

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT
STRUCTURAL AND COHESION POLICIES **B**



Agriculture and Rural Development



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**COMPLIANCE OF IMPORTS
OF FISHERY AND
AQUACULTURE PRODUCTS
WITH EU LEGISLATION**

STUDY





DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES

FISHERIES

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FISHERY AND AQUACULTURE PRODUCTS
WITH EU LEGISLATION**

STUDY

This document was requested by the European Parliament's Committee on Fisheries.

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Abstract

The study estimates the level of compliance of fisheries and aquaculture products imported into the EU with the current safety and quality EU legislation, as well as with the regulation on IUU fishing. It analyses the process of monitoring and control of FAP imports in relation to this requirements and it investigates to what extent the FAP reaching the EU market comply with the sanitary and IUU regulations.

The study identifies critical issues and proposes recommendations for political action.

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LIST OF ABBREVIATIONS

A2LA	American Association for Laboratory Accreditation
ACP	African, Caribbean and Pacific Group of States
AIPCE- CEP	Association des Industries du Poisson de l'UE - Comité des Organisations nationales des importateurs et exportateurs de poisson de l'UE
APR	Annual Percentage Rate
APSM	Agreement on Port State Measures
BIP	Border Inspection Post
CA	Competent Authority
CBP	Bureau of Customs and Border Protection
CC	Catch Certificate
CCA	Central Competent Authority
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCS	Catch Certification Scheme
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CDC	Center for Disease Control and Prevention
CDS	Catch Documentation Scheme
CEVD	Common Entry Veterinary Form
CFCA	Community Fisheries Control Agency
CFP	Common Fisheries Policy
CN	Combined Nomenclature customs codes
CORE	Coordinated Outbreak Response and Evaluation, United States
DEFRA	Department for the Environment, Food and Rural Affairs
DFSI	Designated Food Sanitation Inspectors
DG MARE	Directorate-General for Maritime Affairs and Fisheries
DG SANCO	Directorate-General for Health and Consumers
DG TAXUD	Directorate-General Taxation and Customs Union
EC	European Commission
EEA	European Environmental Agency
EEZ	Exclusive Economic Zone
EFCA	European Fisheries Control Agency
EFSA	European Food Safety Agency
EP	European Parliament
EU	European Union
EUROSTAT	Statistical Services of the European Union
FAO	Food and Agriculture Organisation of the United Nations
FAOCA	FAO Compliance Agreement
FAP	Fishery and Aquaculture Products
FBO	Food Business Operator
FDA	Food and Drug Administration of United States of America
FSA	Food Standards Agency
FSMA	Food Safety Modernization Act
FVO	Food and Veterinary Office (of DG SANCO)
GC	Gas Chromatography
GMP	Good Manufacturing Practices
HACCP	Hazard Analysis and Critical Control Point (system)

HPLC	High Pressure Liquid Chromatography
HS	Harmonised System code
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
IOTC	Indian Ocean Tuna Commission
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate IUU Fishing
ISD	Inspection and Safety Division, Japan
IUU	Illegal, Unreported and Unregulated fishing
LC-MS/MS	Liquid Chromatography-Tandem Mass Spectrometry
LWE	live weight equivalent
MAFF	Ministry of Agriculture, Forestry, and Fisheries of Japan
MCS	Monitoring, Control and Surveillance
MHLW	Ministry of Health, Labor and Welfare of Japan
MPA	Marine Protected Area
MS	EU Member State
mt	Metric tonne
NAFO	Northwest Atlantic Fisheries Organisation
NEAFC	North-east Atlantic Fisheries Commission
NPOA-IUU	National Plan of Action to prevent Illegal, Unreported and Unregulated fishing
PAD	Pangasius Aquaculture Dialogue
PE	Processing Establishment
POAO	Products of Animal Origin
PP	Processing Plant
OCT	Overseas Countries and Territories
OIE	World Organisation for Animal Health
OVS/OFI	Official Veterinary Surgeons/Official Food/Fish Inspector
RASFF	Rapid Alert System for Food and Feed
RFMO	Regional Fisheries Management Organisation
RMP	Residue Monitoring Plan
RTE	Ready to Eat
SEAFO	South East Atlantic Fisheries Organisation
SLO	Single Liaison Office
SPS	Sanitary and Phytosanitary
TAC	Total Allowable Catch
TRACES	Trade Control and Expert System
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	United Nations Fish Stocks Agreement
USD	United States Dollar (EUR1.00 = USD1.35)
USDA-FSIS	United States Department of Agriculture- Food Safety and Inspection Service
WCPFC	Western and Central Pacific Fisheries Commission
WICC	Weight in Catch Certificate Note
WTO	World Trade Organization

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EXECUTIVE SUMMARY

Production of fishery products has increased dramatically in recent years. Capture fisheries have stabilised or declined and production from aquaculture has increased. International trade in fisheries products has increased substantially, with considerable value-added as a result of processing, which has become increasingly globalised. Fisheries resources are overexploited as a result of continued increased demand for fisheries products in the context of weak management regimes and the threat of Illegal Unreported and Unregulated (IUU) fishing activities.

Concerns relating to consumer health and safety led to the establishment of hygiene regulations across the European Union (EU) in 1993. These were complemented in 2004 with regulations concerning the importation of food and feed, including fisheries and aquaculture products. This comprised the hygiene package which has evolved over time involving designated Competent Authorities (CAs) in EU Member States (MS) and in third countries, a network of Border Inspection Posts (BIPs), a system of sanitary certification and of rapid alerts (i.e. RASFF).

Considering that *"Illegal, unreported and unregulated (IUU) fishing constitutes one of the most serious threats to the sustainable exploitation of living aquatic resources and jeopardises the very foundation of the common fisheries policy and international efforts to promote better ocean governance"* (preamble of the EU IUU Regulation), the EU decided to adopt the Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate IUU fishing (EU IUU Regulation) in 2008 and its accompanying implementing regulation and other tools. The EU IUU Regulation prohibits trade with the Community in fishery products stemming from IUU fishing, and states in its preamble *"...to make this prohibition effective and ensure that all traded fishery products imported into or exported from the Community have been harvested in compliance with international conservation and management measures and, where appropriate, other relevant rules applying to the fishing vessel concerned, a certification scheme applying to all trade in fishery products with the Community shall be put in place."* The Catch Certification Scheme (CCS) was introduced on 1 January 2010, whereby fisheries products¹ must be accompanied by Catch Certificate (CC) declaring that the catch was made in accordance with applicable laws, regulations and international conservation and management measures.

The European Parliament contracted GOPA Consortium to conduct this Study on the Compliance of Imports of Fishery and Aquaculture Products with EU Legislation (IP/B/PECH/IC/2012-087), which took place in the first months of 2013, comprising questionnaires, visits to EU MS and review of literature, as well as drawing on the experience of the authors.

This study has found that, despite some issues, the hygiene regulation is being applied in a relatively uniform manner across EU MS, with higher variations across third countries. The controls undertaken by the EU MS at the Border Inspection Posts (BIP) are comprehensive, follow an official procedure and, in the main, work properly. However FVO audits over the past years have noticed a number of issues which need to be addressed including control of transshipments of consignments. Traceability is not

¹ The EU IUU regulation defines the fisheries products in its article 2.8. This concept has evolved over the years and currently most of the bivalve molluscs and aquaculture products are excluded from the scope of the EU IUU Regulation.

severely compromised, due in part to the Trade Control and Expert System (TRACES), which allows communicating the health certificate to the relevant BIPs. DG SANCO operates in a relatively transparent way, through a system of BIPs, and publicly available audits in both EU MS and in third countries where equivalent safety standards are required. However, this study has demonstrated that, even if the FVO identifies shortcomings in complying with the EU sanitary and safety legislation package, the EC seems reluctant to take strong measures against third countries and their exports to the EU. This conservative attitude may be due to the nature of the system, which is based on elements of risk analysis and trust in the CAs. The EC relies on the designated CAs in the authorized exporting third countries, which are responsible for authorising fishing vessels, freezer vessels and processing establishments and ensuring that these comply with EU requirements. The EC's influence on the content of these lists is limited. The rates of notifications on RASFF (e.g. number of border rejections) and also the results from FVO missions demonstrate that third countries authorised to export to the EU are largely complying with EU sanitary legislation and have systems that are equivalent to those in EU MS. Their products do not significantly jeopardise the health of European consumers and any risk can be considered minor. The study does note cases of fraudulent labeling of boxes that may provide a risk from a hygiene perspective. Should the EU IUU Regulation become effective in deterring IUU activities (and not just protecting the EU consumer from IUU sourced products), there could be significant complementarity between the hygiene package and the IUU Regulation.

The EU IUU Regulation is a relevant instrument to address IUU fishing, protect the EU consumer from such products and reduce demand for IUU products worldwide. So far no other country has developed such a system. The CCS established under the EU IUU Regulation has potential in deterring IUU fishing activities. However, there are issues concerning the interpretation and implementation of this Regulation, which may decrease the prevention of entry and sale of IUU products on the EU market. The complexity of the trade flow in the fishing industry represents a challenge for the effective implementation of the EU IUU Regulation.

Though established after the hygiene package, the EU IUU Regulation does not build on the experience, advances nor technology (e.g. TRACES System) inherent in the hygiene package and the way that DG SANCO works. The EU IUU Regulation relies on paper versions and copies of documents, meaning that document security and traceability are severely compromised. Moreover, there is no transparency regarding the audits carried out by the European Commission (DG MARE) of EU MS nor of third countries. EU MS performance is not published nor ranked, and reports relating to their evaluation or monitoring are not made public. There are loopholes in the implementation of the EU IUU Regulation and its supporting documents and in the checks on products while passing through third countries and on arrival in the EU. Moreover, although many third countries have reinforced their Monitoring, Control and Surveillance (MCS) systems in an effort to guarantee true validation of the CC, in many cases the validating authority does not have all the elements to fully ensure that the fishing products covered by a Catch Certificate are IUU free. The frequent lack of cooperation between flag State, port State and coastal State considerably harms the fight against IUU and efficiency of the EU IUU Regulation, which relies mainly on the responsibility of the flag State. Finally, complicated trade flows and indirect imports represent a significant challenge to tracing products back to their origin and along the production chain, to ensure their legality. It is too early to establish the true effectiveness to date of the EU IUU Regulation, but there is no doubt that it has raised the profile of IUU fishing worldwide, and improved measures of control are in place, both in exporting countries and importing countries. The EU IUU Regulation should not remain an isolated piece of legislation and the international community should draw on the experiences of its implementation.

The table below provides a comparison of some of the elements of each system covered in this Study.

	Sanitary Certification	Catch Certification
Nature and extent of the problem	Small but significant number of alerts; small number of cases affecting EU consumer. Alerts published	Extensive worldwide problem of IUU. No objective assessment of EU MS performance is published
Aim	Protect the health of the European Consumers (<i>and aquatic fauna in the case of live fish</i>)	Avoid the importation of fisheries products obtained from IUU fishing and reduce the demand for such products
Scope	Fish and Fishery Products traded to EU Member countries from "authorised" countries	All fishing vessels under any flag in all maritime waters, and all processed and unprocessed marine fishery products, traded to or from the EU (and EU nationals operating under any flag)
Consistency with international instruments	Consistent with CODEX, WTO SPS Agreement etc.	Consistent with IPOA-IUU, UNFSA, FAOCA, APSM and partly with the voluntary guidelines for flag state performance
Overall responsible	Authorised Exporting Country. The country must be in the list of "authorised" countries based on legal framework and the "competency" of the CA	Flag State of the harvesting vessel (<i>and/or a RFMO if the vessel/flag country is participant of a catch certification scheme recognised as compliant with the applicable regulation</i>)
Applicable EU regulations	Various, most notably Regulations: (EC) No 178/2002, No 852/2004, No 853/2004, No 854/2004, No 2073/2005. In place since 1/1/2006 (<i>prior was a similar system since 1993</i>)	The regulation Reg (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate IUU fishing, and various others
Competent Authority EU MS	Coherent set of Border Inspection Points monitored and aided by DG SANCO; national systems within EU MS	Inconsistent methodology on entry into EU either through designated ports for Fishing vessels, or through other ports for containers; little complementarity with sanitary controls; no standard methodology applied by DG MARE
Vetting and monitoring of EU MS CAs	Not vetted; DG SANCO carries out standard audits and publishes results	Not vetted; DG MARE carries out undefined audits or visits and does not publish results
Competent Authority in third country	Seafood safety CA varies depending on the country, for example it can be Ministry of Health, Fisheries, Agriculture, or Food Safety Authority.	Generally is the Fisheries Authority of the flag country of the vessel but can be the veterinary services in charge of validating the health certificate.
Vetting and monitoring of third country CAs	Vetted and monitored through published list of missions, published audits and CA responses	Nominations either accepted or not, unclear on nature of DG MARE or CFCA audits or visits; results not published
Contents of the certificate	Completed by the CA, and an officer of the CA of the country of processing provides official guarantees that the consignment dealt as per the EU regulations, or equivalent.	Declaration by exporter; validation of transshipment; validation on export by CA; checks on arrival in the EU (authorisation); re-export certificate, transport details, and fishing details (save fishing area does not distinguish between high seas and EEZ, making licence verification difficult).

	Sanitary Certification	Catch Certification
Presentation of the Certificate	On product arrival at the Border Inspection Post. Electronic notification through TRACES before arrival; original on clearance.	By the importer on arrival. In case of direct landings in EU ports 3 days prior notice, with shorter periods for fresh products, air freight, and arrivals by road and train (2 to 4 hours).
Status of the operator (processing plant/ fishing vessel)	The operator must appear in a list of establishments (processing plants, vessels) published by DG SANCO, authorised and submitted by an accepted CA in a listed third country	Vessel must fly the flag of a country whose notification has been listed. No list of approved vessels. Products of vessels in a list of IUU vessels (either by the EU or by RMFOs) are not allowed access.
Role of the RMFO	None	Catch Documentation Scheme may be approved to substitute the CCS under the EU IUU Regulation
Signatories	The authorised CA signs the certificate	Notified CA validates Catch Certificate, but unclear who signs transshipment sections 6 & 7 and Processing Statement
Controls on entry	Standard practices at BIPs and guidance to them; electronic record of all health certificates	Varied practices and risk assessment on entry; no record of use of CCs and Processing Statements
Action on rejection	Consistent methodology	Sometimes returned, even though this is not provided for in the EU IUU Regulation
Controls on re-export and split consignments	EU MS issues new health certificate	Re-export certificate completed by EU MS CA, but CC copied of consignment split, thus no control or traceability. No record of issue or use of re-export certificates
Alerts	Comprehensive RASFF system, accessible by public, annual reports issued	Provided for in the EU IUU Regulation, but not instituted
Single Liaison Office EU MS	Provided for, but not easily accessible	Publication provided for in EU IUU Regulation, but not done to date; third countries do not have access to SLO contacts in EU MS
Traceability	Health certificate re-issued at each point in the chain; one-up-one-down principle applied	Copies of CCs permitted; no record of their issue or use; port of landing not indicated; limited traceability of product is possible
Controls on vessels	In third countries and in EU MS need constant monitoring and improvement; EU distant water fleet controlled weakly	Flag State responsibility paramount; coastal and port State controls bypassed at times.
Training and support to third countries	Over 15 years of technical assistance by various bodies inside and outside the EC. Comprehensive long-term support through Better Training for Safer Food; plus other initiatives (EDES, PIP)	No formal support from DG MARE; some missions carried out but results not published; one initiative from DEVCO has ended. However the EC have promised to co-operate administratively with and/or support third countries in the implementation of this Regulation
Consequences of non-conformity	Product detained. Rapid Alerts Systems entry, report from the Country of Origin CA, product returned or destroyed.	Refusal of Importation. CA of MS may confiscate and destroy, dispose of or sell for charity. If the flag State refuse/fail to take corrective measures against the vessel, it could be potentially listed as IUU vessel. Flag State potentially listed as a Non co-operating country

	Sanitary Certification	Catch Certification
Black lists	No country black list. Countries must be listed. Certain products can be excluded or EC can ask third country CA to suspend an establishment from its list of approved establishments.	There is provision for non-cooperating third States; none instituted as yet. CAs must be notified and EC accepts notification by publishing list (though this is not legislated). IUU vessel list so far only compilation of RFMO lists; no EU list as yet.
European Community Nationals	Nothing there.	Nationals of the EC shall neither support nor engage in IUU activities and the EC Member State concerned shall cooperate with the relevant third country in order to identify nationals supporting or engaging in IUU activities.

1. Background, scope and method of the study

1.1 Background

The EU is the world's largest market for fisheries and aquaculture products (FAP). This market is heavily dependent on FAP imports from non-EU countries, which are essential to meet the increasing demand for FAP: more than 60% of FAP consumed in the EU (and ca. 90% for white fish) is currently imported. Against a backdrop of declining EU production, a market increasingly opened up to imports and overexploitation of fish stocks worldwide, participants at the World Economic Forum made the following declaration:

"As representatives of businesses, civil society groups, governments and academic institutions gathered together under the auspices of the World Economic Forum, we see an urgent need for a global system to ensure that wild-caught seafood and other fish products are legal, healthy, fully traceable and accurately labelled". (WEF 2013)

The Committee on Fisheries of the European Parliament echoes these concerns and at the end of 2012 commissioned this Study on Compliance of Imports of Fishery and Aquaculture Products with EU Legislation (IP/B/PECH/IC/2012-087), focussed on the effects of EU demand for fishery and aquaculture products (FAPs) on fisheries worldwide. Complementary to this, on 6 February 2013 the EP voted 502 vs. 137 to end overfishing in the EU and set a target to recover fish stocks by 2020.

The sanitary conditions are presently set out in EU legislation (known as the food hygiene package), and regular inspections and reports by the Food and Veterinary Office of DG SANCO of the European Commission verify food safety conditions and compliance.

Council regulation (EC) No 1005/2008 established the framework for the introduction on 1 January 2010 of a regime to prohibit the importation of fishery products from IUU fishing, and to ensure proper control of the supply chain for fishery products imported into the EU. The IUU Regulation defined a catch certification scheme, as well as verification checks on importation of consignments.

1.2 Scope

This study is intended to estimate the level of compliance of FAP imported into the EU with the current safety and quality EU legislation, as well as with the regulation on IUU fishing. More specifically, the study is expected to:

- analyse the process of monitoring and control of FAP imports in relation to EU quality and sanitary provisions, and to the IUU regulation, in order to provide an assessment of its effectiveness; and
- investigate to what extent the FAP reaching the EU market comply with the sanitary and IUU legislation.

Based on this analysis, the study identifies critical issues and proposes recommendations (see full list in Section 5) for political actions aimed at dealing with them. Therefore, the study is not charged with revising the exact wording of the Regulation or its supporting documents.

1.3 Method

The activities under the contract started in January 2013. These comprised an inception period and an inception meeting, at which the GOPA Consortium² presented the Research Design and Methodology to the European Parliament. This was approved as comprising:

- The statistics of the European Union (Eurostat³) in relation to import and export figures, and other international and national statistics;
- Secondary sources from the literature, as indicated in the technical proposal for this study; and
- Structured interviews at the EC, the Border Inspection Posts (BIPs) and other agencies.

Sources are referenced in footnotes and the Bibliography. For the sanitary aspects, the Strengthening Fishery Products Health Conditions (SFP) Programme was a significant source of material for third country reality. The comparison done with the Japan and US sanitary control system was based on literature surveys such as legal texts, reports, statistics and news articles, as there was no possibility to discuss the issues directly with the concerned agencies in the United States and Japan. For the IUU aspects, GOPA Consortium was implementing the IUU Project “*Accompanying developing countries in complying with the Implementation of Regulation 1005/2008 on Illegal, Unreported and Unregulated (IUU) Fishing*” financed by EuropeAid (EuropeAid/129609/C/SER/Multi). This project covered 51 third developing countries, and basic characteristics of up to 48 of these have been summarised. The reports are effectively in the public domain, having been distributed to the CAs and other interested parties in the third countries in all cases. Despite agreement by the EC at the beginning of the project that “*There will be no confidential part of report*” for each country (Agreed notes on Reference Group Meeting held on 22 October 2010), on 15 May 2012, a year and a half into the project, DG MARE indicated that the Country Evaluation Reports be restricted. Therefore the GOPA Consortium has extensive and detailed knowledge of the implementation of the EU IUU Regulation for two of its first three years of implementation (October 2010 to October 2012), and the EP selected the GOPA Consortium for this Study partly on the basis of this experience. Thus it would be impossible for the Consortium not to make use of this experience. In the framework of this study the Consortium has drawn on this experience explicitly to make general statements regarding the application of certain measures in third countries, and of course to qualitatively analyse the implementation of the EU IUU Regulation in third countries. This Study has therefore not quoted specific information that would prejudice confidentiality or referring to particular Country Evaluation Reports of particular countries, but has of necessity drawn on its experience and knowledge, with the sole purpose of contributing to a positive debate regarding the application of the EU

² Comprising GOPA Consultants, OCEANIC Développement and COFAD.

³ http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database

⁴ Antigua and Barbuda, Angola, Argentina, Bangladesh, Cape Verde, Colombia, Costa Rica, Cote d’Ivoire, Curacao, Ecuador, Egypt, El Salvador, Fiji, FS Micronesia, Gambia, Ghana, Guatemala, Guinea, Guyana, Indonesia, Kenya, Kiribati, Madagascar, Malaysia, Maldives, Marshall Islands, Mauritania, Mauritius, Mexico, Morocco, Mozambique, Myanmar, Namibia, Nicaragua, Panama, Nigeria, Peru, Papua New Guinea, Philippines, Senegal, Seychelles, Solomon Islands, Sri Lanka, Suriname, Tanzania, Thailand, Togo, Tunisia, Uruguay, Vanuatu, Vietnam

⁵ DEVCO financed a series of Country Evaluation Reports covering 51 countries, under the auspices of the “*Accompany developing countries in complying with the implementation of Regulation 1005/2008 on IUU fishing*” project (EuropeAid/129609/C/SER/Multi). These Country Evaluation Reports were unrestricted until the beginning of 2012, when DG MARE advised on confidentiality, despite their having been distributed to third countries. After consultation with DG MARE, DEVCO advised the European Parliament that the reports could not be used, as “*they contain confidential information and therefore cannot be made public or be used for any other purpose than the one stated in the service contract (i.e. be distributed to the beneficiary countries, the Commission and to relevant EU Delegations)*” (email of 12 February 2013).

IUU Regulation specifically and the fight against IUU fishing and overexploitation of fishery resources generally.

The European Parliament, through the Committee on Fisheries, and European Council, is responsible for the oversight of Commission activities. However, DG MARE has seen fit to regard its activities concerning the EU IUU Regulation as confidential and internal. It has advised against the use of information from the previously mentioned IUU Project, and did not make the biennial reports from EU Member States on the implementation of the EU IUU Regulation available to the study, or any other significant element of monitoring and evaluation of the EU IUU Regulation, despite official requests from the European Parliament.

This study includes five cases studies in Annex 1 presenting the situation with regards to the compliance with the EU sanitary package in selected third countries exporting FAP to the EU. The case studies were drawn from those countries whose import figures into the EU of FAPs are highest: Norway, China, Iceland, Vietnam, Thailand, USA, Ecuador, Morocco, India and Argentina. The composition of this list has not changed significantly in the last few years. As stated in the methodology submitted to the EP at the beginning of the Study, Norway, Iceland and the United States are deemed to have control mechanisms equivalent to those of the EU and therefore products from these countries may be relatively risk free. China has already been the subject of a study commissioned by the EP in 2012 so a case study on this country would be repetitive. Ecuador carries out much more processing than Argentina and therefore carries a greater risk of laundering for the EU market. It was therefore proposed to carry out case studies of Ecuador, Morocco, India, Thailand and Vietnam. This proposal was accepted by the EP.

The team prepared a questionnaire for DG SANCO and DG MARE. Neither DG SANCO, nor DG MARE has returned the questionnaire. However, meetings at DG SANCO were fruitful and the FVO provided significant statistics from the TRACES system on the nature of FAPs imported through BIPs. The Study was weakened by the reticence of DG MARE to share information or opinions on the implementation of the EU IUU Regulation, even during the one meeting with one individual allocated to the Study. The interviews in the European Fisheries Control Agency (EFCA), the BIPs, ports of entry and in the head offices of the Competent Authorities for the EU IUU Regulation and sanitary package were conducted by different experts. In order to ensure standardisation, the experts were guided by a series of structured questions, to ensure overall coverage of the themes to be explored. The team prepared a questionnaire for the EU MS CAs, BIPs and ports of entry of goods, and these were distributed to the FVO, France, Germany, Italy, the Netherlands, Portugal, Spain and the UK prior to interviews. The FVO, France, and the UK returned the questionnaire⁸.

Separate questions were prepared and asked of the sanitary CA and IUU CA or involved authorities. The individual experts have been responsible for probing, where necessary, and gathering evidence to support the answers received.

⁶ In order of importance in terms of value, 2011.

⁷ This can be corroborated from the Country Evaluation Reports of the Assist third countries in the implementation of the EU-IUU fishing regulation Project carried out by GOPA.

⁸ Spain provided complementary information, including their biennial report on the implementation of the IUU Regulation (Spain 2011). Germany, France and the UK also provided complementary information.

2. Imports into the EU and evolution of the market

KEY FINDINGS

- World fish food supply has grown dramatically, with an average growth rate of 3.2% per year in the period 1961–2009, much faster than the 1.7% per year in the world's population.
- While aquaculture has provided most of the growth in production in recent years, catches from inland waters have also increased substantially. Marine captures excluding anchoveta have remained fairly constant since 2004, at around 73 million mt but the latter have declined by more than half.
- In 2009 57% of stocks were at production close to their maximum sustainable yield.
- In European waters 65% of the stocks are not fully assessed and only 22% of stocks under TACs known not to be overfished.
- The share of total fishery production exported in the form of various food and feed items increased from 25% in 1976 to about 38% (57 million mt) in 2010, becoming an increasingly important and valuable commodity.
- In 2010, developing countries confirmed their fundamental importance as suppliers to world markets with more than 50% of all fishery exports in value terms and more than 60% in quantity (live weight equivalent).
- The EU as a whole is the largest single market in the world for fishery products, amounting to EUR36.0 billion in 2011, followed by the USA and Japan.
- While imports have been increasing, self-sufficiency has been in decline: The EU is dependent on imports for 65% of its fishery product consumption, and for higher proportions for the most important products: tuna (98%); cod (86%); shrimp (98%).
- There is increasing globalisation of processing, exemplified by China, the world's largest fish producer and exporter, significantly increasing its fishery imports, as processors import raw material from all major regions, including South and North America and Europe, for processing or re-processing and export.
- Ninety per cent of world international trade in fish and fishery products consists of processed products, and trade with EU reflects this global pattern.
- Though consumption per head and the composition of imports in the EU varies widely between EU Member States, demand is expected to continue to increase.

