal, Unregulated and Unreported Fishing Activities by Large-Scale Tuna Longline Vessels in the Convention Area and Other Areas, 00-19 GEN, 27 December 2000; ICCAT, Resolution by ICCAT Concerning Cooperative Actions to Eliminate Illegal, Unreported and Unregulated Fishing Activities by Large-Scale Tuna Longline Vessels, 02-26 GEN, 4 June 2003.
- 197 Data generated using web-based query of EuroStat External Trade Dataset (EU27 Trade since 1995 by HS2-HS4). The query interface can be accessed at <http://epp.eurostat.ec.europa.eu/newxtweb/>. The following HS product categories are analysed: HS0301 live fish, HS0302 fresh or chilled, HS0303 frozen fish, HS0304 fish fillets, HS0305 preserved fish, HS0306 crustaceans, HS0307 molluscs, HS1604 prepared or preserved fish, HS1605 prepared or preserved molluscs or crustaceans.