2.1 Fish and aquaculture production and state of stocks

The FAO (2012)⁹ estimates total global production of fishery and aquaculture products (FAPs) of 154 million mt for 2011 (see Figure 1), of which 131 million mt was destined as food. World fish food supply has grown dramatically, with an average growth rate of 3.2% per year in the period 1961–2009, much faster than the 1.7% per year in the world's population. Thus, world per capita food fish supply increased from an average of 9.9kg (live weight equivalent) in the 1960s to 18.4kg in 2009, and preliminary estimates for 2010 point to a further increase in fish consumption to 18.6kg. Europe's is above average, at 22.0kg per person per year in 2009 (FAO 2012 p3).

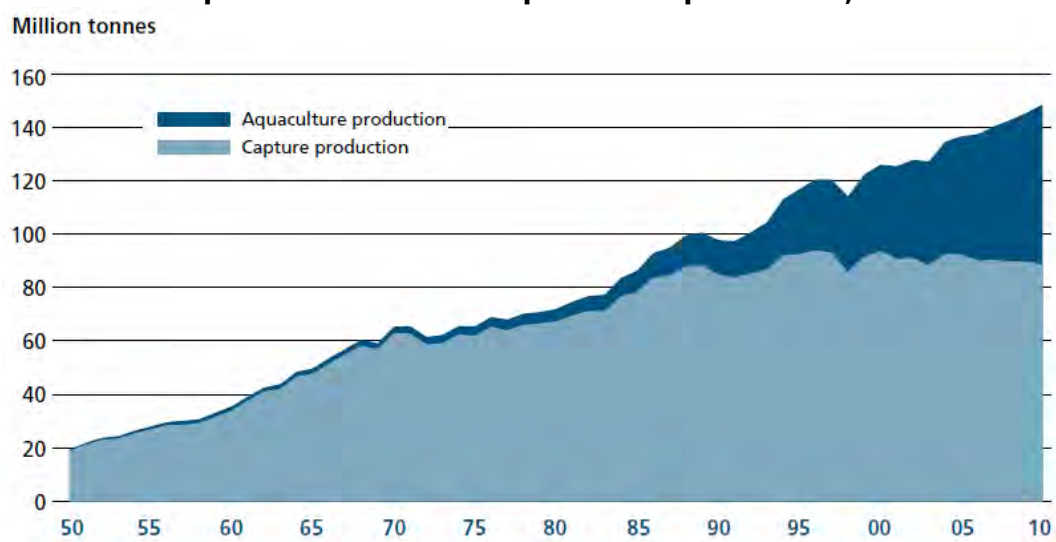
⁹ Much of the information for this section comes from the FAO State of World Fisheries and Aquaculture, 2012

In 2010, global production of farmed FAP was 59.9 million mt up from 32.4 million mt in 2000. The total farmgate value of food fish production from aquaculture is estimated at USD119.4 billion (EUR99.5 billion) for 2010.

Asia accounted for 89% of world aquaculture production by volume in 2010, up from 87.7% in 2000. The contribution of freshwater aquaculture has gradually increased, up to 65.6% in 2010 from around 60% during 1990s. In terms of volume, Asian aquaculture is dominated by finfishes (64.6%), followed by molluscs (24.2%), crustaceans (9.7%) and miscellaneous species (1.5%). The share of non-fed species farmed in Asia was 35% (18.6 million mt) in 2010 (compared with 50% in 1980). The contribution of China to world aquaculture production volume in 2010 declined to 61.4% from its highest level of about 66% in the period 1996–2000. Other major producers in Asia (India, Vietnam, Indonesia, Bangladesh, Thailand, Myanmar, the Philippines and Japan) are among the world's top producers (FAO, 2012, p 26).

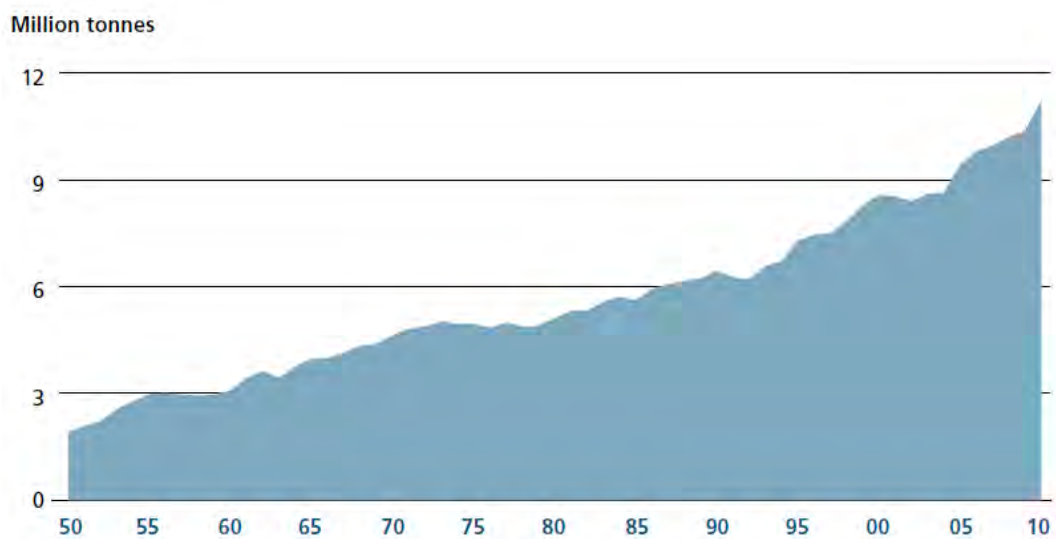
While aquaculture has provided most of the growth in production in recent years, catches from inland waters have also increased substantially (see Figure 2).

Figure 1: World capture fisheries and aquaculture production, 1950-2010



Source: FAO (2012, p4)

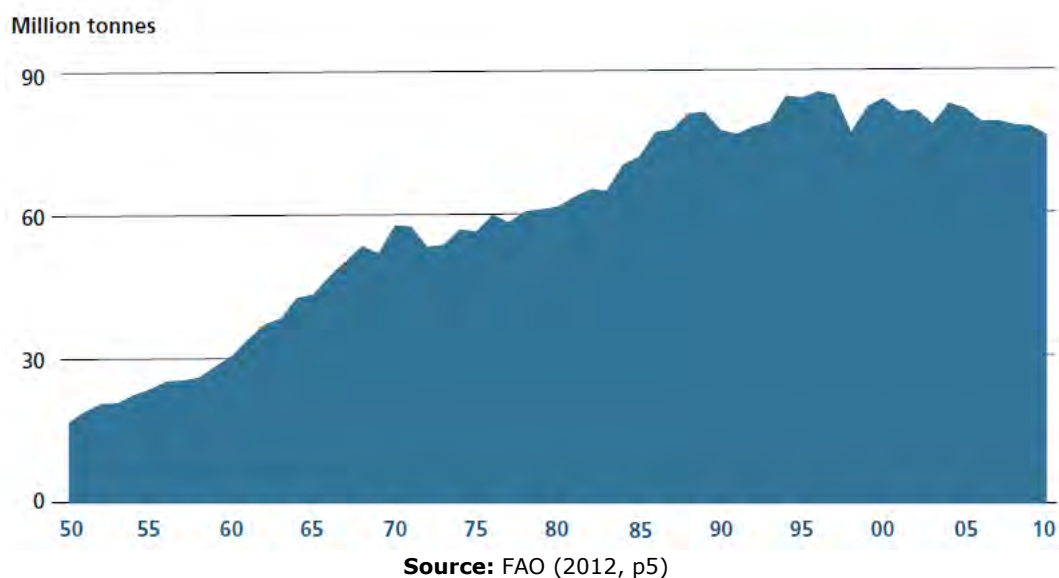
Figure 2: World capture fisheries production, inland waters



Source: FAO (2012, p5)

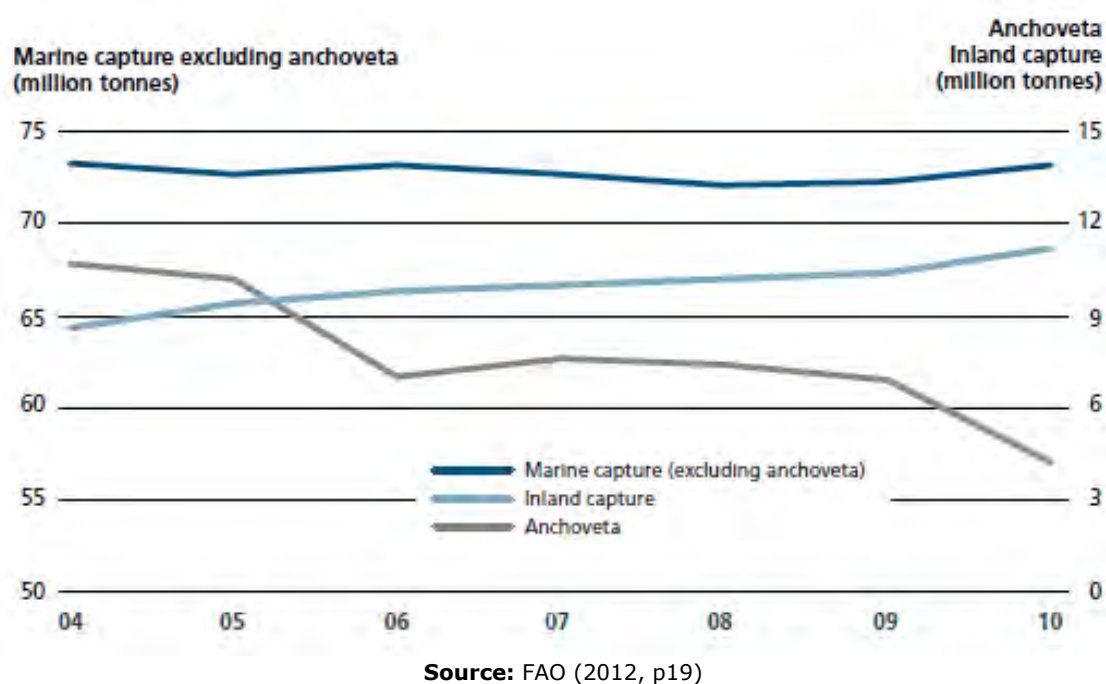
In contrast, wild capture fisheries production from marine waters peaked around 1990 and has since oscillated around 80 million tonnes per year (see Figure 3), declining substantially since 2004.

Figure 3: World capture fisheries production, marine waters



Marine captures excluding anchoveta have remained fairly constant (see Figure 4), but the latter have declined from around 11 million mt per year to around 4 million mt per year. This has been due in large measure to natural phenomena such as el 'Nino'.

Figure 4: Capture fisheries production by three major components, 2004-2010



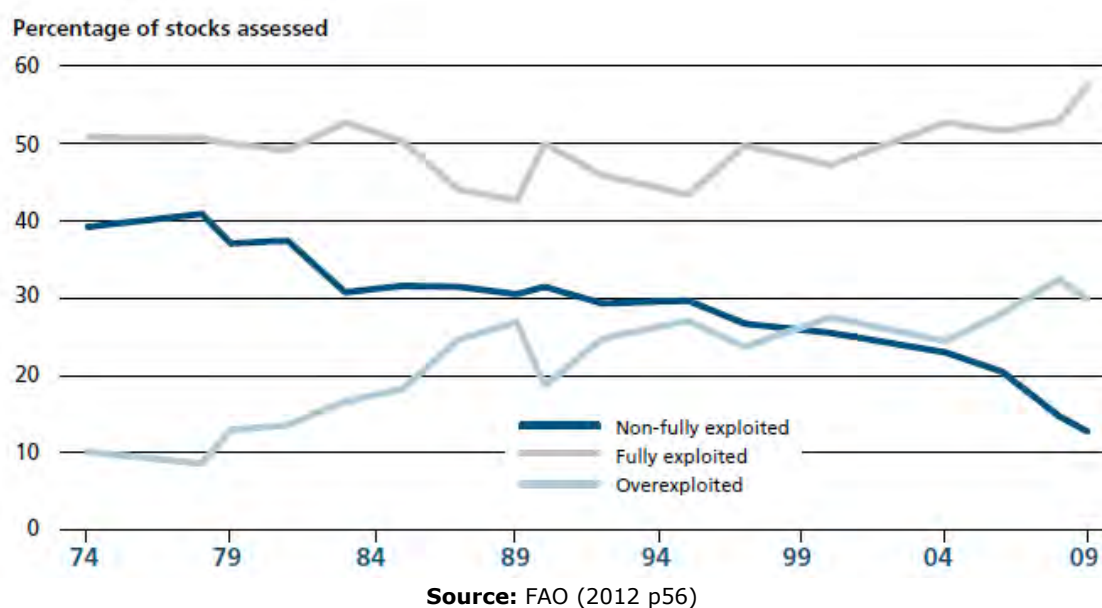
The plateau in global production is due in no small measure to excess effort worldwide. (seararoundus.org¹⁰) The FAO estimates that in 2009 57% of stocks were at production close to their maximum sustainable yield, a vulnerable state, in that a slight increase in

¹⁰ With reference to Watson et al. (2012)

effort could in many cases lead to damaging overexploitation. About 30% of stocks are overexploited, producing lower yields than their biological and ecological potential. The remaining 13% of stocks were non-fully exploited in 2009 (FAO, 2012, p11). The trends are not promising (see Figure 5).

Most of the stocks of the top ten species, which account in total for about 30% of world marine capture fisheries production, are fully exploited. Among the seven principal tuna species, one-third were estimated to be overexploited, 38% were fully exploited, and 29% non-fully exploited in 2009 (FAO, 2012, p12).

Figure 5: Global trends in the state of world marine fish stocks since 1974



The Johannesburg Plan of Implementation that resulted from the World Summit on Sustainable Development (Johannesburg, 2002) demands that all these stocks be restored to the level that can produce maximum sustainable yield by 2015¹¹

The situation in the EU is no better. Though the EU have committed themselves to this target in 2002, and a plan was laid out in 2006¹², the EC's 2009 Green Paper on the reform of the Common Fisheries Policy (CFP) states: "88% of Community stocks are being fished beyond MSY". In 2012 the EC confirmed that "in European waters 65% of the stocks are not fully assessed and only 22% of stocks under TACs known not to be overfished." That is, that 78% are at full exploitation or overfished. It goes on to state that "a decreasing proportion of stocks (from 47% in 2003 to 35% in 2012) can be classified according to safe biological limits". In 2013, the WWF and the European Commission estimate that 65% of EU commercial stocks are believed to be overfished¹³, a negligible improvement two years from the target date of 2015. However, where stocks have been assessed, there have been some improvements: the proportion of overfished stocks in the Atlantic and nearby seas fell from 32 out of 34 stocks to 18 out of 38 (from 94% to 47%).

¹¹ Paragraph 31a in: United Nations. 2004. Johannesburg Plan of Implementation.IV. Protecting and managing the natural resource base of economic and social development. In: UN Department of Economic and Social Affairs, Division for Sustainable Development [online]. [Cited 16 April 2012]. www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIChapter4.htm

¹² Implementing sustainability in EU fisheries through maximum sustainable yield. Communication from the Commission to the Council and the European Parliament. COM (2006) 360 final

¹³ <http://www.europarl.europa.eu/news/en/headlines/content/20130201STO05560/html/Plenty-more-fish-in-the-sea-MEPs-to-decide-on-best-way-to-tackle-overfishing>

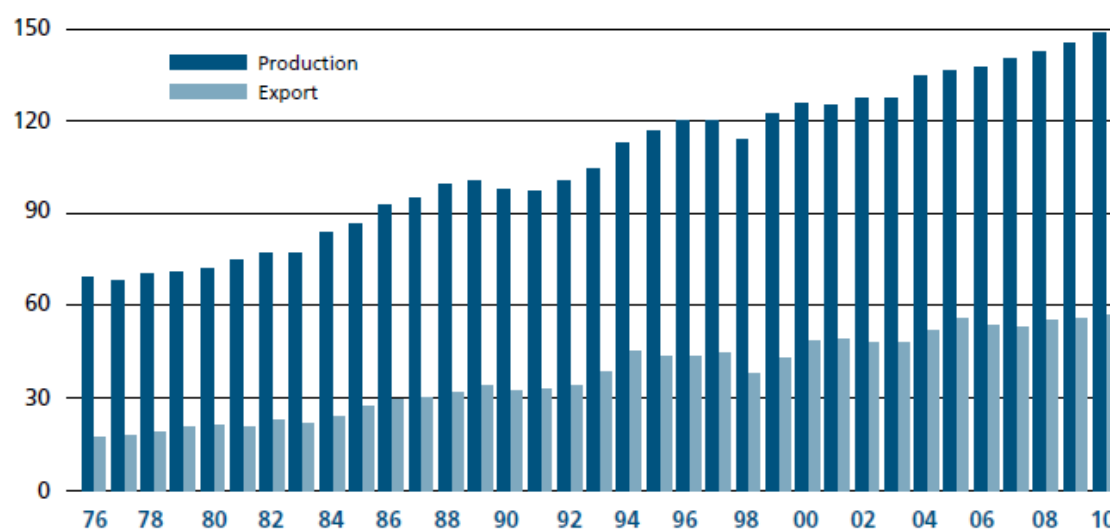
The current reform of its CFP aims to rebuild its fish stocks, as well as boosting its aquaculture production. The results of the reform and the effects on supply and trade may only be felt in the medium-to-long term (FAO, 2012, p72).

If well designed and implemented effectively, the reform of the CFP will imply a reduction in fishing effort and of catches in the short term in order to be able to sustain production in the long term. This would mean an increased dependence on imports at least in the short term.

2.2 Worldwide market for FAP

The share of total fishery production exported in the form of various food and feed items increased from 25% in 1976 to about 38% (57 million mt) in 2010 (see Figure 6). In the same period, world trade in fish and fishery products grew significantly in value terms, rising from USD8 billion (EUR6.4 billion) to USD102 billion (EUR81.6 billion) (FAO, 2012, p14). This underlines not only the growing importance and scale of the fisheries industry, with ecological and management implications, but also the growing trade in fishery products and in international interconnectivity.

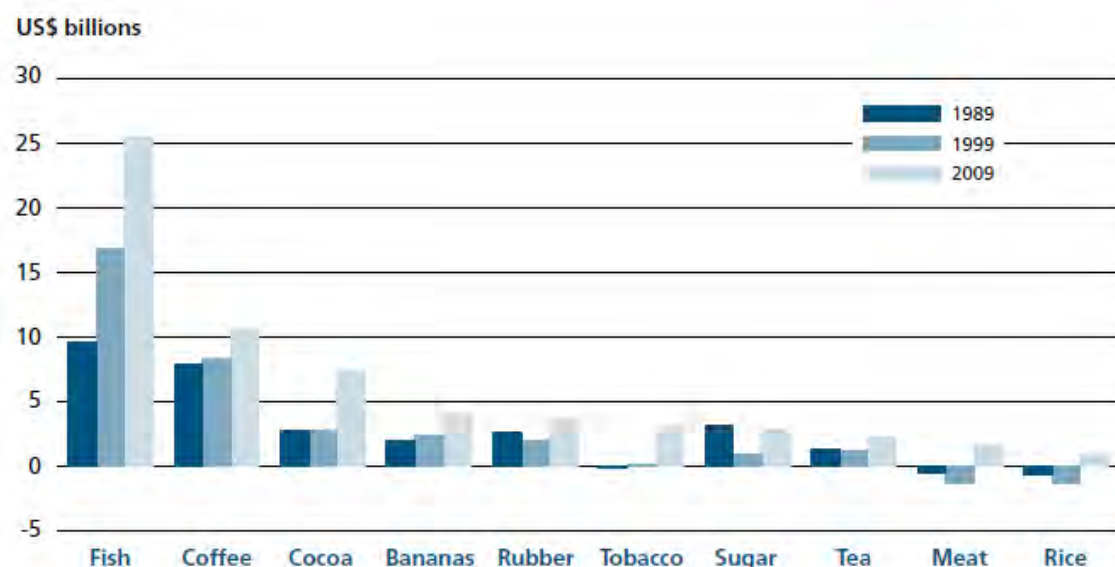
Figure 6: World fisheries production and quantities destined for export, 1976-2010 (million mt live weight)



Source: FAO (2012, p68)

In 2010, fishery trade represented about 10% of total agricultural exports (excluding forest products) and 1% of world merchandise trade in value terms (FAO, 2012, p67).

Figure 7 shows the growing importance of fish products to developing countries in contrast to other agricultural commodities.

Figure 7: Net exports of selected agricultural commodities by developing countries

Source: FAO (2012, p72)

Since 2002, China has been by far the leading fish exporter, contributing almost 12% of 2010 world exports of fish and fishery products, or about USD13.3 billion (EUR10.6 billion), and increasing further to USD17.1 billion (EUR13.7 billion) in 2011. A growing share of fishery exports consists of reprocessed imported raw material. Thailand has established itself as a processing centre largely dependent on imported raw material, while Vietnam has a growing domestic resource base and imports only limited, albeit growing, volumes of raw material. Vietnam has experienced significant growth in its exports of fish and fish products, up from USD1.5 billion (EUR1.2 billion) in 2000 to USD5.1 billion (EUR4.1 billion) in 2010, when it became the fourth-largest exporter in the world. In 2011, its exports rose further to USD6.2 billion (EUR5.0 billion), linked mainly to its flourishing aquaculture industry. Vietnam's tuna exports shot up in November 2012, going up more than 50% compared to the same period in 2011, and total exports from January to November were also up over 50%, according to the latest report from the Vietnam Association of Seafood Exporters and Producers (VASEP)¹⁴.

In 2010, developing countries confirmed their fundamental importance as suppliers to world markets with more than 50% of all fishery exports in value terms and more than 60% in quantity (live weight equivalent) (FAO 2012 p 15).

In 2010 the United States of America and Japan were the major importers of fish and fishery products (see Table 1).

¹⁴ http://www.seafoodsource.com/newsarticledetail.aspx?id=19219&utm_source=Informz&utm_medium=Email&utm_campaign=Insert+Campaign+Name+here

Table 1: Top ten importers of fish and fishery products, 2000 & 2010 (USDm & APR%)

Country	2000	2010	(APR) for 2000-2010
United States of America	10 451	15 496	4.0
Japan	15 513	14 973	-0.4
Spain	3 352	6 637	7.1
China	1 796	6 162	13.1
France	2 984	5 983	7.2
Italy	2 535	5 449	8.0
Germany	2 262	5 037	8.3
United Kingdom	2 184	3 702	5.4
Sweden	709	3 316	16.7
Republic of Korea	1 385	3 193	8.7
TOP TEN SUBTOTAL	26 349	69 949	10.3
REST OF WORLD TOTAL	33 740	41 837	2.2
WORLD TOTAL	60 089	111 786	6.4

Note: APR refers to the average annual percentage growth rate for 2000-2010

Source: FAO (2012, p71)

2.3 The EU market for FAP and imports

The EU as a whole is the largest single market in the world for fishery products, amounting to EUR36.0 billion in 2011. Excluding the intra-regional trade of EUR17.4 billion, imports from outside the EU amounted to EUR18.6 billion in 2011 (see Table 2).

The main EU Member State importers in terms of volume¹⁵ are (in order of magnitude) Spain, Germany, Sweden, United Kingdom and Italy.

¹⁵ Raw figures, not live weight equivalent.

Table 2: Imports of FAPs into EU MS, from outside the EU, 2011 (EUR; '00kg)

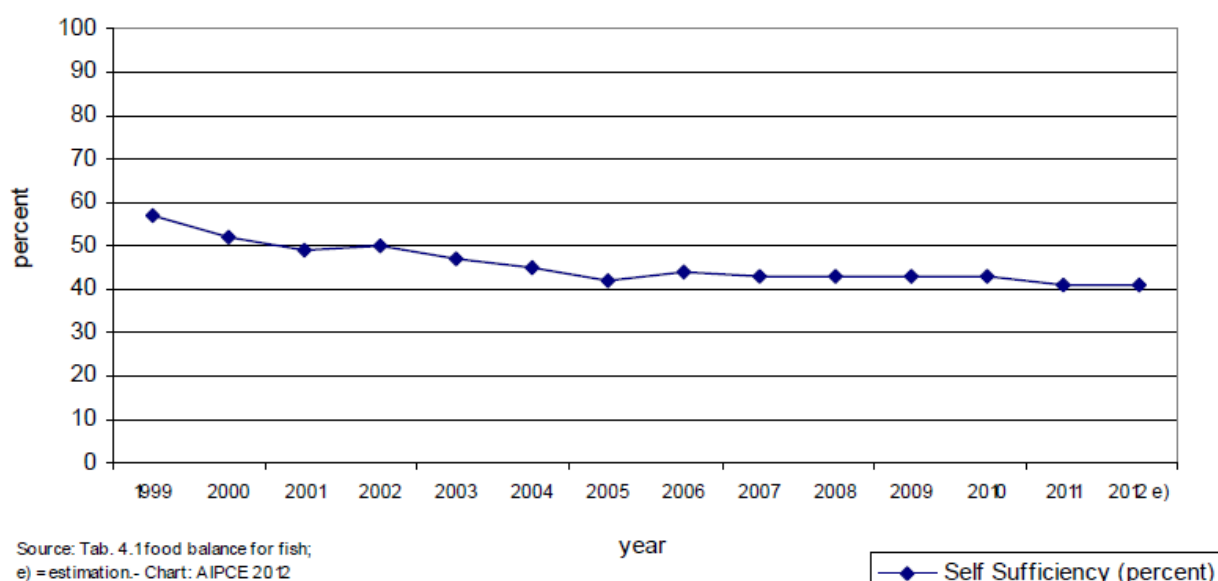
Rank	Country	Value EUR	Rank	Country	Volume ('00kg)
	EU 27	18,543,604,609		EU27	50,306,593
1	Spain	3,436,687,912	1	Spain	10,534,077
2	Sweden	2,265,189,960	2	Germany	5,393,670
3	United Kingdom	2,004,837,284	3	Sweden	5,100,671
4	Italy	1,882,094,235	4	United Kingdom	4,872,189
5	Germany	1,824,583,415	5	Italy	4,635,835
6	France	1,723,242,678	6	Denmark	4,426,854
7	Denmark	1,651,469,907	7	France	4,135,905
8	Netherlands	1,502,937,708	8	Netherlands	4,035,525
9	Belgium	726,030,691	9	Poland	1,982,891
10	Poland	446,052,732	10	Belgium	1,350,032
11	Portugal	378,064,828	11	Portugal	1,174,207
12	Greece	178,588,952	12	Greece	503,227
13	Finland	143,274,889	13	Lithuania	480,107
14-27	Remainder	380,549,418	14-27	Remainder	1,681,403

Notes: Value of imports to the country from all sources under codes 03, 1604 and 1605

Source: Eurostat

Overall, while imports have been increasing, self-sufficiency has been in decline (see Figure 8). The EU is dependent on imports for 65% of its fishery product consumption (AIPCE-CEP, 2012, p5), the USA for 60% and Japan 54%. The dependence of the European Union on imports is growing because of increases in consumption, while supplies from Community waters remain constant or are declining¹⁶.

¹⁶ It is not clear what is the production of the EU offshore fleet, fished in non-Community waters, but not considered to be imports into the EU because of customs rules.

Figure 8: Changes in EU self-sufficiency in relation to third country supply

Source: AIPCE-CEP (2012 p13)

Import dependency is highest for whitefish products, at 89% for wild capture and more than 91% including aquaculture products (AIPCE-CEP, 2012).

Some species whose supply to the EU market is significant, and which depend highly on third country imports, are presented in Table 5.

Demand in the EU MS varies considerably, from lows of less than 5kg per inhabitant per year in Bulgaria, Romania and Hungary to highs of more than 40kg per inhabitant per year in Portugal and Spain. Demand in the EU is likely to increase, as is consumption, due to a number of factors. Among these are: increased purchasing power, because of high income elasticity of demand; sociological factors such as trends towards healthy foods and increased use of prepared fish products; increased global availability of and demand for new species away from the traditional ones; mass marketing of standard homogeneous products sourced from aquaculture, such as Norwegian salmon, Vietnamese pangasius fillets and tropical prawns; the increased use of quality and environmental labels (DG MARE, 2009a).

The FAO (2007) endorses these findings, and estimates that consumption per inhabitant in the EU will go up from 22kg per person per year to 25kg per person in 2030, implying increased demand of 1.5 million mt live weight equivalent (LWE) and additional import requirements of 1.4 million mt LWE. Recent fears regarding meat products have led to increases in demand for fish products (Seafood, 2013a).

The EU market has shown considerable flexibility, with the reduction in the availability of traditional species such as cod, plaice, and haddock, reduced herring consumption, but increased demand for sea bream, salmon, shellfish, and new exotic species of fish such as Alaska pollock, Nile perch and pangasius (DG MARE, 2009a). However, it is extremely heterogeneous, with markedly different conditions from country to country.

Owing to the high perishability of fish and fishery products, 90% of trade in fish and fishery products in quantity terms (live weight equivalent) consists of processed products (i.e. excluding live and fresh whole fish). In the last four decades, prepared and preserved fish have nearly doubled their share in total quantity, going from 9% in 1980

to 16% in 2010. In 2010, 71% of the quantity of fish and fishery products exported consisted of products destined for human consumption. (FAO 2012, p77).

Imports into the EU reflect this global pattern, both in volume and in value (see Table 3 below, Figure 9 and Figure 10). The predominance of processed products highlights the importance of sanitary measures during processing and the traceability of products subjected to processing.

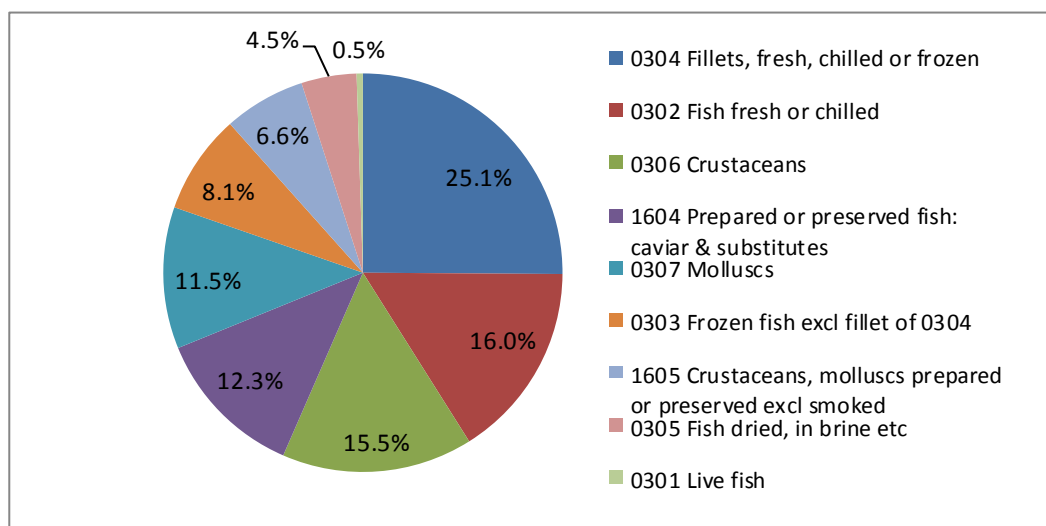
Table 3: Composition of imports into EU MS from outside the EU, 2011 (EUR & '00kg)

Code	Product	Value EUR	%	Volume ('00kg)	%
	Total FAP	18,543,604,609	100.0%	50,306,593	100.0%
0301	Live fish	94,012,295	0.5%	52,560	0.1%
0302	Fish, fresh or chilled (excl. 0304)	2,958,894,176	16.0%	7,665,815	15.2%
0303	Frozen fish (excl. 0304)	1,498,909,367	8.1%	6,978,101	13.9%
0304	Fish fillets and other fish meat, whether or not minced, fresh, chilled or frozen	4,655,267,706	25.1%	14,071,407	28.0%
0305	Fish, fit for human consumption, dried, salted or in brine; smoked fish, fit for human consumption, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption	828,645,245	4.5%	1,671,432	3.3%
0306	Crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine, even smoked, incl. crustaceans in shell cooked by steaming or by boiling in water; flours, meals and pellets of crustaceans, fit for human consumption	2,869,644,738	15.5%	5,141,389	10.2%
0307	Molluscs, fit for human consumption, even smoked, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine; flours, meals and pellets of molluscs, fit for human consumption	2,131,453,179	11.5%	5,684,763	11.3%
1604	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs	2,280,036,986	12.3%	6,726,864	13.4%
1605	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved (excl. smoked)	1,226,654,998	6.6%	2,314,029	4.6%

Source: Eurostat

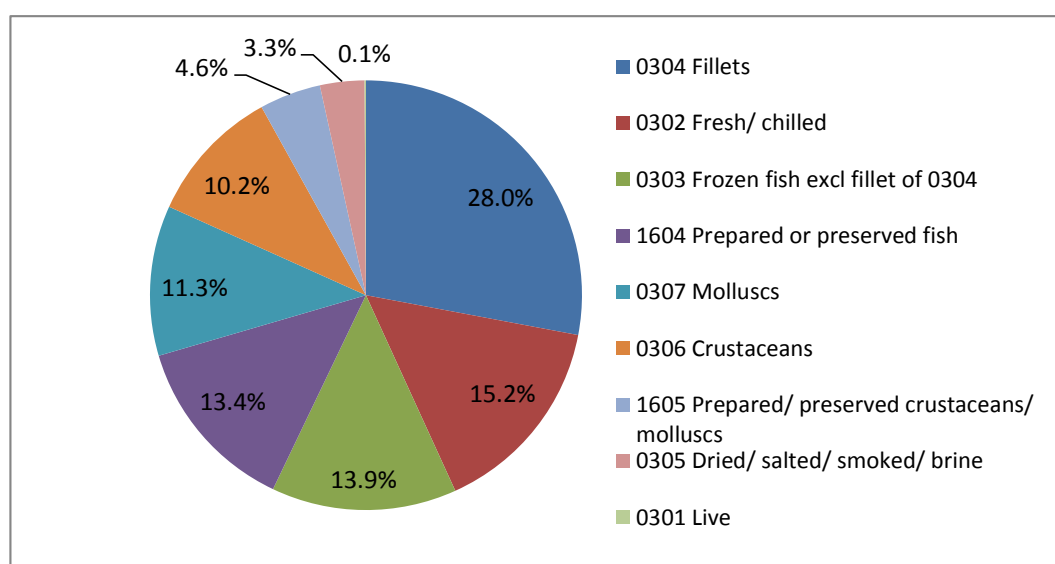
In 2011, 80% of the fillets in HS0304 were frozen products. Thus, 22% of the volumes imported overall (0302 plus part of 0304) were fresh or chilled. Conversion rates to LWE are higher for processed than for non-processed products, substantiating the ratios of processed products found worldwide in the literature.

Figure 9: Composition of imports into EU MS from outside the EU, 2011 (value)



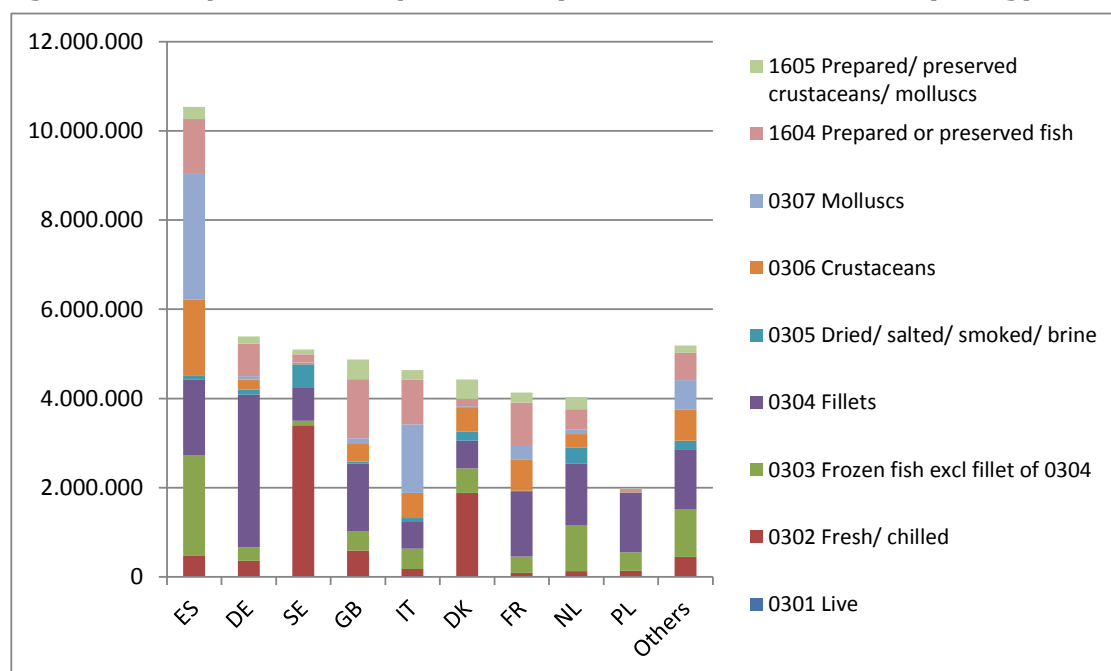
Source: Eurostat

Figure 10: Composition of imports into EU MS from outside the EU, 2011 (volume)



Source: Eurostat

However, these general figures hide a highly diverse EU market. The composition of imports both in terms of processing and in composition of species varies greatly between EU MS (see Figure 11).

Figure 11: Imports of fish products by MS and HS code, 2011 ('00kg)

Source: Eurostat

2.4 Sources of supply for the EU market, and their nature

China, the world's largest fish producer and exporter, has significantly increased its fishery imports, partly a result of outsourcing, as Chinese processors import raw material from all major regions, including South and North America and Europe, for processing or re-processing and export. Imports are also being fuelled by robust domestic demand for species not available from local sources, and, in 2011, China became the third-largest importer in the world. The ten most important sources of FAP into the EU are presented in Table 4.

Table 4: Ten largest source of imports into the EU, 2011 (Euro)

Rank	Country	EUR	% of Total	Rank	Country	Volume ('00kg)	% of Total
1	Norway	3,834,405,839	20.7%	1	Norway	10,058,770	20.0%
2	China	1,711,011,283	9.2%	2	China	5,670,262	11.3%
3	Iceland	933,659,006	5.0%	3	Vietnam	3,323,330	6.6%
4	Vietnam*	923,270,673	5.0%	4	United States	2,455,381	4.9%
5	Thailand*	894,021,540	4.8%	5	Thailand	2,226,144	4.4%
6	United States	879,316,317	4.7%	6	Iceland	2,210,197	4.4%
7	Ecuador*	830,359,002	4.5%	7	Ecuador	2,076,182	4.1%
8	Morocco*	812,448,245	4.4%	8	India	1,621,999	3.2%
9	India*	616,823,957	3.3%	9	Morocco	1,596,068	3.2%
10	Argentina	579,506,470	3.1%	10	Argentina	1,541,884	3.1%
	Others	6,528,696,527	35.2%		Others	17,526,111	34.8%

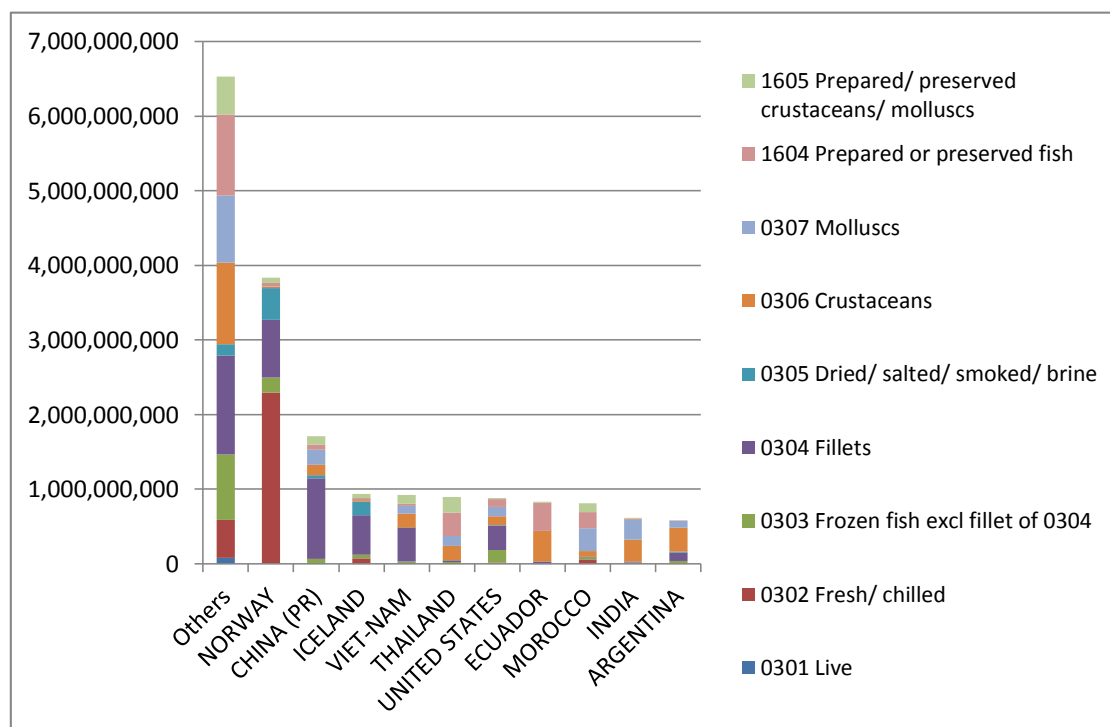
Notes: *Proposed countries for case studies;

Value of imports as reported by the EU 27 imported under codes 03, 1604 and 1605

Source: Eurostat

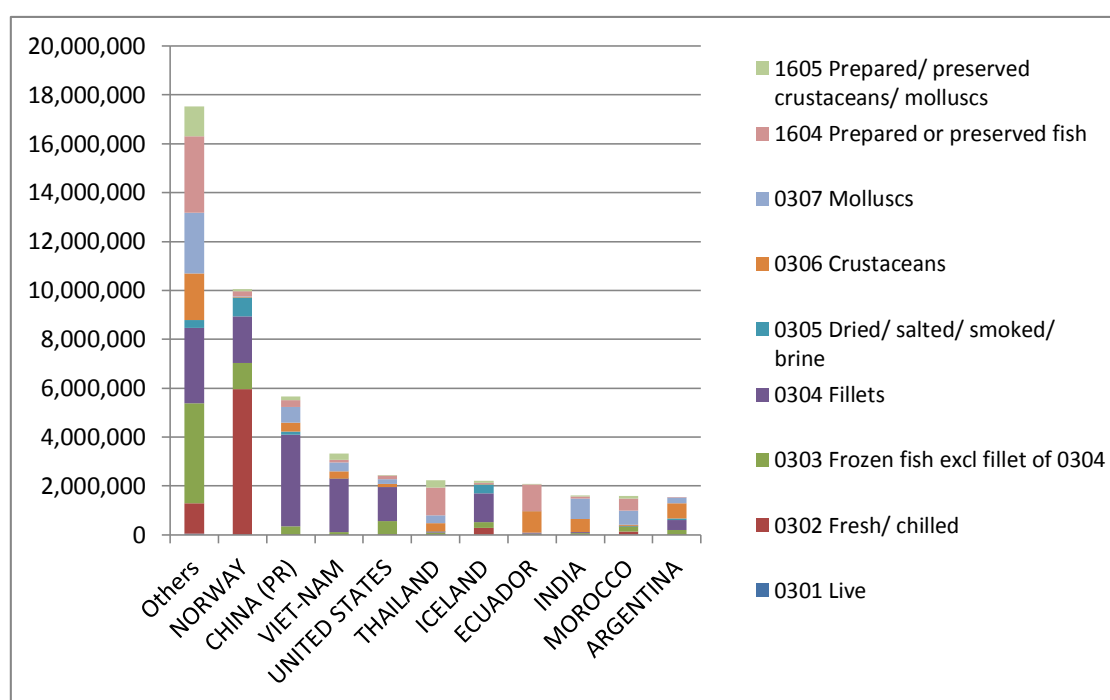
The composition of imports from different countries varies significantly, depending on their fisheries and the degree of processing that they carry out (see Figure 12 and Figure 13).

Figure 12: Imports from ten top sources of imports and HS code, 2011 (EUR)



Source: Eurostat

Figure 13 Imports from ten top sources of imports and HS code, 2011 ('00kg)



Source: Eurostat

Some of the most important species in the EU market rely heavily on imports (see Table 5).

The most important species, in terms of live weight equivalent, is tuna, which depends on 98% sourcing from outside the EU (AIPCE, 2012). Sixty per cent of the supply from third countries comes from Ecuador, Thailand, Mauritius, Seychelles and Philippines. Of the 1.7 million mt, 1.1 million mt (63%) is prepared, 304,998mt (18%) is in tuna loins and 265,686mt (15%) is whole frozen. Only 0.4% is whole fresh, the remainder being fresh or frozen fillets. This underlines the importance of preparation and processing for this species. The implications of this for traceability, the hygiene¹⁷ and IUU fishing controls will be discussed in sections 3 and 4 of the Study. There are also significant concerns regarding multiple sourcing of products for processing and onward export to the EU.

The second most important species, in terms of LWE, is cod, which, though a traditional species, depends on third countries for 86% of its supplies, principally from Norway, Iceland and China, together representing 76% of supplies. Norway and Iceland are considered to be largely equivalent in their standards to those of the EU and will therefore not be subject to particular scrutiny in this study, and China has been the subject of a separate study for the EP in 2012 (Blomeyer *et al.*, 2012). Dried products represent 32% of the market and frozen (whole and fillet) products 42%.

The third most important species is shrimps, which depends on third countries for 98% of supplies. The origins of these products are more diffuse, but 55% of supplies come from Thailand, Ecuador, China, Argentina, India and Vietnam. Five of these countries form the subject of case studies (see Annex 1). There are potential concerns relating to the freshwater or marine sourcing, the former being exempt from the Catch Certification Scheme (CCS), as well as particular concerns relating to residue controls in the aquaculture sector (section 3.6) (Blomeyer *et al.*, 2012).

Salmon is the fourth most important product, but most of this is sourced from Norway, which can be judged to be largely equivalent to EU norms, since it has to adhere to EU norms as a member of the EEA. The same argument can be applied for mackerel, haddock and saithe. Half of all Alaska pollock is sourced from China, but that has been the subject of a separate study (Blomeyer *et al.*, 2012).

All pangasius is imported from Vietnam. Sixty-nine per cent of the 533,262kg of hake comes from Namibia, Argentina and South Africa.

Around half of the imports of cephalopods come from India, China, Peru and Morocco.

At 386,241mt, Surimi is an increasingly important processed product, 67% coming from China, Thailand, Vietnam and India.

¹⁷ Unless specifically mentioned hygiene is synonymous with "safety and quality" in this Study.

Table 5: Species, imports, source and share, 2011

Species & total supply ¹⁸ (mt)	Source	Supply (mt LWE)	Share %
Tuna	Total supply	1,731,867	100
	Imports 3 rd countries	1,690,271	98
	Ecuador	312,107	18
	Thailand	260,603	15
	Mauritius	162,894	10
	Seychelles	127,307	8
	Philippines	123,061	7
Cod	Total supply	1,010,188	100
	Imports 3 rd countries	871,559	86
	Norway	302,559	35
	Iceland	202,770	23
	China	153,976	18
	Russia	105,845	12
Shrimp	Total supply	967,511	100
	Imports 3 rd countries	946,916	98
	Greenland	116,314	12
	Thailand	112,902	12
	Ecuador	108,084	11
	China, Argentina, India, Vietnam	71,771 to 80,230	8, 8, 8, 8
Salmon	Total supply	936,976	100
	Imports 3 rd countries	936,407	100
	Norway	711,374	76
	China	88,608	9
Alaska pollock	Total supply	854,076	100
	Imports 3 rd countries	854,076	100
	China	427,357	50
	USA	328,192	38
	Russia	96,366	11
Pangasius	Catches & import	616,487	100
	Imports 3 rd countries	616,487	100
	Vietnam	614,942	100
Hake	Catches & import	533,262	100
	Imports 3 rd countries	472,374	89
	Namibia	151,176	32
	Argentina	104,753	22
	South Africa	69,348	15
	USA	41,604	9
Cephalopods	Catches & import	496,706	100
	Imports 3 rd countries	496,706	100
	India	83,576	17
	China	63,442	13
	Peru	59,652	12
	Morocco	43,881	9

¹⁸ Supply = catches plus third-country imports into the EU

Species & total supply ¹⁸ (mt)	Source	Supply (mt LWE)	Share %
Mackerel	Catches & import	484,504	100
	Imports 3 rd countries	129,983	27
	Faroe Islands	35,275	27
	Morocco	33,520	26
	Norway	15,507	12
Surimi	Total supply	386,241	100
	Imports 3 rd countries	386,241	100
	USA	115,754	21
	China	66,001	20
	Thailand	61,690	20
	Vietnam	60,708	14
	India	52,027	13
Haddock	Total supply	222,280	100
	Imports 3 rd countries	175,989	79
	Norway	76,914	44
	China	37,476	21
	Russia	27,223	15
	Iceland	26,788	15
Saithe	Total supply	185,703	100
	Imports 3 rd countries	132,154	71
	Norway	41,382	31
	Iceland	38,231	29
	Faroe Islands	28,045	21
	China	23,668	18

Source: AIPCE (2012)

All imports must pass through a BIP, save direct landings of fresh products¹⁹, but these quantities do not significantly alter this picture.

¹⁹ Article 19 (2) of Directive 97/78/EC and Article 15 (1) of Regulation (EC) No 854/2004 derogate from the veterinary checks in the BIPs, if fresh fishery products are landed directly from a fishing vessel flying a third-country flag at Community ports

3. Compliance with safety and quality legislation

KEY FINDINGS

- The structure of EU legislation provides a robust framework for MS, and third countries wishing to export to the EU, establishing a comprehensive food control system.
- The role of the CAs in EU MS is to coordinate areas that will support the production of a safe and wholesome food and feed supply in country. Each EU MS has to carry out internal audits of the national control system and has to produce a report on these controls in place.
- By reviewing these reports it has been identified that there is limited sharing of knowledge and experience across the EU MS control authorities. The degree of detail within the annual reports also varies between different EU MS. The situation would improve if the instructions given to prepare the reports were more prescriptive so that the same level of detail was received by every member state.
- An area of good practice was observed in the flexibility of planning for FVO audits. The list of countries audited is strongly based on the risk based approach.
- The primary responsibility for ensuring that food is safe rests with food business operators throughout the food supply chain, from primary production to the point of final sale to the consumer.
- Overall, the food safety control system in the United States is well-structured with qualified CA staff supported by state of the art laboratories under the FDA/Office of Regulatory Affairs.
- Japan has a well-functioning food control system with the Food Safety Basic Law as the legal basis, which is in line with Regulation (EC) No 178/2002. The institutional framework has well trained CA staff with well-defined functions supported by laboratories with qualified staff and well-equipped facilities.
- The United States and Japan have based their food safety and quality control systems on either compliance or equivalency. Similar to EU, both the United States and Japan have comprehensive, risk-based approach systems to ensure the safety of imported FAP.
- Similar to the EU, the control systems in the United States and Japan cover the entire food supply chain (farm to table), put the primary responsibility on food business operators with the government providing oversight, employ a risk-based inspection and audit system, and have traceability and rapid alert systems in place.
- Overall system of imports controls in EU MS provides guarantees that consignments of FAP accepted into the EU market comply with legal requirements. However recent FVO missions also demonstrate that the main EU MS importers present shortcomings (e.g. old infrastructure). Moreover, disparities in the implementation of the EU legislation in EU MS and lack of harmonisation especially concerning veterinary checks could hamper effective and efficient controls at the BIP.
- EU legislation does not distinguish whether the FAP comes from third countries or from MS. Moreover the results of the comparison of the safety standards requirements in EU MS and in third countries showed that the food safety standards are similarly applied or required in both categories of countries.
- Although the same standards are required, there are differences how these are implemented in both categories of countries. The assurance of FAP safety depends

largely on the effective implementation of the food standards in both third countries and EU MS.

- The EU legislation foresees sanctions for both EU and third countries in case of non-compliance to the food safety standards. The European Commission can take emergency measures against FAP originating from an EU MS or a third country to protect EU health consumer. Additionally EU MS should foresee and impose sanctions on their own operators in case of non-compliance.
- RASFF results illustrate that imports of FAP do not appear to be a high risk to the human consumer. However the reliability of the system and results depends on the EU MS which feed the database. It is essential therefore that all members contribute towards the on-going monitoring and surveillance of foodborne risks.
- All third countries authorised to export to the EU particularly those belonging to the EU top 20 exporters, have food control systems that are in line with EU requirements. Overall, the food control systems are functioning adequately in these countries. The deficiencies pointed out by the FVO missions regarding fishery products have been, in general, addressed. The system relies in third countries' CAs providing full equivalence with the EU requirements and ensuring that its operators are fully in compliance with the EU requirements.
- Some common weaknesses in the food control systems in third countries are: primary production (aquaculture farm and fishing boats/vessels); landing sites, ice plants/factories, cold stores and processing establishments (including freezer vessels); implementation of residues (veterinary medicinal products) monitoring in aquaculture products and contaminants monitoring in FAP and testing of official samples. Despite these weaknesses, European consumers' health is not threatened.
- Developing countries face particular challenges in complying with the EU sanitary package related to: lack of qualified CA and laboratory staff; unhygienic conditions in artisanal fisheries; sustainability of control laboratories; traceability of raw materials; and newly emerging risks to food safety. However issues are tackled by training programmes and donor's assistance to improve the situation in these countries and particularly in ACP countries.
- The decisions of the European Commission to suspend imports from a third country based on article 53 of Regulation No 178/2002 sometimes seem arbitrary. The decision to suspend imports of FAP from a third country is rarely taken by the EC, which appears to be very cautious and reluctant to adopt this measure without strong basis and evidence. These decisions are justified by evidence that food or feed imported from a third country is likely to constitute a serious risk to human health. This evidence is provided by food poisoning cases in EU MS and RASFF notifications but particularly by FVO audit reports. However these reports can sometime lack impartiality and accuracy as missions are undertaken in a week to cover an entire country. Moreover, FVO inspectors have limited access to vessels which are operating in long distance waters, and do not have direct powers to delist freezer vessels and processing establishments as this is the responsibility of third country CAs.
- The FVO audit activities in third countries have significantly improved the system of food control in the countries concerned. FVO audits should be continuously carried out to ensure further improvement in the implementation of food safety controls concerning FAP in third countries. There is a tendency for some third countries to be complacent with their present status. Some countries might become lax in their control activities when there is no occurrence of foodborne illnesses.

3.1 Description of EU sanitary legislation and control system

3.1.1 Overview of the hygiene package of the EU

The European Commission is a member of the WTO and takes the rules and agreements as binding for the assessment and management of risks associated with food and feeds linked to trade. In respect to food and feed the WTO SPS agreement and the supporting standards, guidelines and recommendations established by the OIE and FAO/WHO *Codex Alimentarius* Commission (CAC) are respected and form the basis of EU legislation. These bodies ensure that established standards are under a constant state of monitoring and review and this is reflected by the EU, which amends legislation and standards whenever required.

The EU hygiene package has been designed to protect the health and safety of consumers, as well as addressing animal welfare, plant health and environmental protection. It follows the principles of the farm to table or food chain approach promoted by the WTO. There are five broadly defined areas which support the international food chain approach (FAO 2005):

1. The fundamental components of risk analysis, assessment, management and communication;
2. Traceability of the food or feed from primary production, through postharvest handling, processing and distribution to consumers;
3. Harmonisation of all standards for fish safety and quality attributes to support the development of internationally agreed science-based standards;
4. Equivalence in food safety systems in which similar levels of protection are developed against foodborne hazards and quality attributes irrespective of the method of control that is applied;
5. An emphasis on risk avoidance and prevention at source within the whole food chain from farm or sea to fork or table. This also covers aquaculture and includes good practices Pre-requisite programmes and safety systems based upon the preventive Hazard Analysis and Critical Control Point (HACCP) concept.

3.1.2 The general principles and requirements of EU food law

Regulation (EC) No 178/2002 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 was adopted on 28 January 2002 and established the general principles and requirements of food law. It provided a framework upon which a coherent approach to food and feed safety legislation could be supported. The instrument also defines the role of the European Food Safety Authority (EFSA), and includes basic concepts of equivalence and traceability (FAO, 2005). Regulation (EC) No 882/2004 defines equivalence as “*the capability of different systems or measures to meet the same objectives, and the term equivalent means different systems or measures capable of meeting the same objectives*”. It was designed to provide a structure for use by EU MS for areas not covered by specific harmonised rules, as well as where controlling internal markets is carried out by mutual recognition²⁰. Food and feed imported for sale in the

²⁰ europa.eu/legislation_summaries/food_safety/general_provisions/f80501_en.htm

Community shall comply with the relevant requirements of EU food law or equivalent conditions. The same article also states clearly that all food has been subjected to EU rules or to equivalent rules (Art. 11).

The regulation provides a structure for EU MS to harmonise existing national legislative requirements to support trade in food and feed. The structure also supports international trade, to maintain standards and mutually accept the requirements within third countries, except where these could undermine the sanitary and safety requirements established within the EU.

The European Commission prepared and published the White Paper on Food Safety in 2000, as the European Commission decided that the hygiene legislation of the time needed to be reviewed and streamlined. The paper also included recommendations for the EFSA to be established (EC, 2000). At this time legislation on food hygiene was distributed in a range of Directives, some dating back to 1964. However, these directives covered a combination of different topics, such as hygiene, animal health and official controls. The White Paper called for a review of this legislation to simplify, coordinate and modify it.

The three main instruments (Regulations No 852/2004, No 853/2004 and No 854/2004) in the new food hygiene package are presented in table 6. It was developed with a focus to delegate responsibility for the production of safe and wholesome food to the producers, with support, monitoring and review activities from trade organisations and MS CAs.

Regulation (EC) No 852/2004 on the hygiene of foodstuffs explains the obligations of the food business operators, including the duty of registering with the Competent Authority, and defines the most important terms regarding the food industry. There equivalence means, in respect of different systems, being capable of meeting the same objectives. Furthermore, the specific hygiene requirements and the principles of the preventive HACCP system are explained.

Regulation (EC) No 853/2004, lays down specific hygiene rules on the hygiene of foodstuffs of animal origin, and Regulation (EC) No 854/2004, lays down specific rules for the organisation of official controls on products of animal origin intended for human consumption, and also includes the basic rules for the surveillance of food and lays down the listing system for imports. This system includes special rules for fishing vessels, factory vessel and freezer vessels flying the flag of a third country, in order to be able to control fishery products even when caught by one flag and processed in a different country. Furthermore, the regulation requires a health certificate that certifies the imported products safety at the BIP. A Certificate is issued by each authority the product passes through, even though its origin in customs terms may be another country. Each EU MS has to nominate a CA with the responsibility to manage all SPS issues.

Regulation (EC) No 854/2004, on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, demonstrates the principles of official controls what those comprise and who executes the checks. One section states that imported goods should undergo the same controls as those defined for European goods and shows the actions in case the consignment coming from third countries does not fulfil the requirements of safety. It has then either to be re-dispatched or destroyed. The related costs have to be borne by the food operator.

Finally binding requirements have been established for residue methods, according to Commission Decision No 2002/657/EC. This regulation has harmonised EU MS approach to validation, which has increased the reliability of results.

The table 6 below summarises the regulations and directives which form the hygiene package.

Table 6: The body of law and supporting acts that form Community legislation on food hygiene

Regulation (EC)	Title
No 852/2004	The hygiene of foodstuffs
No 853/2004	The hygiene of foods of animal origin
No 854/2004	Official controls on products of animal origin
Directive No 97/78/EC	Laying down the general principle and requirements of food law, establishing EFSA and procedures in matters of food safety.
Supplemented by	
No 178/2002	The general principles of food law
No 882/2004	Reorganising official controls on foodstuffs and feedingstuffs
No 2073/2005	Microbiological Criteria for foodstuffs
Directive No 2002/99/EC	Conditions for placing products of animal origin on the market

Source: Based upon www.europa.eu/legislation_summaries/food_safety/veterinary_checks_and_food_hygiene/184001_en.htm

3.1.3 The role of DG SANCO and the Food and Veterinary Office

DG SANCO is the Directorate of the EC in charge of protecting and improving public health and ensuring that Europe's food is safe and wholesome. It is also responsible for protecting the health and welfare of farm animals.

There are regular audits undertaken by the FVO which is a directorate within DG SANCO, rather than an independent agency like the European Food Safety Authority (EFSA). The FVO is an inspection service that oversees national audits, both within the EU MS and in third countries. In its function as the eyes and ears of the Commission, the FVO verifies on site that applicable requirements in the areas of food safety, animal health and welfare and plant health are properly implemented and enforced by MS and by third countries. By contributing to the improvement of national control systems, the effective enforcement of requirements in the EU and third countries is enhanced (EC, 2012a).

Regulation No 882/2004 provides a basis for FVO's activities. The regulation provides that MS must give all necessary assistance and provide all documentation that the FVO requests. The controls in third countries may only be executed if the authorities in those

countries agree to them. However, as such controls may be a condition for export to the EU, these authorities often have little alternative.

The FVO checks the performance of important stakeholders (e.g. CA, establishments handling FAPs or related vessels in MS). As the responsibilities have been delegated to the CAs and consecutive to the related industries there are only a limited number of controls carried out directly in the establishments. The audits comprise checks on legislation, and structure and activities of CAs. The audit in MS assess the compliance of the MS rules with the relevant legislation and its enforcement, while the audits in third countries check whether the national surveillance structure complies with EU regulations.

The audits check on national legislation, and on the structure and performance of the CA in both MS and third countries. They include visits in order to cross check the information given by the CA with the reality in the field. Only third countries which are considered as compliant or equivalent with EU rules will have the possibility to import FAPs into the EU. The reports of DG SANCO and the FVO can be found on the web site of the Food and Veterinary Office.

The FVO also has to support the development of EU food policy and control measures on SPS measures. The FVO prepares an annual audit programme of premises and CAs in MS and third countries, based upon data collated from previous inspections and information on notifications. Audit priorities are identified under careful consideration of a number of factors such as risk, legal requirements, trade and policy considerations, with risk being the main factor, and fully involving all relevant stakeholders in DG SANCO, while the MSs are equally consulted. The audit programme may be altered as the year progresses when emergencies, other urgent issues and unforeseen circumstances arise. Audits in response to emergencies can only be made by cancelling or postponing other activities. Also, the carrying out of certain audits will depend on the timely availability of resources (EC, 2012).

Following the audit carried out on the spot the FVO prepares an audit report containing recommendations. The CA comments on this and prepares an action plan in response to the non-compliances identified. All outcomes are made public and can be reviewed on the FVO website.

3.1.4 Certification, listing of countries and approval of establishments and fishing vessels

Imports of animals and animal products into the EU must, as a general rule, be accompanied by the health certification laid down in EU legislation. This sets out the conditions that must be satisfied, and the checks that must have been undertaken, if imports are to be allowed.

The rules for certification are laid down in Council Directive 96/93/EC on the certification of animals and animal products. According to the Directive, the certification must be signed by an official veterinarian or official inspector (as indicated in the relevant certificate). Strict rules apply to the production, signing and issuing of certificates, as they confirm compliance with EU rules. The original version of the certificate must accompany consignments on entry into the Community. Rules and principles applied by third country certifying officers should offer guarantees at least equivalent to those laid down in the Council Directive 96/93/EC (see section 3.4 and 3.6).

The listing of countries, establishments and fishing vessels, including processing vessels and freezing vessels, helps the inspectors at the BIP to check the incoming goods, because fishery products coming from listed countries, establishments, vessels will be checked mainly on the documentation. DG SANCO evaluates CAs in third countries, and if satisfied, lists these in accordance with Art 11 of Regulation 854/2004. That reflects the EU principle for imported food intended for human consumption, which gives the main responsibility to the authorities in the exporting countries. It is the third country CA that is responsible for oversight of its own establishments (processing plants, landing sites, fishing vessels and freezer vessels), and it provides lists of approved establishments to the EC, in accordance with Art 12 of Regulation 854/2004. These have to guarantee that the establishments or vessels are in conformity with EU standards. DG SANCO, with its Directorate General Food and Veterinary Office (FVO), are controlling the standards in third countries and in the EU MS and the enforcement of the national rules. The reports of the FVO demonstrate that generally the listed countries can be considered as equivalent. Since the enforcement of the rules of the hygiene package, both severe shortcomings and visible progresses have been observed in most of the countries to date (see section 3.6).

Establishments in a third country intending to export their FAP to the EU should be registered by the national CA. The registration procedure should be done in accordance with the EU legislation. The registering CA must also be listed, to guarantee that the structure and the execution of food/fish products are controlled at least to standards equivalent to those of the EU. The same principle rules fishing vessels (i.e. freezer vessel and factory vessel), except artisanal vessels and small scale crafts; they merely have to be registered before they can be used for export.

A comprehensive list of EC legislation related to food safety and FAP is included in this document in Annex 3.

3.1.5 The structure, organisation and role of EU MS CAs

To compare the way that MS organise and manage activities within a CA this Study conducted visits to the CAs in pre-selected MS countries. The countries visited were France, Germany, Spain and the UK because of their importance as importers of EU FAPs into the EU²¹.

The role of the CA in EU MS is to coordinate areas that will support the production of a safe and wholesome food and feed supply in country (EC, 2012). Maintenance and review of legislative requirements in each EU MS by the CA is an on-going process across the EU. Each EU MS has to carry out internal audits of the national control system so that they produce a report which provides information on the types of controls they have in place. This data is used to assess their performance and identify priority areas for future control activities (EC, 2012). By reviewing these reports it has been identified that there is limited sharing of knowledge and experience across the EU MS control authorities. The Commission is reviewing this situation and planning to develop a system based upon electronic transmission and analysis to improve this breakdown in communication. The degree of detail within the annual reports also varies between different member states. It would be better if the instructions given to prepare the reports were more prescriptive so that the same level of detail was received by every EU MS.

²¹ The Study sent a questionnaire to these countries, and to Italy, the Netherlands and Portugal (see the methodology).

It is the role of the EU MS CAs to monitor all national FBOs and confirm that they are conforming to norms that are equivalent to the legislation laid down by the EU. This is done through a national programme of audits and supported by monitoring and surveillance programmes. This schedule of events is planned on an annual basis and a report summarising the findings is prepared and submitted to DG SANCO (EC, 2010). The Commission has found it difficult to draw direct comparisons between the activities reported in EU MS because of the variations between national reports in content and structure. There was also an absence of harmonised data on controls. The Commission found this was also true for reports received for 2007, 2008 and 2009 which reflected the differences in agri-structures, administrative cultures and country size between EU MS (EC, 2012). Since this time the Commission have worked with all EU MS to improve the content and comparability of their reports. Some member states, e.g. France, Finland, Sweden and the Slovak Republic have used the reports to develop key performance indicators that can be used to measure their specific performance against specific animal diseases or foodborne illnesses (EC, 2012). In France and the UK there are also plans to evaluate the costs of carrying out specific controls.

On the basis of EU regulations and rules (Commission Decision 2001/812/EC and Regulation (EC) No 882/2004) the European Commission required the EU MS to establish Border Inspection Posts (BIP) where almost all food for human consumption including FAP, feed stuff and other goods of veterinary interest will be controlled when imported into EU MS from third countries. Visits to BIPs in the EU MS demonstrate as well that all visited MS are principally in line with the rules of controlling incoming consignments and constant improvement is noted. The shortcomings are mainly due to organization of surveillance and reporting between the involved administrations. The standard of veterinary inspectors and related personal is generally good and fit for the job (see section 3.3).

3.1.6 Laboratories

Official laboratories with the responsibility of sampling and testing need to have key analytical methods accredited to the requirement of ISO 17025:2005. The process of accreditation can take time and be expensive, which can be a prohibitive factor to some laboratories, especially in regional areas of some EU MS and third countries. The FVO audits confirm that performance between official control laboratories will vary depending on the sectors. In general, laboratories that carry out analysis of FAPs tend to be well-equipped and competent to carry out these analyses.

3.2 Comparison of EU with US/Japanese controls

3.2.1 United States

Until recently, the role of the Food and Drug Administration (FDA) in the United States food safety control system was reactive, rather than proactive. The FDA was largely responsible for issuing and enforcing recalls of the product. The role of FDA changed when in January 2011 President Obama signed the Food Safety Modernization Act of 2010 (FSMA). The FSMA places FDA's food safety focus on prevention. The FSMA also requires the FDA to treat imported foods to the same standards as domestic foods. The FDA is responsible for the safety of all fish and fishery products entering the United States (www.fda.gov).

The United States regulations have taken the EU rules as a model, basing their system on “responsibility and trust”. In order to undertake controls, two measures have been established:

- Delegation of responsibility to national authorities of the exporting countries; and
- Inspections of goods at the port of entry into the USA.

Under the new system, food importers have been entrusted with the responsibility of providing documented assurances to the FDA that the food they import has been produced under the same prevention-oriented standards (e.g. HACCP) as domestic food. FDA can then verify the adequacy of the assurances by examining the importer’s records and selectively examining import shipments. FDA also supports the establishment of accredited third-party certification programmes (www.fda.gov). According to GAO (GAO, 2012), the FDA is developing the accredited Third party programme and the Comparability programme as complementary tools that FDA may use to assess countries’ food safety systems or parts thereof, specific to countries’ particular capabilities, interest and the maturity of their regulatory system

Since February, 2010, the FDA has been implementing a screening system for imports, the Predictive Risk-based Evaluation for Dynamic Import Compliance Targeting (PREDICT), which is expected to improve the current electronic screening system by targeting higher risk products for examination and sampling and minimizing the delays of shipments of lower risk products. PREDICT can improve the agency’s ability to detect trends and investigate patterns. Therefore, it makes more efficient use of FDA’s import resources and allowing FDA to adjust import sampling levels for seafood products over time and as appropriate²². Furthermore, FDA has strengthened and better coordinated its international engagements by establishing permanent FDA posts abroad in strategic locations. Areas in which FDA has established overseas posts include China, India, the Middle East, Europe, and Latin America. The posting of FDA staff in certain foreign regions is a key part of FDA's strategy for expanding oversight of imported food²³.

With respect to FDA’s responsibilities in inspection of fish and fishery products, which are shared with the National Marine Fisheries Service's (NMFS) Seafood Inspection Program, a Memorandum of Understanding (MOU) has been signed between the agencies. From fiscal years 2005 through 2010, FDA inspected, on average, 84 foreign processing facilities annually out of 17,000 worldwide (GAO, 2011).

As stipulated in the new FDA Act (2010), in order to carry out the activities in FDA’s Center for Food Safety and Applied Nutrition (CFSAN), the Center for Veterinary Medicine (CVM), and related field activities of the Office of Regulatory Affairs (ORA), the Secretary of Health and Human Services shall increase the field staff of such Centers and Office with a goal of not fewer than:

- 4,000 staff members in fiscal year 2011;
- 4,200 staff members in fiscal year 2012;
- 4,600 staff members in fiscal year 2013; and
- 5,000 staff members in fiscal year 2014.

The FDA/Office of Regulatory Affairs (ORA) laboratories are accredited by the American Association for Laboratory Accreditation (A2LA). Several of the testing methods used in the FDA laboratories are publicly available on the FDA/ORA website. Testing of FAP under

²² See www.fda.gov/ForIndustry/ImportProgram/ucm172743.htm

²³ See www.fda.gov/ForConsumer/consumerupdates/ucm185769.htm

the EU additional testing programme is also carried out in private laboratories outside the United States. The laboratories are accredited to ISO 17025 (ISO/IEC 17025:2005) by the national accreditation body in the FAP country of origin. Under the FSMA, the number of accredited laboratories that are eligible to perform testing is expected to be increased.

FDA has continued with the national residue monitoring program for aquaculture products. It has recognized the benefit of such a program to ensure that foods are not contaminated with illegal animal drug residues or excessive doses of approved drugs. A food testing programme by accredited laboratories has been established²⁴. FDA also conducts foreign country assessments to review the country's industry and regulatory infrastructure regarding the country's laws for, and implementation of, control of animal drug residues in the aquaculture products it ships to the United States²⁵.

According to the last FVO audit carried out in the USA, the number of domestic samples analysed is relatively small compared to import samples. The number is insufficient to detect a violation rate in the population of 1% with either 90% or 95% confidence (FVO, 2010). In general there are ten times more samples taken from imported aquaculture compared to domestic production. FDA claimed that this was due to the fact that 85% of the total aquaculture product on the United States market is imported (FVO, 2010).

FDA collaborates closely with the Centers for Disease Control and Prevention (CDC), the U.S. Department of Agriculture's Food Safety and Inspection Service (USDA-FSIS), and some state health departments and counties concerning surveillance for foodborne illnesses. The Foodborne Diseases Active Surveillance Network, (FoodNet) under the CDC's Emerging Infections Program, serves as the principal foodborne disease component of the surveillance system. It collects information from sites in ten States—covering 15% of the US population, or 46 million Americans—about diseases that are caused by any of seven bacteria and two parasites commonly transmitted through food. The system has been in operation since 1995²⁶.

During 2009–2010, a total of 1,527 foodborne disease outbreaks (675 in 2009 and 852 in 2010) were reported, resulting in 29,444 cases of illness, 1,184 hospitalisations, and 23 deaths. Among the 299 outbreaks attributed to a food composed of ingredients from one of 17 predefined, mutually exclusive food commodities, those most often implicated were beef (13%), dairy (12%), fish (12%), and poultry (11%). The commodities in the 299 outbreaks associated with the most illnesses were eggs (27% of illnesses), beef (11%), and poultry (10%). The pathogen-commodity pairs responsible for the most outbreaks were *Campylobacter* in unpasteurized dairy (17 outbreaks), *Salmonella* in eggs and STEC 0157 (Shiga-like toxin producing *E. coli*) in beef (15 each), ciguatoxin in fish (12), and scombroid toxin (histamine fish poisoning) in fish (10) (CDC, 2013).

The number of food poisoning outbreaks linked to imported food per year has more than doubled, to 6.5 in 2005–2010, up from 2.7 per year in 1998–2004, according to CDC data presented at the International Conference on Emerging Infectious Diseases in Atlanta, Georgia. Of the 39 reported outbreaks in the latest six-year period, seafood accounted for nearly half. Most of the outbreaks involved food imports from Asia, with products from Latin America the number-two source. The study noted that 16% of the foods eaten in the United States are imported, including more than 80% of seafood. The nation's food imports are growing at a rate of 10% a year, according to FDA²⁷.

²⁴ See www.fda.gov/Food/GuidanceRegulation/ImportsExports/Importing/ucm248706.htm

²⁵ www.gao.gov

²⁶ www.cdc.gov/foodnet

²⁷ www.voanews.com

Enhanced surveillance, quick identification, and rapid recall response are essential in controlling any foodborne outbreak. These measures help to prevent further exposures, illnesses, and deaths. To ensure consumer awareness, updates on the recall and sub-recalls are posted on FDA's website. Furthermore, a new Coordinated Outbreak Response and Evaluation (CORE) Network has been created within FDA to ensure rapid and effective emergency response and more systematic follow-up investigations, in collaboration with CDC and other agencies. Future prevention efforts will be created based on lessons learned from past outbreak experiences. CDC continues to evaluate the best methods in FoodCORE Sentinel Sites and to promote best practices among all local and state health departments²⁸.

To further protect domestic consumers from emerging threats to safety of food, such as acts of terrorism, the United States Congress passed the Public Health Security and Bioterrorism Preparedness and Response Act (Bioterrorism Act for short) in 2002. The Act was enacted to address the country's vulnerability to the threat. It gives FDA several important new tools to protect the food supply: it includes provisions for registration of food facilities, prior notice of imports, recordkeeping to trace foods, and administrative detention of suspect food²⁹.

3.2.2 Japan

The Legislation pertaining to food safety and quality of FAP in Japan is the following:

- The Food Safety Basic Law (Law No. 48, May 23, 2003; last amendment: No. 50, June 2, 2006) promotes policies to ensure food safety by establishing basic principles, clarifying the responsibilities of the state, local governments and food business operators (FBOs) and the role of consumers. This law also established the Food Safety Commission, a food related risk assessment body which sets the principles for developing a food safety regime³⁰.
- The Food Sanitation Law (Law No. 233, December 24, 1947; last amendment: Law No. 87, July 26, 2005) ensures the safety and sanitation of foods through the Ministry of Health, Labor and Welfare (MHLW), a food risk management agency³¹.
- Directive for Handling of Marine Products for Export to the European Union (June 2009). This Directive lays down the requirements for seafood to be exported to the EU, for the issuance of export health certificates and for the official control of food business operators (FBOs) by health authorities and fisheries authorities. This Handling Directive relates to all fishery products and bivalve molluscs.
- Directive for Management of Scallops for Export from Aomori to the European Union (Last revised October 20, 2009), called the Aomori Directive. This Directive sets the rules for the management of production areas and farming sites of scallops to be exported to the EU from Aomori Prefecture.

Food safety inspection services are administered, at central level, by the Inspection and Safety Division (ISD) of the Department of Food Safety of the Pharmaceutical and Food Safety Bureau, in the MHLW. ISD is the Japanese Central Competent Authority (CCA) for fishery products, bivalve molluscs and fish oil exported to the EU, and is entitled to issue directives on food safety requirements to Prefecture Governors concerning those exports. The Food Safety and Consumer Affairs Bureau in Ministry of Agriculture, Forestry, and

²⁸ www.fda.gov

²⁹ Ibid.

³⁰ <http://www.ietro.go.jp/en>

³¹ www.mhlw.go.jp/english

Fisheries (MAFF) and the Fisheries Agency cooperate closely with the ISD in the implementation of the Handling Directive. The officials of the Prefectural Fisheries Authorities (PFA), ensure the official controls related to the farming sites, fishing vessels and freezer vessels (FVO, 2010a).

The inspectors in Japan can be veterinarians, pharmacists, or medical doctors, or possess agricultural and fisheries degrees or degrees in other courses specifically approved by MHLW. Only Designated Food Sanitation Inspectors (DFSI) can conduct inspections in establishments approved for export to the EU. At regional level, seven Regional Bureaus of Health and Welfare (RBHW) were created in 2001, and provide consultation and on-site review in establishments. In addition, RBHW carry out inspections to and approval (or *registration*) of laboratories as being competent for performing the establishments' own checks testing (FVO, 2010a).

At local level, there are 136 local government areas. The local governments are the main executive level directly in charge of control and monitoring of food establishments. The Food Sanitation Division (FSD) in each local government is in charge of public health matters. Public Health Centres (PHC) exist in different cities. These centres are under the supervision of the local governments Environmental Health Divisions and it is here that the DFSI are based. The Food Safety and Consumer Affairs Bureau in the MAFF and the Fisheries Agency cooperate closely with the ISD in the implementation of the Handling Directive. The officials of the Prefectural Fisheries Authorities (PFA) ensure the official controls related to the farming sites, fishing vessels and freezer vessels (FVO, 2010a).

Based on the last FVO audit carried out in Japan in 2010, laboratories are well equipped and functional to undertake the necessary analyses. Also, the laboratory personnel are knowledgeable and professional. The private laboratories that carry out official controls are registered and subject to annual inspections by RBHW. The CA has access to sufficient diagnostic facilities as regards the official controls to be carried out on fishery products, bivalve molluscs and fish oil for export to the EU (FVO, 2010a).

Similar to the EU and the United States, Japan has a farm-to-table approach to food safety. At the national level, MAFF oversees primary production processes, including animal health and the use of agricultural chemicals while the MHLW controls the processing and distribution stages.

Japan has a risk-based approach to inspections. Every year, MHLW prepares an imported foods monitoring and guidance plan that, among other things, provides the quantity and category of inspections to be conducted each year. Although the burden of compliance with Japanese food safety regulation lies with importers, the Japanese government (specifically MHLW) ensures compliance through a high level of import monitoring. In 2006, Japan reported that its inspectors examined 11% of declared products coming into its ports. Japan requires that importers bear the cost of disposing of or re-inspecting noncompliant food products (GAO, 2008). Importers are required to submit two copies of the import notification to the Food Sanitation Inspections Division of the Quarantine Station for the import site. If no problem is found after the examination and inspection at the quarantine station, the notification will be stamped "*Passed*" and a copy will be returned to the importer (www.jetro.go.jp).

As of 2005, there are 31 quarantine stations at ports of entry throughout Japan which are responsible for inspecting food imports. The 300 inspectors assigned in the stations are in charge of reviewing import notifications and certificates. Quarantine stations randomly select shipments for monitoring on a daily basis; such tests are paid for by the

Japanese government (www.mhlw.go.jp). In 2006, MHLW carried out almost 80,000 random inspections and found 360 violations (GAO, 2008).

Port of entry inspections beyond routine document checks depend on a variety of factors: companies' past violations; whether Japan has certified the exporting companies; and information on exporting countries, including the types of agreements they have with Japan, resource materials, and manufacturing methods. Japan maintains this information in a national database (GAO, 2008). The Japanese government has a mandatory recall authority, but it has seldom been used by the authority. Instead, the MHLW through the local health centres which test food suspected to be the source of an outbreak subtly suggest to a company that it recalls its contaminated product (GAO, 2008).

In cases of foodborne illness outbreaks, MHLW responds through the network of regional health centres in partnership with local governments. Another government agency, the National Institute of Infectious Diseases, besides serving as Japan's reference laboratory for infectious diseases, is also responsible for collecting information on such diseases from the local public health centres. Moreover, it monitors incidents of infectious diseases around the country. In the event of an outbreak, the institute carries out epidemiological investigations (GAO, 2008). In recent years, there has been no report concerning foodborne illnesses brought about by imported FAP³².

3.2.3 Comparison

It appears that EU, the United States and Japan have based their food safety and quality control systems on either compliance or equivalency. Similar to the EU, both the United States and Japan have comprehensive, risk-based approach systems to ensure the safety of imported fishery and aquaculture products. Specifically, the control systems are focused on the entire food supply chain (farm to table), put the primary responsibility on food business operators with the government providing oversight, employ a risk-based inspection/audit system, and have traceability and rapid alert systems in place.

As shown in the summary Table 7, there is no significant difference in the food safety and quality legislation requirements among the EU, the United States and Japan concerning imports of FAP. Although the means adopted to ensure the safety of imported FAP in the countries concerned vary, there is no doubt that the same outcome has been achieved - a supply of safe imported FAP for domestic consumers.

Table 7: Comparison of requirements on food safety legislation in EU, United States and Japan

Requirements	EU	United States	Japan
Food Safety Law	Reg. (EC) 178	FSMA 2010	Food Safety Basic Law
Competent Authority	CAs of MS	FDA	MHLW
Farm to Table Approach	x	x	x
Risk Based Approach	x	x	x
Inspection/Audits	FVO*	FDA/FSIS	MHLW/MAFF
HACCP	CAs of MS	FDA/FSIS	MHLW/MAFF
Port of Entry	BIPs	U.S. Customs and Border Protection (CBP)	Quarantine stations

³² www.mhlw.go.jp

Requirements	EU	United States	Japan
Surveillance (RMP)	FVO	FDA	MHLW
Alert System (RASFF)	DG-SANCO	FDA	MHLW
Traceability	x	x	x

*Responsible Agency

Source: (GAO, 2008; GAO, 2011, www.fda.gov, www.mhlw.go.jp, <http://ec.europa.eu/food/fvo>)

3.3 Description of process of monitoring and control of FAP into EU

There are about 300 Border Inspection Posts (BIPs) which are regulated by EU MS carrying out monitoring and surveillance activities of food and feeds for human and animal consumption which may enter into the food chain. Based upon EU legislative requirements and the concept of equivalence each EU MS organizes how the BIPs function within their respective, harmonised national control systems. As the organization and management of BIPs lie with each EU MS there may be different organisations with specific delegated responsibilities from the CAs involved. For example in the UK the designated CA, the Department for the Environment, Food and Rural Affairs (DEFRA), has delegated overall responsibility for the management of Food Safety to the Food Standards Agency (FSA). However, BIPs in the UK are under the management of their Local Authorities who will report back to the FSA. This process is also present in other EU MS where a federal system also delegates the responsibility for the execution of control measures to regions which can result in complicated communication routes between the designated CA and the actual BIP (e.g. Germany). Since the final clearance for the entry into one of the EU MS, which means into the whole territory of the EU, lies with the national customs a good system of communication between the involved offices is essential.

BIPs are allocated for specific types of products and only consignments that relate to that can be sent to a specific BIP. For example, according to Commission Decision 2007/275 checks on fish eggs can only be carried out at a "live animal BIP". This is also the case for live FAPs and snails for direct human consumption. It is the importers responsibility to understand the classification of BIPS so that such consignments are not shipped to the wrong BIP, where it would be rejected

3.3.1 The control system at BIP according to the EU legislation

The particular veterinary checks of food are regulated by Directive 97/78/EC of 18 December 1997, laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries, and Regulation (EC) No 136/2004 of 22 January 2004, laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries. There specific rules for the controls including the documentation and verification rules of imported food of animal origin at the incoming ports / BIPs are laid down. This tool to control incoming goods is an important one as any FAPs have to pass to one of the 300 MS BIPs before they can enter the EU. Principally, the legislation does not differentiate between whether fishery products are imported from a third country or landed in an EU MS. The important point is that measures followed by an exporting country are equivalent³³ to those adopted within the EU (Art. 4 SPS agreement – WTO 1994). Definitions are laid down in the relevant laws and give clear indication to an importer

³³ According to Regulation (EC) No 852/2004 equivalent means, in respect of different systems, capable of meeting the same objectives)

what the conditions for the import are. According to the Council Directive 97/78/EC, EU MS shall ensure that no consignment from a third country is introduced into the EU without having been subject to the veterinary checks required by this Directive. Veterinary checks imply documentary checks, identity checks and physical checks.

Notification of arrival

The arrival of all consignments of FAPs (Products of Animal Origin - POAO) has to be notified to the BIP, approved for that FAP before it physically arrives (Council Directive 136/2004). To that end the person responsible for the load should complete and submit the part I of the Common Entry Veterinary Form (CVED) form (Annex III of Council Directive 97/78/EC) to the veterinary staff of the BIP. This pre-notification, as it is called in UK, can be submitted to the OVS/OFI electronic systems (e.g. SPIN, PACE, FCPS or by fax, e-mail or TRACES) followed by a hard copy.

The consignment needs to be presented to the BIP when it is landed without any delay. Consignments of food have to be announced prior to arrival at the BIP so the control can be prepared accordingly. The CVED needs to be completed by the importer and submitted to a BIP a prescribed time before the consignment arrives at the BIP. This gives the Official Veterinary Surgeons/Official Food/Fish Inspector (OVS/OFI) time to prepare for and supports decision making upon how the consignment will be managed.

Documentary checks

According to Council Directive 97/78/EC documentary checks means the examination of the veterinary certificate(s) or veterinary document(s), or other document(s), or other document(s) accompanying the consignment. Each consignment shall be subject to a documentary check irrespective of the customs-approved treatment or use. Detailed rules for documentary checks are included in Annex 1 of Regulation (EC) No 136/2004³⁴. Original documents will be retained at the BIP and be available for audits by the CA and/or the FVO. At the BIP the OVS/OFI check part 1 of the CVED form to make sure it has been completed correctly and it is accompanied with related documentation such as the health certificate, at this stage a decision is made regarding the safety of the consignment and which, if any tests need to be carried out. This decision is risk based depending on the nature of the consignment, its country of origin and related safety issues.

³⁴ THE DOCUMENTARY CHECKS REFERRED TO IN ARTICLE 1(1)

The following rules are to be applied to the documentary checks on products from third countries:

1. For each consignment, the Competent Authority must ascertain the intended customs approved treatment or use to which the goods will be assigned.
2. Each certificate or document for animal health or public health which accompanies a consignment of products originating in a third country and presented to the border inspection post must be inspected in order to confirm as appropriate:
 - (a) that it is an original certificate or document;
 - (b) that it refers to a third country or part of a third country authorised to export to the Community, or, for non-harmonised products, to the Member State concerned;
 - (c) that its presentation and content correspond to the model drawn up for the product and third country concerned, or, for non-harmonised products, to the Member State concerned;
 - (d) that it meets the general principles of certification laid down in Annex IV to Council Directive 2002/99/EC (1);
 - (e) that it has been fully completed;
 - (f) that it relates to an establishment or vessel authorised or registered to export to the Community, or, for non-harmonised products, to the Member State concerned;
 - (g) that it is signed by the official veterinarian or, where appropriate, the representative of the official authority, and shows legibly and in capitals his/her name and position, and also that the official health stamp of the third country and official signature are in a different colour to that of the printing of the certificate, or, for electronic certificates, signature and stamp are made by a secure system;
 - (h) that part 1 of the CVED is correctly completed and that the information in it corresponds with information in other relevant official documents accompanying the consignment.

The CVED and associated documents are processed by adding the date received and related details into the ledger/computer system. It is at this stage the unique number of the BIP is allocated and a decision made regarding the level of inspection, based upon the information on the documentation, the consignment and its point of origin. The documentation is inspected to make sure that the information required has been provided including associated documents. The CVED needs to be fully completed and the associated documents should include the health certificate and information on its country of origin, i.e. from an authorised third country and relates to an approved establishment (processing plant, freezer vessels, fishing vessels or cold store). All required documents need to be received prior to deciding on the level of inspection, after documentation and an identification check is carried out. The decision whether to take samples for analysis depends on the information included in the documentation, identity and findings of physical examination of the consignment.

Identity checks

An identity check³⁵ should be carried out on the product to ensure that the veterinary certificate and related documents relate to the product itself. Each consignment should be subject to an identity check. This might be as simple as a seal check (if seal is required by Community law), and that the number is correct on model certificate and the product is confirmed to be fully harmonized. Checks on stamps, official marks, labelling, establishment numbers, country of origin information, weight markings should be included and not on items that are close to the container door. The container should be resealed if opened for these purposes. Equivalence agreements (e.g. New Zealand) allow for a reduced frequency of checks.

Physical checks requirements and techniques

The physical check should be carried out *according to frequencies laid down* in Commission Decision 94/360/EC of 20 May 1994. The Council directive 97/78/EC defines physical check as check on the product itself, which may include checks of packing and temperature and also sampling and laboratory testing. According to Annex I of this Commission Decision the frequency of physical checks for fish products in hermetically sealed containers intended to render them stable at ambient temperatures, fresh and frozen fish and dry and/or salted fishery products should be 20% (category I)³⁶. In case of other fishery products than those mentioned under Category I and bivalve molluscs, the frequency of physical checks provided in Annex I should be 50%.

Analysis or examination

A decision might be made by the OVS/OFI to carry out a compositional analysis of a consignment to ensure that non-permitted or non-declared ingredients or additives are absent and to determine that declared ingredients for additives do not exceed regulatory guidelines. Chemical analyses may be made to confirm that chemical contaminants do not exceed statutory limits. This would include toxic elements such as heavy metals, pesticides, industrial chemicals and drug residues. Analyses for natural toxins may be carried out to confirm that if present, they do not exceed regulatory limits, (e.g. histamine, paralytic shellfish poison, domoic acid or other biotoxins such as ciguatera, okadaic acid or tetramine). The consignment might require examination of samples for pathogenic microorganisms such as *Vibrio* spp., *Escherichia coli*, *Listeria monocytogenes*,

³⁵ According to the Council Directive 97/78/EC identity check means a check by visual inspection to ensure that the veterinary certificate(s) or veterinary document(s), or other document(s) provided for veterinary legislation tally with the product itself.

³⁶ Without prejudice to Article 10, subparagraph 2, of Directive 91/493/EEC (fresh fish).

Salmonella spp. or *Staphylococcus aureus*. Protocols for analysis and examination are present in legislation and OVS guidance notes, (e.g. 466/2001 contaminants; 2001/22 heavy metals).

Clearance or rejection of the consignment

When results are satisfactory and samples confirm that a consignment complies with legislative requirements and after completion of the veterinary checks the CVED (part 2) is completed by the official veterinarian responsible for the BIP. The official veterinarian or the person responsible for the load shall notify the custom authorities for the BIP of the veterinary clearance of the consignment by submitting the original CVED or by electronic means. The CVED is issued with the following options: that the consignment can be imported for free circulation to EU MS; that the consignment can be imported to a specific destination only; that the consignment is in transit to a non-EU destination and decision may be made that sampling of this type of consignment in the future may be reduced. A copy of the CVED form, along with copies of the health certificate if required, will be copied electronically via TRACES to customs to allow entry into the EU. All information regarding the consignment will be recorded in the appropriate databases.

All CVED forms and copies should be signed and stamped by the OFI/OVS and a copy of the CVED form and the original health certificate should be retained for three years. The forms should be easily retrievable for traceability and auditing purposes. The original CVED travels with the consignment to the first premises of destination within the community and should be kept at the first premises of destination for 1 year. The exception to these requirements is that for consignments that are in transit or are transshipments, copies of the documents are retained at the BIP.

According to the Council Directive 97/78/EC if any of the veterinary checks indicates that a consignment of products is likely to constitute a danger to animal or human health, the competent veterinary authority shall immediately take the following measures:

- It shall seize and destroy the consignment in question,
- It shall immediately inform the other BIPs and the Commission of the findings and of the origin of the products, in accordance with Decision 92/438/EEC.

Depending on the nature of the FAP they will either be destroyed at the BIP or returned to the exporter of the third country. The option of re-dispatch or destruction is permitted for rejected consignments when there is no health risk. They can only be redirected to countries outside the EU. The final decision is with the importer as he/she will have to pay the cost.

3.3.2 Specific cases of transit, transshipments and imports of direct landed product

Transit

Article 9 of Directive 91/496/EC and Article 11 and 12 of Directive 97/78/EC lay down specific requirements in relation to consignments in transit including deadlines for exit. These consignments must enter and leave EU via an approved BIP and detailed requirements including deadlines for delivery are specified in Commission Decisions 2000/208/EC and 2000/571/EC.

Transit means the movement of non-conforming consignments or, the movement of live animals conforming to EU requirements across Union/EEA territory by road, rail, or waterway transport from one third country to another. During the transit, the products

shall be transported without being unloaded or split after leaving the BIP of arrival, in vehicles or containers sealed by the authorities. No handling shall be authorised during transport, messages about transits should be sent via TRACES and fax. The process of transits should take place within 30 days. Results from the overview report of the EC on import controls at BIP between 2007 and 2009 indicated that controls on consignments transiting the EU were performed effectively. However the report indicates that *"follow-up by the entry BIP was not performed within the specified deadlines when it does not receive confirmation of exit from the exit BIP increasing the risk that such consignments do not leave the Union as required"*. In 2009 the issues started to be addressed within TRACES.

Transshipments

Transshipments is the movement of a consignment from a third country from a vessel/aircraft in an Union/EEA port/airport served by an Union/EEA approved BIP to another vessel/aircraft in the same port/airport within the same area of the same customs office responsible for import and export or within the same free zone for onward travel.

Article 9 of Council Directive 97/78/EC provides for some consignments to be transhipped to another BIP, if some or all veterinary checks on specific consignments are to be deferred to another BIP in EU MS. Commission Decision 2000/25/EC clarified the minimum and maximum time periods following arrival which determine the type of veterinary checks to be carried out. Checks at the original BIP might be carried out depending on how long the consignment stays in the BIP of entry, unloaded and stored on the quayside at a seaport for seven days or airport tarmac for less than 12 hours prior to transhipment. However the exact timeframe for advance notification is not specified in EU legislation.

The report of the EC on import controls at BIP (DG SANCO, 2011) noticed various shortcomings in the EU MS concerning the implementation of the relevant Directive provisions:

- Lack of proper notification in advance
- Absence of systems to monitor the times the transhipped consignments stay at the point of entry
- Variation in implementation of the requirements due to imprecise legislative requirements: documents requested varied, time of documentary and identity checks

These issues compromise the ability of CA in EU MS to check consignments transhipped when needed and to ensure that they leave the EU territory within the specified time limits.

The EU MS and the Commission discussed these issues in working groups. A general guidance document on consignments of live animals and animal products from third countries in transit or transhipment has been produced but is still at the stage of a working document³⁷. This document was not approved by the EC and is only for information purpose.

Recommendation H.1 The EP should follow up with the European Commission the issues related to transhipment rules and see whether harmonisation has been achieved since the adoption of the guidance document.

³⁷ SANCO/10844/2011 08.04.2011

In case of FAP MS have to designate ports, or places close to the shore, where landings or transshipment operations of fishery products are permitted and port services are accessible for third country fishing vessels, as provided for in Article 5 (1 and 2) of Council Regulation (EC) No 1005/2008.

Imports of direct landed product

Direct landed fish are regulated by Council Regulation (EC) No 1093/94/EC³⁸ of 6 May 1994 which sets the terms under which fishing vessels of a third country may land directly and market their catches at Community ports. As explained previously FAP landings need to take place in designated ports in accordance with the EU IUU Regulation but also ensuring health and veterinary checks. The master of a fishing vessel referred to in Article 1 must draw up and deliver to the Competent Authorities of the Member State where he wishes to use landing facilities a statement specifying, for all the products which he intends to land:

- the origin and, where applicable, the vessel or vessels from which those products have been transhipped,
- the quantities, broken down by species,
- the intended method of marketing.

Imports of direct landed product may also be subject to random testing to analyse for contamination. This will include organoleptic tests to assess the freshness of the product to ensure it is fit for human consumption. This check should be carried out at the time of landing or before first sale.

The checks to be done are clearly defined and did up to now not demonstrate very serious danger for the consumer. However so called “*direct imports*” can be imported bypassing the BIPs. It comprises only fresh fish (fresh or chilled) since those goods are considered to show no or a very limited risk for the client if consumed quickly. The legal base for this exception is laid down in Council Regulation (EC) No 1093/94 and Article 19.2 of Directive No 97/78/EC. Although considered of minor risk, this procedure remains less strict and therefore not in line with the regulations regarding controls at BIPs.

3.3.3 Differences of practices among the EU MS and weaknesses identified

Practices carried out at BIPs will depend on the nature and risk-based history of the type of consignment but also vary between the EU MS. Findings by the authors of this study demonstrate there are differences in the management and enforcement of EU regulations in the various MS BIPs, which is permitted by equivalence, providing the same level of control is achieved. Although in all EU MS there are nominated CAs and the national laws are harmonized with EU legislation the organisation of responsibilities, number and status personnel and the equipment of necessary facilities do not always fulfil the criteria of Regulation (EC) No 853/2004 for protocols to be followed at an EU BIP. These organizational shortcomings are due to national rules and have, in principal, no input in the assessment of the sanitary quality of the imported goods. The numbers of consignments that are refused entry is actually very low since the importers try to avoid any risk of losing a consignment.

³⁸ Council Regulation (EC) No 1093/94 of 6 May 1994 setting the terms under which fishing vessels of a third country may land directly and market their catches at Community ports

During the visits undertaken for this study it has also been observed that there are differences in the veterinary controls carried out at the BIPs from one country to the other which may result in the fact that consignments refused in one MS may be cleared in another one. In general the surveillance of sanitary/veterinary controls of imports of FAPs has to be considered as appropriate. Some BIPs reported that there are “soft” approaches to inspection procedures that are practiced in some BIPs, for example containers’ seals are checked but physical checks do not take place. The continuous progress demonstrated by the results of the FVO reports over the last seven years shows that the principles used by the EC to prevent severe risks for the European consumer when importing FAPs from third countries are valid. However additional measures and actions could be taken such as additional training programmes through the Better Training Safer Food programme, to standardise the activities of the EU MS regarding the controls for POAO at BIPs.

The FVO, during its audits in EU MS, has observed that in some BIPs full identity checks were not always carried out. The BIPs were carrying out seal checks, to confirm the official seal was intact, but were not opening the container to confirm the identity of the consignment (DG SANCO, 2011). In the UK, a full documentation and identity check and a physical check are undertaken. Containers are opened after seals are checked, boxes are selected for opening and physical checks are made. A decision is then made whether any further sampling is required.

The EC only provides general guidance on how veterinary controls should be undertaken. Some EU MS would be willing to have standardisation on veterinary checks including documentary and physical checks (e.g. Spain). These detailed guidelines would not need to be binding for the EU MS but could be applied on a voluntary basis. The FVO reports analysed between 2007 and 2009 also indicate that there was a problem with the system to apply reduced checks. In some cases it was not ensured that the selection of consignments was carried out in a random manner; in others the system did not cover all countries or commodities. Moreover reinforced checks foreseen under Article 24 of Directive No 97/78/EC are applied differently in most Member States. A guidance document was in preparation to address this issue.

Finally problems and variation among EU MS also arise concerning the decision on the consignment. The DG SANCO noticed that veterinary decisions on consignments were appropriate in most cases even though some consignments that should have not been allowed were released. Some other problems were noticed by FVO during its missions in EU MS related to filling in the CVED or the recording of information concerning rejected consignments. Regarding enforcement measures and sanctions, the EC noticed that EU MS were not systematically making use of these measures to improve compliance in areas such as pre-notification prior to consignment arrivals and the correct completion of official documentation (EC, 2012).

The recent FVO audits carried out in Italy (8 to 19 February 2010), in France (18 to 28 September 2012) in Germany (27 November to 6 December 2012) and in Spain (16 to 27 May 2011) indicate that generally the system of import controls provides guarantees that consignments of products of animal origin and live animals accepted on the EU market comply with legal requirements. However, like in the overview report prepared by DG SANCO, shortcomings were identified in all of the biggest EU MS concerning controls at BIPs. In Germany, the old infrastructure does not insure flow of staff and consignments during checks. Facilities at Dusseldorf BIP are still non-compliant. Stuttgart BIP was suspended following the FVO report in 2011. In Italy the FVO also noticed that BIP facilities of Palermo airport, Genova and Taranto did not fulfil the requirements of Decision No. 2001/812/EC. Import/transit controls were considered generally carried out

correctly. However deficiencies persist in the identification and processing of consignment in transshipment. In Spain, the FVO mission noticed poor maintenance of facilities, insufficient co-ordination with other CA and limited effectiveness of the verification procedures.

Moreover for the time being, there is no EU central register of signatories, stamps and health certificates in place. Such a register would facilitate the review of documentation at EU MS BIPs.

Recommendation H.2 The EP should follow up with the European Commission on strengthening the prescriptive content of Regulation (EC) No 882/2004 in order to standardise inspection practices in EU MS BIPs.

Recommendation H.3 The EP should follow up with the European Commission regarding the development of further capacity building through the Better Training Safer Food initiative in inspection processes followed at EU MS BIPs to ensure equivalence in food import inspection processes.

Recommendation H.4 The EP should follow up with the European Commission that a central register of signatories, stamps and health certificates should be established to facilitate the review of documentation at EU MS BIPs.

3.3.4 TRACES

On the bases of Decision No 2003/623/EC the EC has developed an integrated computerised veterinary system called TRACES (**TRAde Control and Expert System**). This system replaced the ANIMO-system which is in EU legislation the communication means for specific consignments received at BIPs. The establishment of a single central database for monitoring the movements of animals and products of animal origin both within the EU and those coming from outside of the EU is an important step in the surveillance and monitoring of imported food and feed into the EU.

The IT system came into force in August 2003 and its main purpose, apart from the information of animal movements and others, is to provide a system of electronic veterinary certificates, which enables commercial operations to obtain information on-line which relates to imports as well. Furthermore, the database should be used to produce lists of establishments from countries outside of the EU which are authorised to export products of animal origin to the EU and manage consignments rejected at EU borders. The last point is of interest for the import of FAPs in order to control their quality at the BIPs.

Article 3 (3) of Commission Decision No. 2004/292/EC requires that the TRACES system be used for all consignments presented to BIPs. The BIPs often use the TRACES Database as well to record their inspections as laid down in the EU rules. It is important that the database is maintained regularly and the information there is always up to date. However the overview report of DG SANCO of 2011 indicated that information added to TRACES varies between different member states. It mentioned that TRACES has improved communication between EU MS, focusing on import and transits, and has simplified many procedures used between BIPs. However, FVO audits reveal that not all EU MS use TRACES, so this weakens the effectiveness and accuracy of the system (DG SANCO 2011). Since 2011, the use of TRACES has been greatly improved in the main importing EU MS. It was also noticed that TRACES was not generally used for consignments being transhipped through EU entry points which makes carry out controls more difficult for the

BIP involved. However the procedure for transshipment has been recently improved and further developed. Sometimes the information given by TRACES is not taken as criterion for granting the necessary entry documents and may be because customs officials do not have a direct link to TRACES. In some BIPs a national database which is not part of TRACES complements information required for decision making at the BIP (e.g. UK and Germany).

Recommendation H.5 The EP should follow up with the European Commission regarding the integration of local BIP computer programmes with TRACES to facilitate communication between BIPs within EU MS.

3.4 Comparison of Standards Required for FAP produced by EU MS or vessels and for FAP imported from Third Countries

3.4.1 EU Food Safety Standards for FAP

Regulation (EC) No 178/2002 and Regulation (EC) No 882/2004 are the central legal foundations for food legislation. These Regulations apply directly to all EU MS without the MS having to enact national laws (BfR, 2009).

In principle, EU legislation does not discriminate whether the fish and aquaculture products (FAP) originate from a third country or from EU MS. Article 11 of Regulation (EC) No 178/2002 clearly states that *"food and feed imported into the Community for placing on the market within the Community shall comply with the relevant requirements of food law or conditions recognised by the Community to be at least equivalent thereto or, where a specific agreement exists between the Community and the exporting country, with requirements contained therein"*. Regulation (EC) No. 882/2004 defines *"equivalence as the capability of different systems or measures to meet the same objectives, and the term equivalent means different systems or measures capable of meeting the same objectives"*.

Regulation (EC) No 178/2002, Article 17 provides that *"it is the responsibility of the MS to enforce food law, and to monitor and verify that the relevant requirements of food law are fulfilled by food and feed business operators (FBOs) at all stages of production, processing and distribution"*.

The CAs in EU MS are obliged to monitor and verify that business operators comply with the requirements of EU law on food and feed safety (including animal health, animal welfare and plant health). Regulation (EC) No 882/2004 sets out how these controls should be organised and operated. In particular, the Regulation imposes requirements on the Member States when they verify:

- compliance by operators with the sectoral legal requirements, or
- that goods to be placed on the EU market (either EU produced or imported from third countries) are in compliance with the standards and requirements of sectoral legislation.

Similarly, exporting or third countries must have a CA which is responsible for official controls throughout the production chain (see section 3.1 and 3.6). The CA must be empowered, structured and resourced to implement effective inspection and guarantee credible public health and animal health attestations in the certificate to accompany fishery products that are destined for the EU. The CA must also ensure that the relevant hygiene and public health requirements are met.

The Hygiene Package (as earlier discussed in Section 3.1) covers the main conditions for FAP sourced within EU MS and imported from third countries. FAP, whether of EU origin or imported, that fail to meet the food safety standards requirements are not allowed to circulate in EU. EU legislation sets the basis for legal requirements in the EU, but there may be some differences in conversion into national legislation between EU MS. Some EU MS have formulated additional legislative requirements (www.cbi.eu). The general food safety standards requirements are summarised below in Table 8.

Regulation (EC) No 853/2004 lays down specific hygiene rules for foodstuffs including live bivalve molluscs and fishery products. These hygiene requirements exclude those for aquaculture products. For fishery products, the hygiene requirements cover the following aspects:

1. Freezer and factory vessels (structural and equipment requirements)
2. Hygiene requirements
 - During and after landing
 - Establishments, including vessels handling fishery products
 - Fresh fishery products
 - Frozen products
 - Mechanically separated fishery products
 - Concerning parasites
 - Processed fishery products
3. Health standards for fishery products
 - Organoleptic properties of fishery products
 - Histamine
 - Total volatile nitrogen
 - Parasites
 - Toxins harmful to human health
4. Wrapping and packaging of fishery products
5. Storage of fishery products
6. Transport of fishery products

Standards requirements in aquaculture products

The food safety standards requirements concerning aquaculture products are covered in Regulation (EC) No 852/2004 and Council Directives No 96/22 and 96/23. Regulation (EC) No 852/2004 details the hygiene requirements for aquaculture products: food business operators should observe hygienic practices and maintain records, particularly on the use of veterinary medicinal products or other treatments administered to the animals, dates of administration and withdrawal periods during the primary production. Directives No 96/22/EC and No 96/23/EC pertain to the measures to monitor certain substances (hormones, steroids, veterinary drugs, contaminants and others) in aquaculture.

Microbiological criteria

According to Article 4 of Regulation (EC) No 852/2004, food business operators are to comply with microbiological criteria. This should include testing against the values set for the criteria through taking samples, conducting analyses and implementing corrective actions, in accordance with food law and the instructions given by the CA. It is therefore appropriate to lay down implementing measures concerning the analytical methods, including, where necessary, the measurement of uncertainty, the sampling plan, the microbiological limits, and the number of analytical units that should comply with these limits (EC Regulation 854).

Contaminants³⁹

Maximum levels for certain contaminants in food are set in Commission Regulation (EC) No 1831/2003. This Regulation entered into force on 1 March 2007. Maximum levels in certain foods are set for the following contaminants: nitrate, mycotoxins (aflatoxins, ochratoxin A, *patulin*, deoxynivalenol, zearalenone, fumonisins), metals (lead, cadmium, mercury, inorganic tin), 3-MCPD, dioxins and dioxin-like PCBs and polycyclic aromatic hydrocarbons (benzo(a)pyrene).

Labelling requirements

Regulation (EU) No 1169/2011 lays down the provision of food information to consumers. Mandatory particulars such as the name of the food, the list of ingredients, the quantity of the food, the date of minimum durability or the '*use by date*', nutrition declaration and many others, should be included in the label. Article 10 requires that in addition to the mandatory particulars, the date of freezing or the date of first freezing in cases where the product has been frozen more than once shall be added and preceded by the words '*Frozen on ...*'; in the label.

Table 8: EU Food Safety Standards for FAP

Standards	Requirements
General Food Law Regulation (EC) No 178/2002	Lays down the general principles and requirements of food law, establishing the European Food Safety Authority and lays down procedures in matters of food safety.
Hygiene Regulation (EC) No 852/2004 Regulation (EC) No 853/2004 Regulation (EC) No 854/2004 Microbiological Contamination Regulation (EC) No 2073/2005	Lays down general hygiene rules applying to all foodstuffs. Lays down specific hygiene rules for foodstuffs. laying down specific rules for the organisation of official controls on products of animal Limits apply to <i>Salmonella</i> , <i>E. coli</i> , and histamine, and coagulase-positive staphylococci.
Irradiation of food Directive No 1999/3/EC Directive No 1999/2/EC: EU legislation: Irradiation of food (ionising radiation)	It is prohibited to treat fishery products with ionising irradiation, unless it is explicitly approved by a Member State in national legislation. The labels of irradiated product must bear the words "irradiated" or "treated with ionising radiation".
Prohibited Substances Hormones Directive No 96/22/EC	<ul style="list-style-type: none"> (Processed) Aquaculture animals from a stock farm where <i>thyrostatic</i>, <i>oestrogenic</i>, <i>androgenic</i> or <i>gestagenic</i> action and <i>beta-agonists</i> substances have been used are forbidden. Young fish treated for the first three months for the purpose of sex inversion with veterinary medicinal products that have an androgynous action and are listed (authorised), see veterinary medicinal products below.

³⁹ http://ec.europa.eu/food/food/chemicalsafety/contaminants/legisl_en.htm

Standards	Requirements
<p>Steroids, veterinary drugs and contaminants Directive No 96/23/EEC</p> <p>Veterinary medicinal products Regulation (EC) No 470/2009 (annexes of Regulation (EC) 2377/90) and Regulation (EU) No 37/2010</p> <p>Pesticides Regulation (EC) No 396/2005 Maximum Residue Levels (MRLs) of pesticides in food</p> <p>Contaminants Regulation (EC) No 1881/2006</p>	<ul style="list-style-type: none"> Substances with an anabolic effect (<i>e.g. stilbenes, steroids and compounds</i>) may not be used for live aquaculture animals. Forbidden veterinary drugs and contaminants in aquaculture animals are: antibacterial substances (<i>sulphonamides and quinolones</i>), and veterinary drugs such as <i>carbamates, pyrethroids, sedatives, organochlorine compounds (PCBs), organophosphorus compounds</i> and chemical elements. <p>Maximum Residue Limits (MRLs) for the use of authorised veterinary drugs are laid down. The annexes of Regulation (EC) No 2377/90 cover:</p> <ul style="list-style-type: none"> Annex I: Pharmacological substances for which MRLs have been fixed; Annex II: Substances for which there are no MRLs fixed Annex III: Substances for which MRLs have been provisionally fixed; Annex IV: Substances for which no MRLs can be fixed <p>The use of substance not listed is prohibited at all circumstances.</p> <p>EU legislation sets maximum level (MRLs) for pesticide residues in food. Unless otherwise specified this is 0.01 mg/kg. This regulation also applies to fishery products. However, to date, there are no specific MRLs for fish published.</p> <p>Maximum levels are laid down for:</p> <ul style="list-style-type: none"> Lead, cadmium and mercury (heavy metals), Annex I, Section III; Dioxins and PCP, Annex I, Section V; Polycyclic aromatic hydrocarbons (PAHs), Annex I, Section VII.
<p>Labeling</p> <p>General labeling requirements Directive No 2000/13/EC (in December 2014 to be replaced by Regulation (EU) No 1169/2011)</p> <p>CN coding system Regulation (EC) No 104/2000 Regulation (EC) No 2065/2001</p>	<p>As with all products intended for human consumption, FAP must comply with a general set of food labeling requirements. Aside from the mandatory particulars, in case of FAP, the date of freezing or the date of first freezing in cases where the product has been frozen more than once shall be added and preceded by the words 'Frozen on ...'; in the label</p> <p>All fishery products imported into the EU must include:</p> <ul style="list-style-type: none"> commercial designation of the species (scientific name, name in official language); production method (caught at sea, inland waters or farmed); and the catch area. <p>A database with the scientific names in the official languages of the EU MS</p> <p>The production methods can be:</p> <ul style="list-style-type: none"> 'caught'...or....'caught in freshwater'... 'farmed'... or ... 'cultivated'

Source: www.cbi.eu (modified version)

3.4.2 Compliance with EU Food Safety Standards

Within the EU, FAP which have been placed on the market are regarded as being in free circulation, which means they must be derived from an approved establishment and comply with the relevant hygiene rules. Health certification for FAP coming from MS is not required and under the conditions of free circulation, the products do not need to enter through a BIP. This is also the case for fishing products landed by EU MS vessels operating outside EU waters. However, FAP consignments produced in EU MS must display an identification mark from other EU MS. The identification mark must consist of the State abbreviation and the establishment approval number set in an oval mark. It should also include the abbreviation CE, EB, EC, EF, EG, EK, EO, EY, ES, EÜ, EK or WE.

The FVO undertakes planned audits in third countries to verify compliance with feed and food law, animal health and welfare legislation (see section 3.1 and 3.6). Similar activities are undertaken by the FVO in EU MS to ensure that FAP being circulated in and entering the EU are safe for consumption (see section 3.3). Moreover Regulation (EC) No 882/2004 also sets out detailed rules on controls by the Commission services on the Member States to verify that they comply with the obligations laid down in sectoral legislation and in Regulation (EC) No 882/2004 itself. MS must establish and implement multi-annual national control plans to enact the requirements of the Regulation⁴⁰. Additionally, Article 44 (4) and (6) of the Regulation require the Commission to establish and submit to the European Parliament and Council an annual report on the overall operation of controls in the Member States in the light of:

- (a) the annual reports submitted by the national authorities;
- (b) EU audits and inspections carried out in the Member States;
- (c) and any other relevant information.

The Commission submitted its first report to the European Parliament and the Council in August 2010. The main purpose of that report was to provide a first screening of the data and information on official controls contained in the first annual reports from the Member States. It also gave a summary of results of EU audits and inspections⁴¹. The second report published in 2012 takes a somewhat different approach from the first and gives an overview of EU food safety controls based on three sources of information. This report does not specifically cover FAP but has a wider scope looking at food safety, animal health, animal welfare, and plant health. However, specific comments were made on official control done on fish and fishery products. To assess the level of compliance in EU MS with EU requirements concerning fish products, audits were carried out in nine Member States. According to the summary made by the EC in the 2012 report⁴², overall it was found that comprehensive official control systems for fishery products were in place in all the countries visited, including registration and approval of establishments and fishing vessels. However, the report indicates that in some countries significant variations in the implementation of official controls were found between different regions. In general, laboratories performing official analyses were well equipped and able to carry out the necessary analyses and most laboratories were accredited.

⁴⁰ Article 44 (1) of Regulation (EC) No 882/2004 (Feed and Food Controls Regulation) requires Member States to submit to the Commission each year a report on the implementation of their multi-annual national control plans established in compliance with Article 41 of that Regulation.

⁴¹ It was discussed by Member States in the Standing Committee of the Food Chain and Animal Health in September 2010. The Committees on the Environment and on Agriculture and Rural Affairs of the European Parliament, discussed it in October 2010.

⁴² Report from the Commission to the European Parliament and to the Council on the overall operation of official controls in the Member States on food safety, animal health and animal welfare, and plant health, 2012.

While the overall systems were well designed and managed, three specific areas of weakness were identified in relation to controls over:

- (a) primary production sites, such as fishing vessels and fish farms;
- (b) some factory and freezer vessels; and
- (c) specific parameters related to fishery products, such as organoleptic checks, freshness indicators, histamine, parasites and microbiological checks.

Therefore problems similar to those in third countries can be found in EU MS concerning the implementation of EU sanitary standards. For example, official controls on primary production sites are also an issue in third countries authorised to export to the EU (see Annex 1 case study on India).

To illustrate that the same food safety standards are being applied in FAP coming from third countries and MS, specific sectoral FVO audit reports were examined in the framework of this Study. The evaluated audit reports concerned the production and placing on the market of fishery products from Vietnam, a third country (FVO, 2012c) and Italy, an EU MS (FVO, 2010b)⁴³. For comparison, the food safety standards requirements and findings of the FVO mission are summarised in Table 9.

In the 2010 FVO FAP audit report on Italy, the mission found significant shortcomings concerning the official controls in primary production (*i.e.* aquaculture farm and fishing vessels) and freezer and factory vessels. These outcomes confirmed the general conclusions made in the 2012 report of the EC on the official controls in EU MS on food safety. Similar conditions were indicated in the 2012 FVO mission in Vietnam where there were deficiencies concerning the standards of vessels, landing sites and ice factories.

Table 9: Comparison of FAP Food Safety Standards in Italy and Vietnam based on FVO audit reports

Specific Standards Requirements	Italy	Vietnam
Hygiene -Primary Production- Fishing boats	No regular inspection carried out although 90% of freezer vessels were based in Sicily. FVO mission finding- a factory vessel operating in African water had not been inspected since its approval in 1995	Non-compliances with regard to hygiene- on board the freezer vessel such as no running water, use of manual reading and recording of temperature. A freezer vessel was not approved as such and had no HACCP plan in place
Landing	In Sicily landing - no water supply; Checklist available covering the hygiene of landing operations, workers, vessels and transport vehicles; Veneto landing - in compliance with EU requirements	CA inspection in place; Some deficiencies found by FVO mission-no hand washing facilities; block ice stored in containers; crushing of ice using rusty machine and storage of crushed ice- in plastic crates

⁴³ The main reason for choosing Vietnam is that it belongs to the top 10 FAP exporters to the EU. This country was also selected among the five case studies done in the framework of this study. The most recent FVO missions done in EU MS to evaluate the control systems in place governing the production and placing on the market of fishery products took place in France and Italy. However, many other EU MS were audited on bivalve molluscs. Italy was selected over France partly because it was more recent.

Specific Standards Requirements	Italy	Vietnam
Facilities, FAP handling in factory and freezer vessels, processing establishment, cold stores	No HACCP in place on board freezer vessels. Land-based establishments, no regular CA inspection; checklist available but not used during inspection. Several deficiencies in the 8 establishments visited (structural & equipment defects; lack of hygiene in facilities, staff and others). Deficiencies in the HACCP plan and its implementation	CA standard checklist used for inspection covering most of the EU hygiene requirements. HACCP in place in processing establishments
Microbiological Contamination	No "own check" testing carried out in processing establishments visited by the FVO mission but CA official controls in place	"Own checks" for <i>E. coli</i> , <i>S. aureus</i> and Salmonella carried out in processing establishments; CA official control testing
Health check on FAP	Non-validated histamine testing; deficiencies in "own check" implementation	CA organoleptic/sensory assessment in processing establishments; CA histamine testing for specific species e.g. tuna as part of the post-harvest monitoring programme; "own-check" for parasite in Pangasius in processing establishments
Contaminants	A national control programme for contaminants in place for farmed products	Pre-export testing for mercury, lead and cadmium for specific FAP; official control testing in place
Veterinary medicinal drugs Residues	A national control programme for residues in place for farmed products	Official monitoring of residues and testing on aquaculture products
Others (Additives)	NA	CA sulfite check in shrimps; Testing of polyphosphates in Pangasius fillet

As shown in the table, there were shortcomings regarding compliance with food safety standards on both sides: Italy and Vietnam. However, the non-compliance was clearly evident in Italy where both the CA and FBOs had not fulfilled their responsibilities effectively. The non-compliance particularly in the uninspected MS flagged freezer vessel (ZV) fishing in African water could compromise the safety of the landed FAP. In view of the fact that the FAP landed from an EU MS freezer vessel (ZV) did not have to be subjected to a BIP inspection, and since there was no CA inspection undertaken on the ZV for a long time, the situation would be more critical. In this case, the role of the FBOs would be very vital since they have the primary responsibility of ensuring that raw materials for processing undergo the required "own-check" health controls. Moreover, if the Italian FBOs in this situation would be negligent due to inefficient "own-check" and HACCP implementation (as shown in the table) in processing establishments, there would be a greater possibility that unsafe FAP would be circulated in the EU MS markets.

Recommendation H.6 The EP should ensure that FAP landed by freezer vessels operating outside EU waters are submitted to sanitary controls at the BIP to the same standards and criteria as for other imported FAP.

The audit findings also showed that the food safety standards applied to FAP originating from third countries are similar to those in EU MS. It can be claimed that in the EU legislation there is no distinction as to whether the FAP comes from third countries or from an EU MS. The FVO audit system is in line with the requirements on official controls as provided for in Regulation No 882/2004. However, even if the food safety standards requirements are similar for both countries, the implementation of those requirements differed between countries.

Assurance of the safety of FAP will depend largely on the effective implementation of the standards both in the third countries and in the EU MS. It should be noted that third countries' FBOs and CAs can only provide guarantees on the safety of FAP until it is landed and accepted in the importing countries. Subsequently, the role of EU MS CAs, FBOs, retailers and consumers would be critical in keeping the FAP safe for consumption within the Community. Although FBOs and government play leading roles to keep FAP safe, food safety is a shared responsibility. Farmers or producers, retailers or food service, and consumers or individuals have a role in ensuring the safety of FAP. In particular, consumers also have a role in the safety of the food supply if they would just make sure that food is hygienically handled/prepared and properly cooked in their homes, risk of foodborne illness could be minimised.

There are sanctions on non-compliance with the EU food safety standards. Article 53 of Regulation (EC) No 178/2002 gives the possibility to take emergency measures depending on the gravity of the situation where it is evident that food or feed originating in the Community or imported from a third country is likely to constitute a serious risk to human health, animal health or the environment, and that such risk cannot be contained satisfactorily by means of measures taken by the EU MS concerned. In the case of food or feed of Community origin, the EC can decide the suspension of the placing on the market or use of the food in question. For third countries, sanctions come in the form of either suspension of export temporarily or for certain type of FAP or removal from the EU list of third countries permitted to export to the EU MS.

Additionally EU MS should take sanctions against their operators in case of non-compliance. Regulation No 882/2004 provides that *"the CA shall ensure that business operators take remedial action when non-compliance is identified. It also requires Member States to have clearly defined rules on the sanctions applicable when EU law is infringed. The sanctions must be effective, proportionate and dissuasive"*.

The most common measures adopted by EU MS governments on non-compliant FBOs are warning notices, fines, temporary or, in serious cases, permanent business closures, and, in rare cases, criminal proceedings in the case of fraud and serious breaches of legal requirements (EC, 2012). This study has demonstrated, however, that these actions are not always applied to fishing vessels, factory vessels and reefers, particularly when these are based abroad or fishing outside Community waters.

The EC also pays attention to enforcement and follow-up. As for third countries, EU MS CAs are requested to present an action plan describing how they intend to address or have addressed the recommendations formulated in the audit reports. The EC systematically evaluates the actions plans submitted by both third countries and EU MS. It monitors the implementation of the activities proposed in the action plan though a

number of follow up activities (e.g. follow up audits). If the EC considers that corrective measures are not satisfactory to address persistent problems, it may have to launch infringement proceedings to achieve compliance in EU MS. For example, this happened to Greece on three occasions as the EC considered that it persistently failed to comply with a range of important components of EU food safety legislation. In 2009 the Court delivered three judgements condemning Greece for failures in the application of EU law⁴⁴. According to the Court both central administration and decentralised authorities failed to carry out efficient and substantial official veterinary controls. Problems seem to be persistent in the country as during the last FVO audit carried out in Greece in 2011 on bivalves molluscs, the FVO inspection team concluded that *"due to very significant failures detected in the Greek system of official controls as well as important deviations from EU legislation all along the production chain of bivalve molluscs it can be concluded that the system in place does not offer the necessary guarantees that bivalve molluscs placed on the market for human consumption comply with EU public health standards."* Therefore risks for health consumers can also come from FAP produced by EU MS although same standards are applied in third countries and EU MS (see section 3.5 on RASFF).

3.5 Analysis of the Rapid Alert System for Food and Feed

3.5.1 Overview of the system

To protect the European consumer against health threats present in food or feed, in 1979 the EC introduced an European wide system for announcing and exchanging information about measures taken to manage direct or indirect serious risks associated with food and feed. This system is called Rapid Alert System for Food and Feed (RASFF). The stimulus for the development of RASFF was when BIP officers in the Netherlands and Germany found oranges exported from Israel with mercury injected into them (Megapesca and Oceanic Development, 2011).

RASFF provides the facility for EU MS to coordinate actions and responses rapidly when hazards are identified in specific consignments. This meets the requirements of Regulation No EC/178/2002 laying down the general principles and requirements of food law. Article 50 identifies the members of the system and sets out when a RASFF notification is required and Article 51 gives the Commission the power to adopt measures implementing Article 50. Article 52 of Regulation No EC/178/2002 sets out the confidentiality requirements for the RASFF. A Commission Regulation was drafted together with more detailed guidelines for implementing measures for the RASFF. This Regulation, (EC) No 16/2011, lays down these implementing rules for the RASFF. It entered into force on 31 January 2011.

On introduction, notifications were made on a paper RASFF notification form with supporting documentation using e-mails to the European Commission Contact Point (ECCP). An online notification platform for RASFF (iRASFF) was launched in June 2011, initially for six EU MS. It was planned that all EU MS will migrate to iRASFF by the end of 2012. It was foreseen that different strategies might be followed by different EU MS. With full implementation of iRASFF by all member countries (Germany, Italy and Spain to follow in 2013), the RASFF Window and RASFF Portal platforms will be updated directly with information from iRASFF. Nevertheless, for a better understanding and overview of individual notifications with many or complex follow-up notifications, official authorities

⁴⁴ Judgment of the Court of Justice of 23.4.2009 in case C-331/07, Judgment of the Court of Justice of 17.12.2009 in case C-248/08 and Judgment of the Court of Justice of 10.9.2009 in case C-416/07.

should consult the notifications in their native application iRASFF. Further performance enhancements of iRASFF and support and training of iRASFF users will be necessary (RASFF 2012 annual report).

All EU MS (27 countries) of the EU, the European Commission who manage the system, the EFSA, the EFTA Surveillance Authority and the EFTA member states have to harmonise their notification systems and are responsible for the effective performance and efficient functioning of the RASFF. The members have to nominate the CA and national contact points (NCP) within each country where the notifications are transmitted to in case of an alert.

Notification of identified risks of hazards associated with food and feeds

The EU MS have to notify the NCPs of any risks identified for food and feed put on the market or received at the BIPs before entry. There are five different notification classifications given by the notifying country according to the kind of risk:

1. the alert notification;
2. the information notification;
3. the border rejection notification;
4. the original notification and follow up notification;
5. the rejected and withdrawn notification.

The system serves as an information network, to give all members the opportunity to react quickly and appropriately to notified risks in relation to imported food and feed. It also gives information on the actions taken by the notifying country and the other EU MS. It also informs the public on the safety of food and feed throughout the production chain. The exception to this process is in the UK, where Border Rejection Notifications are sent directly to authorised BIP contacts (FSA 2011).

Data can also be accessed via a RASFF window which gives all EU MS and members access to specific notifications, their status and progress. Countries involved in such actions also have access to this window as a measure to strengthen preventive management systems in their respective countries. RASFF also links with international databases such as INFOSAN of the World Health Organisation (WHO), corresponding ASEAN and MERCOSUR (REDISAN) networks and systems in Africa and other non-EU European countries.

Training

Training courses in systems use by MS CAs and the EU are essential to ensure that enforcement officers (EOs) can contribute to maintaining the integrity of these systems.

It is the role of the MS CAs to provide training for all Officers working at BIPs. In the United Kingdom the FSA has developed a series of on line training courses for EO, which include a course on Imported Food (FSA, 2012). The FSA also has commissioned additional courses that are offered by Campden BRI (that all EO are required to attend as Continuing Professional Development (CPD)).

The EU DG for Health and Consumer protection have commissioned a consortium made up of AETS, Ainia Centro Tecnologia and AENOR to offer workshops on RASFF for third country representatives to stimulate similar systems in other regions of the world.

3.5.2 Review and records

The EC publishes yearly reports demonstrating the performance of the system by presenting the relevant statistics regarding risks of food and feed encountered. The last published report at the time of preparing this document was published in 2012, which presents the development of notifying alerts over the previous year (RASFF 2011 annual report).

Regarding FAP the statistics demonstrate only a small number of notifications in the last few years. This reflects the lower level of hazards associated with FAPs in comparison to other POAO. An example supporting this demonstrating the number of outbreaks of foodborne illnesses reported to the Health Protection Agency, England and Wales, 1991 – 2010 are presented in table 10.

Table 10: Demonstrating the natural of agents of foodborne illness

Organism	Poultry meat	Red meat	Crustacea and shellfish	Finfish
<i>Salmonella</i>	204	101	20	30
<i>Clostridium perfringens</i>	75	125	1	3
Foodborne viruses	12	9	55	5
Scombrototoxin	-	-	-	75
<i>S. aureus</i>	13	11	1	-

Source: HPA (2011)

It can be seen in Table 10 that finfish, crustacean and other shellfish are associated with far fewer outbreaks of foodborne illness than red meat and poultry meat. The relative levels of notifications made on RASFF are reflected in these statistics. However, the statistics of the causal agents of foodborne illness are reflected in notifications and alerts (HPA, 2011).

There were 3,850 notifications reported in 2011, of which only 490 reports (corresponding to about 12%) were related to FAPs, including bivalve molluscs, crustaceans, fish and fish products and cephalopods. This figure supports the evidence for lower numbers of food poisoning episodes caused by FAPs compared to other products of animal origin and can be taken as evidence of lower risk.

Provided the RASFF database is regularly maintained by all members, results illustrate that the import of FAPs do not appear to be a high risk to the human consumer. The performance of the RASFF as a tool for protecting the European consumer from food poisoning risks can only be maintained if all stakeholders are committed to maintaining the database. However, a survey carried out over the period 2000 – 2009 demonstrated that 60% of notifications on RASFF were made by Italy, Germany, the UK and Spain. The remaining 405 notifications were made by the other 23 countries and the Commission services (Petroczi *et al.*, 2010). A later publication investigated differences in practices of notifications of EU MS (Taylor *et al.*, 2013). Wide variations in food safety practices were reported, between 7% - 89% for “border: non-border notifications” for average monthly contributions.

A weakness in the RASFF system was identified at the beginning of the beef contaminated with horse meat identified in mid-2011, but was not public knowledge until February 2013. The company who identified that their raw material contained a percentage of horsemeat did not report this fact to their CA in Ireland. They returned the product to the country of origin. Despite there being a potential issue of fraud, it was thought that horsemeat did not pose a health issue, and was a matter of quality. The issue was not added to RASFF, so most EU MS were not aware of this issue (Robertson, 2013).

It is essential therefore that all members contribute towards the ongoing monitoring and surveillance of foodborne risks. RASFF provides EU MS and third countries information on the risk of hazards associated with FAPs from specific countries/regions in the world. This data in RASFF can be used to develop monitoring and surveillance programmes in EU MS as well as used to make informed decisions on future consignments of FAPs being imported into the EU. The data is also science-based information that can and should be used in risk analysis activities by EU MS and other third countries to develop and revise legislative requirements and standards for these products. Public health authorities in EU MS also have access and can use information on RASFF to inform consumers of potential risks associated with foods so that preventive actions can be taken. National surveillance and monitoring schemes are often based on the findings of this database.

Recommendation H.7 The EP should ensure that the EU MS systematically and properly record the notifications in the RASFF system to allow for effective ongoing monitoring and surveillance of foodborne risks.

3.5.3 Hazards associated with FAP

Heavy metals

Heavy metals have been associated with FAP from various regions of the world for many years. The following notifications presented in table 11 were revealed in the 2011 RASFF report⁴⁵. Heavy metals can contaminate FAP from the environment or from specific contaminants which might occur in some waters or from packaging or other contact materials.

Table 11: Heavy metal notifications in FAP

	Bivalve molluscs	Fish and Fishery products	Crustaceans	Cephalopods
Cadmium	2	14	4	21
Lead	-	1	-	-
Mercury	-	76	-	-

Source: RASFF report 2011

⁴⁵ When this section was drafted the 2012 RASFF annual report was not available.

Pathogenic microorganisms

The incidence of pathogenic microorganisms can be seen to be increasing in RASFF report with notifications with *Salmonella* spp. being the main pathogen identified. This provides concern to EU MS as this is at a time when cases within the EU are falling. Interestingly, the incriminating foods were identified as fruits and vegetables, herbs and spices and animal feeds but not POAO. For example, *Salmonella* spp. in fruit and vegetables were predominantly from paan leaves, leaves that are chewed in and imported from Asian countries. In comparison *Listeria monocytogenes* was notified in fish products 61 times, with smoked salmon being the causal agent in 42 cases notified mainly from Poland (20) and Denmark (13). In the 2011 RASFF report there were almost 50 cases of food poisoning involving the classical causal agents of bacteria and viruses.

Table 12: Notification of food poisoning agents from FAP

Classification	Notified by	Causal agent	Persons affected	Distribution
Information for attention	Denmark	Norovirus in oysters (<i>Crassostrea gigas</i>) from France	11	Denmark.
Alert	France	Norovirus in mussels from the Netherlands with raw materials from UK, Ireland and the Netherlands	16	France, Germany and Switzerland.
Alert	Denmark	Foodborne – insufficient labeling frozen butterfish (<i>Lepidocybium flavobrunneum</i>) from Ecuador, via the Netherlands (Possible wax ester from pathogens)	1 family	Denmark.
Alert	Norway	Norovirus in oysters from the Netherlands	16	Belgium, Germany, Norway.
Information for attention	Italy	Histamine (480 mg/kg – ppm) in chilled yellow fin tuna loins from the Maldives	2	Italy
Alert	Sweden	<i>Salmonella</i> in frozen seafood mix from Vietnam via Denmark	58	Faeroe Islands, Finland, Greenland, Iceland and Sweden.
Alert	Italy	Histamine in tuna fillet (<i>Thunnus albacares</i>) from Spain	3	Italy
Information for attention	Italy	<i>Bacillus cereus</i> enterotoxigenic (positive) in risotto rice with squid from India	25 - 30	Italy
Alert	Italy	Histamine (3100:1900 mg/kg – ppm) in chilled yellowfin tuna fillets (<i>Thunnus albacares</i>) from Spain	1	Italy

Source: 2011 RASFF Annual Report

Table 12 illustrates three types of hazards that were notified via the RASFF and reported in the 2011 report.

By analyzing this information, any patterns of occurrence of specific hazards in FAP can be identified and this information used to put preventive measures in place to eliminate/reduce repeat incidents in the future. The product that caused the highest level of outbreaks of foodborne illness was frozen seafood mix from Vietnam, which was contaminated with *Salmonella* spp. *Salmonella* spp. as enteric pathogens are indicators of poor hygienic practices through the process of capture and processing of the ingredients included in the frozen seafood mix. This notification should be investigated by the food business(es) and CA in Vietnam should identify how the salmonellae can be eliminated from products manufactured in the future.

Recommendation H.8 The EP should ensure that the EC establish cooperation with Vietnamese authorities in order to reduce the risks linked to the salmonellae and other issues related to FAP produced in the country.

The second highest foodborne outbreak, notified as “information for attention”, with between 25 – 30 people affected was caused by *Bacillus cereus* in risotto rice with squid. Due to the nature of the intoxication it is more probable that the spores of the bacterium were present in the risotto rice and not the squid, so in the author’s opinion this notification was not due to a hazard associated with FAP. This example underlined the importance of well-trained EU MS officers who are capable of filling in the RASFF database correctly.

Recommendation H.9 In cooperation with the EC, the EP should strongly support training in EU MS on the use of RASFF database and iRASFF and especially on recording information.

The two other hazards reported and associated with FAP were a) the presence of norovirus in bivalve molluscs, i.e. mussels and oysters – 43 cases, an issue caused by contamination of the FAP in their growing waters, poor or minimal depuration or during further processing stages, and b) histamine levels in yellow fin tuna with six cases of the allergen affecting sensitive individuals.

Histamine and other pressor amines can be prevented from forming in fish and fishery products by good practices, chilling the FAP as soon after capture/harvest as possible and maintaining the storage temperature below 5°C. This temperature will reduce the growth of bacteria naturally present on the FAP that are able to decarboxylate histidine, present in the FAP protein, to histamine if temperature abuse occurs. Such data collated from monitoring average concentrations for histamine in FAP notified over RASFF between 2002 – 2010 have contributed to the risk analysis activities undertaken over this period and reflect EU food safety criteria (Leuscher *et al.*, 2013).

3.5.4 Origin of notifications

The most important region in terms of number of notifications is Asia (around 1,800 notifications) followed by Europe (around 1,200 notifications) (2011 RASFF annual report). Africa, Latin America, Oceania and Northern America stand far behind. In 2011, the ten most important countries of origin for RASFF notifications were the following: China (558), India (337), Turkey (318), Germany (152), Spain (131), France (125), Italy (117), USA (112), Vietnam (109) and finally Poland (101). This ranking has been pretty stable over the past three years. Of course these figures do not concern only FAP but all other product categories (e.g. fat and oils, fruits and vegetables and herbs and spices). In total there are over 34 product categories.

However, in 2011 out of all issued notifications, fish and fish products ranked 3rd with 491 notifications. Bivalve molluscs accounted for only 68, cephalopods for 81 and crustaceans for 78. In total 718 notifications were issued for FAP which is consequent if put in relation with the figures of 2011 on countries of origin.

Concerning the country of origin of the RASFF notifications, it is interesting to note that in 2011, 70% of the alerts involved FAP originating from EU Member States while only around 28% concerned imports from third countries. For the information for follow-up the number of notification was also more important for EU MS. However, border rejections especially involved third countries compared to EU MS as FAP produced by EU MS can freely circulate in the EU territory and there is no border inspection.

In the framework of this study, analysis of RASFF notifications have been carried out in five countries (see case studies in Annex 1).

Table 13 below summarises the number of border rejections recorded in the RASFF database for FAP originating from Ecuador, India, Morocco, Thailand and Vietnam. As we can see in the table there are few border rejections from Ecuador. The country facing the major number of border rejections is Morocco despite the great efforts deployed by the country towards sanitary compliance (see Annex 1).

Table 13: Number of FAP border rejections in five selected third countries between 2009 and 2012

Countries	2009	2010	2011	2012
Ecuador	9	17	5	7
India	30	22	19	23
Morocco	34	34	41	34
Thailand	11	6	13	22
Vietnam	42	23	24	16
TOTAL	126	102	102	106

Source: RASFF Portal

3.5.5 Political issues

Little and his co-researchers (2012) have reported negative coverage of the farmed Vietnamese whitefish pangasius and its trade with the EU by organisations such as the WWF and members of the European Parliament in terms of environmental social and safety attributes. The research demonstrated that political debate on risk and uncertainty are counter-productive for EU seafood security and aquaculture industry. The paper recommends that all risk analyses should be science based.

The concerned authorities in Vietnam have addressed this issue through the strict implementation of better management practices such as GAP (Good Agriculture/Aquaculture Practice). Furthermore, with the support from WWF, a three-year initiative called the Pangasius Aquaculture Dialogue (PAD) has created global standards designed to reduce the negative environmental and social impacts associated with pangasius farming (see case study of Vietnam in Annex 1).

The number of border rejections in Vietnam is not significantly higher than the number of border rejections from other third countries (only 16 in 2012). However it is true that most of the border rejections concern fish and fish products and especially pangasius fillets. The reasons for rejection were the following:

- poor temperature control - rupture of the cold chain - of frozen pangasius fillets from Vietnam
- absence of health certificate(s) for frozen pangasius from Vietnam
- trifluralin (0.05; 0.09 mg/kg - ppm) in frozen panga fillets from Vietnam
- chlorpyrifos (122 µg/kg - ppb) and trifluralin (3.5 µg/kg - ppb) in frozen pangasius fillets from Vietnam
- prohibited substance nitrofurantoin (metabolite) nitrofurazone (SEM) in frozen pangasius (*Pangasius hypophthalmus*) fillets from Vietnam
- *Listeria monocytogenes* (in 1 out of 5 samples) in frozen pangasius (*Pangasius* spp) fillets from Vietnam
- *Salmonella* (serogroup O: 3,10,15 /25g) in frozen pangasius spp from Vietnam
- unauthorised substance malachite green in frozen pangasius fillets from Vietnam
- damaged packaging of frozen pangasius fillets from Vietnam

This kind of information is useful in itself in gaining an idea of the problems in a particular country, and can guide the audits carried out by the FVO in different countries.

3.6 Analysis of the system of certification of sanitary conditions by Competent Control Authorities in third countries

3.6.1 Approval of third countries

According to article 11 of Regulation (EC) No 854/2004 products of animal origin shall be imported only from a third country or a part of third country that appears on a list drawn up and updated. Third country should in principle appear on such lists only if a Community control in that country has taken place and demonstrates that the Competent Authority provides appropriate guarantees as specified. However, a third country may appear on such lists without a Community control having taken place there if:

- (a) the risk determined in accordance with Article 18(18) does not warrant it; and
- (b) it is determined, when deciding to add a particular third country to a list in accordance with paragraph 1, that other information indicates that the Competent Authority provide the necessary guarantees.

The Commission Decision of 6 November 2006 No 2006/766 amended several times⁴⁶ establish the lists of third countries and territories from which imports of bivalve

⁴⁶ Commission Decision 2008/156/EC of 18 February 2008, Commission Decision 2009/951/EU of 14 December 2009, Commission Decision 2010/602/EU of 6 October 2010, Commission Decision 2010/725/EU of 26 November 2010, Commission Decision 2011/131/EU of 25 February 2011, Commission Implementing Decision 2012/203/EU of 19 April 2012 and Commission Implementing decision of 6 November 2012.

molluscs, echinoderms, tunicates, marine gastropods and fishery products are permitted. The annex I contains the list of third countries from which imports are permitted of live, chilled, frozen or processed bivalve molluscs, echinoderms, tunicates and marine gastropods for human consumption and the annex II contains the list of third countries and territories from which imports are permitted of fishery products for human consumption, other than those covered by Annex I. The Annex I includes 17 third countries⁴⁷ of which eight are subject to restrictions (last update on 6 November 2012). Annex II includes 114 third countries of which seven are subject to restrictions.

The EC has a very detailed procedure concerning the approval of third countries which follows nine steps⁴⁸. First of all, the national authority submits a formal request for approval to the Commission services including information on type of animal/product for which approval is sought. Full details of all animal-origin products should be given and on number and type of establishments considered to meet EU requirements. It should also include confirmation that all proposed establishments satisfy EU requirements. References to the appropriate EU legislation must be given. The Commission acknowledges the request and sends the relevant pre-mission questionnaire which the national authority should complete and return. In most cases an FVO mission is arranged. If the outcomes of the mission are satisfactory, the Commission prepares draft legislation:

- (a) to add the third country to the list of third countries from which imports of the animal/product are approved;
- (b) to draw up if necessary animal health certification based on the country or part of the country's health situation to accompany imports, (a number of model health certificates are already laid down in Community legislation);
- (c) to approve the residues monitoring programme;
- (d) to set up an initial list of approved establishments

The proposed legislative texts are adopted by the Commission, and published in the Official Journal, after a favourable opinion of the Standing Committee on the Food Chain and Animal Health has been received.

When the EU establishes that a third country has an equivalent food safety system for a particular food product, the CA in the third country becomes the responsible authority for meeting EU requirements. The CA addresses any identified problems and takes regulatory actions throughout the supply chain, from the farm or vessel to the processing facility and on to export. Therefore, the EC can leverage the oversight capacity and resources of many third countries determined to have equivalent export systems for specific food products (GAO, 2012).

The CA should continuously provide assurances regarding compliance with, or equivalence to Community requirements.

⁴⁷ Australia, Canada, Chile, Greenland, Jamaica, Japan, South Korea, Morocco, New Zealand, Peru, Thailand, Tunisia, Turkey, USA, Uruguay and Vietnam.

⁴⁸ See the General guidance on EU import and transit rules for live animals and animal products from third countries published by DG SANCO in 2007.

3.6.2 Evaluation of the food control system in third countries

Principles of the FVO audits in third countries

Regulation (EC) No 882/2004, Article 46 (1) provides that “*Commission experts may carry out official controls in third countries in order to verify, on the basis of the information referred to in Article 47 (1), the compliance or equivalence of third country legislation and systems with Community feed and food law and Community animal health legislation. The Commission may appoint experts from Member States to assist its own experts*”. The Regulation sets out how these controls should be organised and operated. The Health and Consumer Protection Directorate General of the EC (DG SANCO) through the Food and Veterinary Office (FVO) has been charged to carry out these tasks.

Specifically, the FVO conducts an on-site audit of the third countries’ food safety system for FAP export to the EU. These audits include visits to farms and processing facilities and reviews of the capabilities and quality of the country’s laboratories. To ensure continuous compliance with EU requirements, FVO inspectors periodically conduct follow-up reviews of foreign countries’ food safety systems for FAP. Furthermore, third countries that trade with the EU are directed to implement national residue monitoring plans (RMPs) and sample for drugs of specific concern to the EU for the food product exported to the EU (GAO, 2012).

Regulation No 882/2004, Article 2 defined “*official control as any form of control that the Competent Authority or the Community performs for the verification of compliance with feed and food law, animal health and animal welfare rules*”. Food control is applicable throughout the entire food system. Effective food control systems are important to protect the health of consumers. According to FAO they are also essential in enabling countries to assure safety and quality of food products for international trade and to verify that imported food products meet the relevant requirements⁴⁹.

The FVO food control system audits comprise checks on: the third countries’ food safety legislation; structure and organisation of the CAs (staff and training); laboratory support (staff and facilities); inspection/audit of primary production (hygiene in fishing vessels and farms), hygiene in landing sites, ice factories, processing establishments, factory and freezer vessels (staff hygiene, facilities, HACCP implementation); and official health controls on FAP and certification procedures.

Audits in third countries are carried out to ensure that CAs correctly apply relevant EU standards or their equivalent with respect to FAP intended for export to EU MS. Table 14 shows the number of completed audits in third countries and in EU MS on FAP over the past years. In 2010, 248 audits took place in EU MS and third countries of which 31 concerned FAP. The number of audits carried out in the FAP sector has recently decreased. In 2012, only 21 audits were carried out, ten audits fewer than in 2010. Around 77% of the FVO audits were undertaken in third countries in 2010 and 71% in 2011. The proportion of audits in third countries again increased in 2012 (76%). The focus of FVO audits on FAP is therefore on third countries since there are more authorized third countries supplying FAP to the EU than EU MS. Most of the audits planned in third countries in the area of FAP are targeted at a review of existing approvals of major trade partners while a smaller number of audits will deal with first applications by third countries for export authorisation. Besides live fish, live bivalve molluscs, aquaculture and animal by-products are covered. Regular controls on the

⁴⁹ See www.fao.org

implementation of residue control programmes are a key element for the listing of third countries for export (EC, 2012).

Table 14: Number of Completed FVO Audits on FAP in third countries and in EU MS

Regions	2010	2011	2012
Member States	7	8	5
Third countries	24	20	16
Total (FAP)	31	28	21
Total (All areas/sectors)	248	258	262 (planned)

Source: EC, FVO programmes of audits (2011 to 2013)

Whereas the FVO's audits do require visits to the relevant country and to establishments there, once satisfied that the CA is qualified, the EC relies on lists of establishments provided by the third country CA. While FVO auditors can and do visit land-based establishments, this can rarely be the case for freezer vessels and fishing vessels, which in some cases rarely, if ever, return to their home bases.

Thus the current system relies on trust of third countries' CA to properly controls that its operators are in compliance with the EU legislation. The FVO inspectors undertake the audit in cooperation with the CAs which organise the visit.

As well as concerns regarding hygiene practices, vessels can be involved in IUU activities, such as packaging in false boxes (see Box 1 below). Transshipment at sea further complicates the situation. DG SANCO does not have the power directly to delist third country fishing vessels, but can request the country to do so. This list remains under the responsibility of the CA which should act responsibly when establishing and keeping this list. However, the EC keep the power to suspend the imports of FAP from a third country if there is a serious risk for European consumer (see section below). The introduction of the IUU Regulation, discussed in Section 4 below, does give the power to the EC to list countries as non-cooperating States, and this may provide some pressure to reduce the incidence of such practices. For the time being there is no formal framework on how the IUU Regulation and the sanitary package should be articulated.

Box 1: Fraudulent use of cardboard boxes

Fraudulent use of cardboard boxes

The Chinese vessel Lian Run 14 was intercepted in 2006 fishing in Guinean waters without a licence. The most recent licence on board was from 2003. On board were cardboard boxes for frozen fish bearing the names of: Lian Run 2, 13, 14, 15, 16, 18, 19, 20 as well as EEC SANCO numbers relating to sanitary standards for export to the EU.

Lian Run 2, 13, 14, 15, 16 were not on the Guinean list of licensed fishing vessels but Lian Run 13, 14, 15, 16 were on the SANCO list for China. Additionally, the handling of catches and state of freezing installation on board Lian Run 14 and similar vessels in the area were appalling from a sanitary point of view. There is evidence that boxes of frozen fish from all the vessels mentioned above enter the EU.

Also, there is evidence of fishing vessels carrying empty cardboard boxes with the names of various fishing vessels and of crew on board these fishing vessels printing the names of vessels, area month/year of catch and DG Sanco number on the boxes as may be needed to be sent to the EU. If the fish is mislabelled, for instance labelled as being caught by vessel A when it was actually caught by vessel B, then it is impossible to verify the true origin of the fish later on, or whether the vessel catching the fish was operating legally or in compliance with sanitary rules. Correct labelling of boxes of frozen fish, which is indispensable for proper control upon arrival in port, is simply not verifiable. The SANCO number gives vessels an aura of legitimacy, but the EC does not know how many have been inspected by their flag State, China, and if they comply with sanitary rules.

Source: Greepeace 2007; EJF, 2009

Analysis of FVO audits in selected third countries

In the European Commission report in 2007, the FVO audits found that there were significant variations in the implementation of official controls in the different third countries. In some countries, the deficiencies were so significant that the Commission needed to impose certain restrictions on trade, such as suspending the listing of establishments. The outcomes of these inspections had resulted in the Commission taking action to focus its technical assistance programmes in the countries concerned, with a view to improving hygiene standards (EC, 2007).

To obtain an overview of the current food control systems in third countries, this study conducted a review of some FVO audit reports covering the various regions. Two criteria were used in the selection process: a) volume of FAP imports into EU MS (countries belonging to the latest Eurostat top 20 exporters to EU); and b) past experience of being suspended from the EU list. The selected countries consisted of India, Malaysia, Philippines, Thailand and Vietnam for Asia; Gambia, Ghana, Guinea, Madagascar, Morocco and Senegal for Africa; Fiji and the Solomon Islands for the Pacific Region; and Argentina, Chile and Ecuador for South America.

Results of the review under this study showed that all countries concerned, particularly those belonging to the top 20 EU exporters such as Argentina, Chile, Ecuador India, Morocco, Philippines, Thailand and Vietnam, have food control systems that are in line with EU requirements. Overall, the food control systems are functioning well in these countries. The deficiencies pointed out by the FVO missions regarding fishery products have been, in general, addressed. With regard to aquaculture products and the controls on veterinary medicines, the FVO audits have shown that the conditions have been greatly improved over the last few years. The food safety control systems in place provide sufficient assurances that the FAP imports into the EU are safe to consume. The determination to improve the system in place is driven by the desire to maintain access to a significant market like the EU. Although FVO declared that the control systems are in line with the EU requirements, some common weaknesses in the systems were noted in the following domains:

- Primary production (aquaculture farm and fishing boats/vessels):
Structural deficiencies and lack of hygiene in fishing vessels/boats were common in almost all of the 16 third countries reviewed.
- Landing sites, ice plants/factories, cold stores and processing establishments (including freezer vessels):
The most common deficiencies found were in landing sites. Lack of facilities (hand-washing) and hygiene in the landing sites were observed. Also, availability of potable water was a problem in some landing sites. In cold stores, insufficient facilities and hygiene conditions were noted. With regard to processing

establishments and freezer vessels, some structural deficiencies due to poor maintenance, poor hygiene practices, and defective thermostats (functioning below the required working temperature) and poor temperature monitoring recording were observed. In HACCP implementation, in some countries, identification of hazards was a problem. Furthermore, FBOs' own checks were not properly carried out, particularly in the testing of microbiological contaminants and parasite checks.

- Implementation of residues (veterinary medicinal products) monitoring in aquaculture products and contaminants monitoring in FAP:
Record keeping in farms concerning the use of veterinary drugs was an issue in third countries exporting aquaculture products. In addition, some countries such as Vietnam, Ecuador and Chile published the official sampling period thus reducing the CAs' ability to detect the illegal use of substances on-farm. Some farmers administered prohibited veterinary drugs, then allowed sufficient withdrawal periods to evade the detection of residues. Another issue here is the scope of testing for veterinary drugs residues in aquaculture products and contaminants in FAP, often the testing performed did not include all the relevant substances required by the EU.
- Testing of official samples:
There were persistent shortcomings with regard to laboratory testing of parameters required for FAP in processing establishments. Most often, relevant "*Own check*" testing such as for histamine, PAH and heavy metals contaminants were not carried out in FAP for EU export. A number of third country laboratories involved in the analysis of official samples did not perform in accordance with internationally approved procedures or criteria-based performance standards and some employed methods of analysis that had not been validated. Furthermore, some laboratories in third countries do not have accreditation with European or international standards such as ISO/IEC 17025.

For additional information, case studies (Annex 1) have also been carried out on five selected third countries (i.e. Ecuador, India, Morocco, Thailand and Vietnam) to demonstrate the impact of the audit activities of FVO on the development and implementation of FAP food safety control systems in the countries concerned.

During the review of the FVO audits in this study, some doubts arose regarding the impartiality of the controls performed by FVO. The means by which FVO arrived at its conclusions, considering that some third countries are not compliant, seem to be open to question. The decision to suspend the exports of an authorised country rests with the European Commission according to article 53 of Regulation (EC) No 178/2002⁵⁰. To adopt emergency measures against FAP imported from third countries two elements are required:

⁵⁰ Where it is evident that food or feed originating in the Community or imported from a third country is likely to constitute a serious risk to human health, animal health or the environment, and that such risk cannot be contained satisfactorily by means of measures taken by the Member State(s) concerned, the Commission, acting in accordance with the procedure provided for in Article 58(2) on its own initiative or at the request of a Member State, shall immediately adopt one or more of the following measures, depending on the gravity of the situation: (a) in the case of food or feed of Community origin: (i) suspension of the placing on the market or use of the food in question; (ii) suspension of the placing on the market or use of the feed in question; (iii) laying down special conditions for the food or feed in question; (iv) any other appropriate interim measure; (b) in the case of food or feed imported from a third country: (i) suspension of imports of the food or feed in question from all or part of the third country concerned and, where applicable, from the third country of transit; (ii) laying down special conditions for the food or feed in question from all or part of the third country concerned; (iii) any other appropriate interim measure.

- Evidence that food or feed originating in the Community or imported from a third country is likely to constitute a serious risk to human health, animal health or the environment; and
- such risk cannot be contained satisfactorily by means of measures taken by the Member State(s) concerned,

This decision is taken following the regulatory procedure defined in Article 5 of Council Decision No 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission. The Commission Decision in most cases relies on evidence provided by food poisoning cases in EU MS and RASFF notifications and particularly by FVO audit reports. However these reports can at times lack impartiality and accuracy as missions are normally undertaken in a week to cover an entire country.

It is noted that some third countries have been permitted to continue their export in spite of negative audit results. For instance, in 2010 during the audit in Senegal to evaluate the control systems in place for the production of fishery products intended for EU export, the FVO concluded that the official control system in place cannot yet be considered to fully comply with European legislation. It is interesting to note that in spite of the numerous deficiencies during the 2010 audit, Senegal has been allowed to continue to export to the EU. According to the European Commission (2013), the next planned audit in Senegal is only expected to be carried out this year (2013). It is open to question whether the Commission should have taken a decision against Senegal or other third countries in similar situation. The findings of the FVO mission in 2008 resulted in de-listing of Fiji, although the deficiencies found in the country were similar in nature to Senegal's (FVO, 2010c). It seems that the EC practice regarding the use of emergency measures lacks some transparency and could appear arbitrary at times. It is possible that sometimes the EC decided to minimise the negative results of an FVO mission if no other evidence of risk for consumer health is available. However, it is the responsibility of the third countries to comply with the EU hygiene package if they want to export to the EU. Though the risk to the EU consumer appears to be low, sanctions should be imposed on third countries when serious shortcomings are noticed by the FVO. Moreover the EC should sanction non-compliant third countries equally and not favour some countries more than others despite their importance as trade partners.

Recommendation H.10 The EP should ensure that the EC closely follow up the situation in countries (both EU MS and third countries) where FVO missions identified serious short comings in compliance with EU sanitary legislation. The EP should guarantee that the EC does not adopt arbitrary decisions penalising certain third countries against others suffering similar sanitary conditions.

Some cases of emergency measures decided by the EC are presented in Table 15 below. Some decisions apply specific controls on particular products or are only temporary suspensions of certain category of products for particular issues (e.g. India and Peru in the table below). In a few cases the emergency measures can include a general ban of all FAP imported to the EU and delisting of the concerned country which can last many years, as in the case of Guinea.

Additionally some countries decided voluntarily to suspend their exports of FAP to the EU or to suspend the approval of some of their authorised establishments in order to address the concerns expressed by the FVO during an inspection mission. In June 2008, the Malaysian authorities voluntarily delisted all EU approved fishery products vessels and establishments. Forty-five exporting establishments and a freezer vessel were delisted, in application of the provisions of Article 12(4)(a) of Regulation (EC) No

854/2004. This voluntary decision followed a FVO mission which highlighted deficiencies concerning legislation, CA knowledge in the performance of official controls, assurances which the CA gave regarding compliance with Community requirements in supervised establishments and laboratories. In 2012 Gambian authorities also suspended the approval of three establishments, following an FVO mission which took place in 2010 identifying severe shortcomings. These examples demonstrate that the third countries can also sanction their operators and take very strict measures to address FVO recommendations and fully comply with EU rules. However, the effects of these measures can be diminished by smuggling. Where a country delists or suspends its establishments, processors might smuggle their FAP to neighbouring countries authorized to export to the EU. FAP originating from the delisted countries might be mixed with FAP produced in the authorized country.

Table 15 Causes of Suspension or de-listing of some third countries for EU FAP Export (2006-2008)

Date	Country	Emergency measures taken and their justifications
March 2002	Myanmar	Protective measures with regard to certain fishery and aquaculture products intended for human consumption and imported from Myanmar (Commission Decision No 2002/249/EC) Member States shall, using appropriate sampling plans and detection methods, subject each consignment of shrimps imported from Myanmar to a chemical test in order to ensure that the products concerned do not present a danger to human health. This test must be carried out, in particular, with a view to detecting the presence of chloramphenicol.
December 2002	China	Protective measures with regard to the products of animal origin imported from China (Decision No 2002/994/EC) Member States shall prohibit the imports of all products of animal origin. By derogation from paragraph 1, Member States shall authorise the imports of products listed in the Annex to this Decision in accordance with the specific animal and public health conditions applicable to the products concerned, and with Article 3 in the case of products listed in Part II of the Annex.
February 2007	Guinea	Emergency measures suspending imports from the Republic of Guinea of fishery products intended for human consumption (Commission Decision No 2007/82/EC) Member States shall prohibit the import on their territory of all FAP originating from Guinea. CA not capable of ensuring the health requirements. Critical shortcomings noted which could give rise to conditions or presence of various fishery product contaminants.
October 2007	Albania	Emergency measures applying to fishery products imported from Albania and intended for human consumption (Commission Decision 2007/642/EC) Member States shall authorise the import into the Community of fishery products of fish belonging to the families Scombridae, Clupeidae, Coryfenidae, Pomatomidae and Scombrosidae only if they are accompanied by the results of an analytical test for histamine carried out in Albania or a foreign accredited laboratory before consignment which reveals histamine levels below the limits set by Regulation (EC) No 2073/2005.

Date	Country	Emergency measures taken and their justifications
2007	Pakistan ⁵¹	De-listing Community requirements not fully enforced all along the production chain, in particular, inadequate follow-up of the establishments' reports; deficiencies remained at all stages of production, processing and distribution. CA not in a position to verify and certify the special conditions governing imports of fishery products.
May 2008	Fiji ⁵²	De-listing (Commission Regulation No 439/2008) Serious shortcomings as regards hygiene in the handling of fishery products and in the capacity of the CA to carry out reliable checks on fishery products. Fiji could not provide the necessary guarantees that fishery products were at least equivalent to those in the EU.
November 2008	Peru	Emergency measures suspending the import of bivalve mollusk (Decision No 2009/297/EC amending Decision No 2008/866/EC) Bivalve molluscs intended for human consumption implicated in Hepatitis A outbreak in the EU. The imports were suspended until 30 November 2009.
September 2009	India	Emergency measures applicable to crustaceans of aquaculture (Commission Decision No 2009/727/EC of 30 September 2009) Under Article 2 of the Decision, consignments of crustaceans of aquaculture origin from India will be allowed to enter the Community only if they are accompanied by the results of an analytical test carried out at origin to ensure that they do not present a danger to human health. The tests must be carried out with a view to detecting the presence of nitrofurans or their metabolites in conformity with Commission Decision No 2002/657/EC.
July 2010	Bangladesh	Emergency measures applicable to crustaceans imported from Bangladesh and intended for human consumption (Commission Decision No 2010/387/EU) Member States shall authorise the importation into the Union of consignments of the products provided that they are accompanied by the results of an analytical test carried out at the place of origin to ensure that they do not present a danger to human health ("the analytical test").
March 2012	Japan	Special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station (Commission Implementation Regulation No 285/2012) Feed and food (hereinafter: 'the products') referred to in Article 1 may only be imported into the European Union if they comply with this Regulation (e.g. maximum levels of caesium-134 and caesium-137).

Source: EUR-LEX

⁵¹ Ban was lifted in March 12th 2013.

⁵² Commission Decision 2011/131/EU amending Annex II to Decision 2006/766/EC (as amended) by inserting Fiji in the list of third countries from which imports of fishery products for human consumption are permitted.

3.6.3 Food Safety Control Challenges in developing third countries

Implementing and complying with the EU sanitary legislation is a real challenge for third countries and especially for developing countries and least developed countries (e.g. Solomon Islands, Senegal).

In order to help third countries to fall in line with these rather complex regulations, the European Commission and the Group of African, Caribbean and Pacific States (ACP), represented by its General Secretary, decided to finance a support programme *"Strengthening Fishery Products' Health Conditions in ACP/OCT Countries"* (SFP Programme). The SFP Programme⁵³ started on 30 November 2002 for a period of five years. On 19 September 2007, the European Commission approved its extension until 30 November 2010. The beneficiary countries of the SFP Programme are ACP countries (Africa, Caribbean & Pacific), signatories to the Lomé Convention, and Overseas Countries and Territories (OCT) of the Netherlands and the United Kingdom.

In the Pacific Region, Papua New Guinea, Solomon Islands and Fiji received support to upgrade their food control system. In particular, Fiji obtained technical assistance for the development of new microbiological methods. The SFP/OCT/ACP Programme Management Unit assistance provided to Fiji had a very positive impact that resulted to ISO 17025 accreditation for tests conducted by the main laboratory supporting the CA. Overall, several ACP countries such as the Gambia, Ghana, Fiji, Papua New Guinea, Senegal and Solomon Islands, have succeeded in accessing the EU market⁵⁴.

In 2010, SFP Programme made a summary on the main issues identified in the ACP/OCT countries and made recommendations on how to address them. These problems were related to the CA, to the laboratories, to the industry and to artisanal/small scale fishery. The global analysis of main issues done by SFP Programme observed that the CA was weak in terms of qualified staff, that the CA does not have sufficient internal inspection procedures in place, that the national food safety legislation is not at least equivalent to EU standards or that CA not systematically write inspection reports (even if inspection is made). In total the analysis recorded 23 issues concerning the CA⁵⁵. The CA in ACP/OCT have to face various issues from the lack of equipment to the lack of budget of staff. In particular, the CA staffs in third countries require continuous training to update their knowledge on new EU regulations and food safety standards. These issues concerning CA are not limited to ACP/OCT countries and can also apply to other developing/emerging countries (e.g. Asian countries).

A very significant challenge for third countries concerns artisanal fisheries/small scale fishery. There is a pressing need to improve the generally poor hygienic conditions in this area (e.g. conditions of fishing boats, hygiene at landing sites, on board canoes, at sale markets, handling practices, use of ice and proper container to store the catch) in order for the fishermen to participate in the supply of raw materials to FAP establishments. To tackle these issues, the SFP programme recommended improving hygiene conditions at artisanal landing sites and of the fishery sector in general but also to provide assistance to fishermen organisation to improve their functioning.

⁵³ The SFP Programme provided support to all those involved in the health control of fishery products: ◦ The relevant authorities (known in EU regulations as the Competent Authorities) and other institutional stakeholders; ◦ Testing laboratories and technical institutes; ◦ Processing companies and exporters of fishery products; ◦ The small-scale fishery sector. The overall amount of EU financing for the Programme was EUR 44 860 000, plus EUR 2 184 800 funded by The Netherlands and the United Kingdom for their OCTs.

⁵⁴ See the website of the SFP Programme on www.sfp.acp.int

⁵⁵ For the full list of issues <http://sfp.acp.int/country-profile/>

The SFP programme also listed numerous problems related to the industry. These include but are not limited to: fish industry not having appropriate vessels and onshore plants, lack of qualified staff in HACCP system, companies not ensuring a complete traceability of FAP, weak control of water and ice quality and inadequate structure/lay out and maintenance.

Other challenges for developing countries, and not only ACP countries, include the following:

- Sustainability of food safety control laboratories is one of the challenges that some third countries will constantly face in order to support the food control system. In general, reference samples, standards, reagents and testing equipment parts are costly in third countries as these are sourced from developed countries. The functioning of the laboratories will be affected by lack of financial resources for further development of manpower and maintenance of equipment.
- Traceability of raw materials will increasingly impact on food control systems in third countries. This is already a current problem for many third countries such as Thailand, Vietnam, Chile, and ACP countries like Fiji and Solomon Islands, that import FAP for processing and export to EU MS. This is a particular challenge to the Pacific Island Countries and Territories (PICTs) because some third countries exporting to the EU such as Papua New Guinea, Solomon Islands and Fiji cannot obtain their raw materials from smaller neighbours' fishing vessels due to the absence of sanitary CA and non-accession to EU list of authorized countries to export to the EU.
- Newly emerging risks to food safety such as the application of nanotechnology in food/fish processing, risk from prevalence of microplastics from marine litter and risk of spreading diseases in a changing climate will likely lead to additional sanitary measures (through regulations or standards) in the importing countries and eventually will mean further requirements for FAP export such as testing for relevant hazards.

The SFP programme global analysis of main issues also listed the main constraints existing in ACP/OCT countries concerning the implementation and compliance with the EU sanitary legislation. These are: the size of the country, the transport difficulties, the rainy seasons, the internet access, the lack of investment of fishing industry in sanitary compliance and quality, the lack of resources, equipment and basic infrastructure, the lack of budget and governmental support to the CA, the particular problem of access to major services such as roads, electricity and drinking water and civil wars. Of course, there are regional differences and some countries are facing more constraints than others. However all ACP/OCT countries are facing difficulties in fully complying with the EU legislation for the reasons listed in this section.

However, it is important to note that despite these issues, the Commission considers that there is no serious risk for consumer health for the FAP originating from these third countries considering the RASFF notifications, food poisoning cases, EU MS reports and FVO reports. This is supported by the relatively small number of cases where the EU consumer has been affected by unsanitary imports. If not the Commission would have used its power to suspend imports from third countries more frequently.

3.6.4 Role of EU in improving the food control systems in third countries

The fishery industries of developing third countries rely heavily on developed countries, not only as outlets for their exports, but also as suppliers of their imports for local consumption (mainly low-priced small pelagics as well as high-value fishery species for emerging economies) or for their processing industries. In 2010, in value terms, 67% of the fishery exports of developing countries were directed to developed countries (FAO, 2012).

The EU as an entity has the primary responsibility to protect its consumers from unsafe food. Therefore, it puts in place high standards in food controls on FAP imports which exporters have to comply with. As shown in the FVO audits being undertaken in EU MS and third countries, developing third countries have been required and influenced to improve their food control systems in order to be at least equivalent with the EU standards. Non-compliance to these food safety standards would result in removal from the list of approved countries permitted to access the EU market.

A similar situation has been occurring in the United States and Japan; these countries have tightened their food safety controls by imposing stringent sanitary requirements on FAP imports (see section 3.2). This new development in the international trade of FAP has been beneficial in terms of economic gains (e.g. increase in foreign currency revenues and domestic employment) not only to the importing countries but to the exporters, particularly those from developing third countries, as well.

Third countries have different ways of adopting EC standards and ensuring equivalence. Some countries incorporate the EU regulations directly into their own framework (i.e. Sri Lanka, Solomon islands), while others develop their own and then negotiate equivalence (i.e. New Zealand, Canada). A third group uses a split system (i.e. Fiji, Ecuador, PNG) where only the processing establishments exporting to the EU are required to comply with EC Market Access Conditions under a regulated National Control Plan, while the other processing establishments comply with less demanding national legislation. The EC accepts that these different scenarios exist, and this can be regarded as one of the strengths of the system: the EC is flexible enough to assess equivalency in a variety of frameworks.

There is no doubt that the FVO audit activities in third countries have significantly improved the system of food control in the countries concerned. To ensure further improvement in the implementation of food safety controls concerning FAP in third countries, FVO audits should be continuously carried out since there is a tendency for some countries to be complacent with their present status. Some countries might become lax in their control activities when there is no occurrence of foodborne illnesses.

Recommendation H.11 The EP should ensure that FVO missions concerning FAP in third countries are conducted as often as necessary.

3.7 Evaluation of current system to prevent contamination

In 2004, the EU introduced the new food hygiene package which puts the responsibility for food safety and hygiene across the entire food chain on the food business operators. Compliance with the Regulations which form the hygiene package is monitored by the Competent Authorities in the EU MS and in third countries. This study demonstrated that the structure of the EU legislation provides a robust framework for MS and third countries wishing to export to the EU, establishing a comprehensive food control system.

A comparison of the EU legislative framework for imported food with those of the United States and Japan, two major FAP importers, was undertaken in the framework of this study. Findings showed that in the United States and Japan, the food safety control systems are well-structured and functioning well. The legal bases for the food safety in both countries are in line with the EU regulations. The newly enacted Food Safety Modernisation Act (FSMA) of 2010 signed into law by President Obama in January 2011 has designated the Food and Drug Administration (FDA) as the Competent Authority (CA) to be responsible for the safety of all FAP imported into the United States. The FSMA 2010 has taken the EU rules as a model, placing the food safety responsibility mainly on importers or food business operators (FBO). Overall, the United States food control system is well-structured, with qualified CA staff supported by state of the art laboratories under the FDA's Office of Regulatory Affairs (ORA). Japan has a food control system with the Food Safety Basic Law as the legal basis, which is in line with Regulation (EC) No 178/2002. The system has a well-organised system of food safety control with qualified CA staff with defined responsibilities and supported by well-functioning laboratories.

There are several similarities in the EU food control system with those of the United States and Japan. These include: basing the system of control on either compliance or equivalency, adoption of risk-based approach systems to ensure the safety of imported fishery and aquaculture products and focusing on the entire food supply chain (farm to table), putting the primary responsibility on food business operators with the government providing oversight, employing a risk-based inspection and audit system, and having traceability and rapid alert systems in place.

In general, imports of FAP from third countries must enter the EU through the approved Border Inspection Posts (BIPs) under the authority of an official veterinarian. Each consignment is subject to a systematic documentary check, identity check and, as appropriate, a physical check. The frequency of physical checks depends on the risk profile of the product and also on the results of previous checks. Consignments which are found not to be compliant with Community (EU) legislation shall either be destroyed or, under certain conditions, re-dispatched within 60 days. Based upon the concept of equivalence each MS organises how the BIPs function within their respective harmonised national control systems. The functioning of these BIPs is regularly audited during their routine schedule by the FVO. The development and implementation of a common computerised system for imports - TRACES - has facilitated and simplified many procedures for BIPs and has improved the communication between MS relating to import and transit. The EC concluded in 2012 in its report to the EP and the Council that the audits identified a number of issues to be addressed, such as the difficulty to enforce and complexity of the current rules regarding controls on transshipments of consignments. There is also a great variability in the monitoring plans for imported consignments in EU MS. The monitoring strategy, the levels of sampling and the range of products and origins tested differed widely. Finally, CAs do not systematically use enforcement measures and sanctions to improve compliance in areas such as the notification of consignments before their physical arrival, and the correct completion of official documentation.

A comparison of the safety standards requirements in EU MS and in third countries was carried out. By examining the FVO audit reports in Italy and in Vietnam on fishery products, results showed that the food safety standards are applied similarly and required in both countries. Although the same standards are required, there are differences how these are implemented in both countries. It appeared that there were shortcomings in both countries in the implementation of the food standards. However,

based on the audit reports, the deficiencies were greater in Italy than in Vietnam. The assurance of safety of FAP depends largely on the effective implementation of the food standards in both third countries and EU MS but also on enforcement and compliance. .

To protect the European consumer against health threats present in food or feed, a Europe-wide system for announcing and exchanging information about measures taken to manage direct or indirect serious risks associated with food and feed was introduced and has been maintained since 1979. This system, called RASFF, provides the facility for EU MS to coordinate actions and responses rapidly when hazards are identified in specific consignments. Regarding FAP the statistics demonstrate only a small number of notifications in the last few years. This reflects the lower level of hazards associated with FAP in comparison to other POAO. The analysis of the 2011 RASFF report showed that there were 3,850 notifications reported of which only 490 reports (about 12%) were related to FAP. This figure supports the evidence for lower numbers of food poisoning episodes caused by FAP in comparison with other products of animal origin and can be taken as proof of the appropriate functioning of the RASFF system. The hazards implicated in the imported FAP included heavy metals such as cadmium, lead and mercury; pathogenic microorganisms mainly from histamine formation in tuna products, norovirus in mussels and oysters, *Salmonella* and *Bacillus cereus* in rice product with squid (in this case, the source of organism most likely came from rice rather than from the squid). The origin of notifications demonstrates that alerts concern more EU MS than third countries which also face issues concerning the non-conformity of their FAP with the EU sanitary legislation. However the reliability of the system depends on the EU MS which feed the RASFF database. Therefore it is very important to ensure that the RASFF system is widely and properly used by all the EU MS which requires trainings and active follow-up from the EC.

Audits in third countries are carried out to ensure that CAs correctly apply relevant EU standards or their equivalent with respect to animals, plants and products intended for export to EU MS. In 2010, 248 audits took place in EU MS and third countries of which 31 concerned FAP. The number of audits carried out in the FAP sector has recently decreased. In 2012, only 21 audits were carried out. Most of the audits planned in third countries in the area of FAP are targeted at a review of existing approvals of major trade partners while a smaller number of audits deal with first applications by third countries for export authorisation. The coverage of the audit is comprehensive as the FVO inspectors assess the organization of the CA, legislation in place, controls carried out on primary production (i.e. landing sites, fishing vessels and auction) and processing establishments, RPM, certification, etc. However, the current system relies on trust of third country's CA to properly control that its operators are in compliance with EU legislation. While FVO auditors can and do visit land-based establishments, this can rarely be the case for freezer vessels and fishing vessels, which in some cases rarely, if ever, return to their home bases. In this case, the DG SANCO does not have the power directly to delist third country fishing vessels. This list remains under the responsibility of the CA which should act responsibly when establishing and keeping it. However, the EC keep the power to suspend the imports of FAP from a third country if there is a serious risk for European consumer. This risk is documented by various sources including food poisoning cases in EU MS, RASFF notifications and FVO reports. Therefore, if there is evidence that some FAP coming on the EU market and originating from certain freezer vessels suspected of not complying with the EU requirements present a serious risk for European consumers, the EC may take action.

To obtain an overview of the current food control systems in third countries, a review of some FVO audit reports covering the various regions was undertaken in the framework of this study. The selected countries included countries from Africa, Asia, Pacific and South

America. All countries reviewed particularly those belonging to the EU top 20 exporters such as Argentina, Chile, Ecuador India, Morocco, Philippines, Thailand, and Vietnam have food control systems that are in line with EU requirements. Overall, the food control systems are functioning well in these countries. The deficiencies pointed out by the FVO missions regarding fishery products have been, in general, addressed. With regard to aquaculture products and the controls on veterinary medicines, the FVO audits have shown that the conditions have been much improved over the last few years. The food safety control systems in place provide guarantees that the FAP imports into the EU are safe to consume. The determination to improve the system in place was driven by the desire to maintain access to a significant market like the EU. Although FVO declared that the control systems are in line with the EU requirements, some common weaknesses in the systems were noted as follows:

- Primary production (aquaculture farm and fishing boats or vessels)
- Landing sites, ice plants/factories, cold stores and processing establishments (including freezer vessels)
- Implementation of residues (veterinary medicinal products) monitoring in aquaculture products and contaminants monitoring in FAP
- Testing of official samples

Some food safety control challenges in third countries were identified, as follows: weak CA, lack of equipment, non-accredited laboratories, deficient laboratory infrastructures and test methodologies, lack of resources (financial and human), difficulty to involve and motivate the industry, lack of qualified laboratory staff, sustainability of food safety control laboratories; traceability of raw materials; and newly emerging risks to food safety (such as the application of nanotechnology in food/fish processing, risk from prevalence of microplastics from marine litter and risk of spreading diseases in a changing climate).

The decisions of the European Commission to suspend imports from a third country based on article 53 of Regulation No 178/2002 might sometime seem arbitrary; the case of Fiji delisting in 2008 is a good example. The adoption of emergency measures and suspension of imports from a third country is rarely taken by the EC, which seems to look for strong evidence before suspending the imports from an important trade partner.

Emergency measures need to be justified by evidence that food or feed imported from a third country can constitute a serious risk to human health. FVO audit reports constitute evidence. However these reports can sometime lack impartiality and accuracy as missions are undertaken in less than a week to cover an entire country.

Overall, the FVO audit activities in third countries have significantly improved the system of food control in the countries concerned. To ensure further improvement in the implementation of food safety controls concerning FAP in third countries, FVO audits should be continuously carried out since there is a tendency for some countries to be complacent with their present status. Some countries might become lax in their control activities when there is no occurrence of foodborne illnesses. There are also cases of fraudulent labeling of boxes that may also compromise consumer health, and it is hoped that the IUU Regulation may have an influence in reducing this through encouraging firmer flag and port State controls across the board.

This study has demonstrated that shortcomings in compliance with EU sanitary legislation can be found in both third countries and EU MS. Despite the weaknesses existing in third countries on the implementation of the EU sanitary package, the EU MS reports, the

outcomes of the FVO reports, RASFF notifications but also the number of cases of food poisoning have demonstrated that FAP imported into the EU coming from third countries do not present a major risk for the health of EU consumers. According to the results of this study this risk is not more significant than for the FAP produced within the EU or landed by EU vessels operating outside EU waters.

4. Compliance with IUU legislation

KEY FINDINGS

- IUU fishing takes many forms, is a phenomenon common to third country and also EU MS fleets, affecting the ability of countries to accurately estimate stocks and subsequently undermines effective conservation and management regimes.
- Poorer third countries with low scores on governance are particularly vulnerable to incursions and illegal activities perpetrated by all distant water fishing nations.
- The EC has estimated that illegal products entering the EU may amount to 500,000mt valued at EUR1 billion per year, but the incidence of IUU FAP entering the EU is unknown, and the consignments rejected since the introduction of the EU IUU Regulation have either not been recorded or have not been divulged by the EC.
- The EU IUU Regulation is largely consistent with international instruments, though it does emphasise flag State responsibilities. It is a new and unique piece of legislation which is potentially a powerful instrument to fight IUU fishing activities and prevent the importation of IUU FAP into the EU. However its implementation and interpretation have undermined its efficiency.
- The EU IUU Regulation has to face the complexity of the trade flows in the fishing sector, which represents an additional challenge for its implementation and effectiveness.
- The catch certification system (CCS) is currently paper based. Recording at the use of these at EU borders is impossible. The establishment of an electronic system in line with TRACES would limit this fraud, ensuring the authenticity of the documents and also controlling the use of the CCs.
- There is little consistency in the designation of the CAs in EU MS and their organisation, including the degree of decentralisation, which affects the effectiveness of controls and their complementarity with the hygiene and sanitary controls.
- The CAs designated in third countries are at times inappropriate considering the tasks they need to undertake. There is lack of clarity in the EU IUU Regulation on the various authorities (i.e. flag State public authorities and competent authorities) responsible for validating the processing statement, the CC and other related documents (article 14.b.2). There is no provision for a CA for validating transshipments (sections 6 and 7 of the Catch Certificate). The acceptance or rejection by the EC of the flag State notification in accordance with article 20 and Annex III of the EU IUU regulation is legally questionable.
- The controls carried out by EU MS on FAP vary widely in scope and practice, and there is no system for recording checks and verifications of consignments, their CCs and Processing Statements. The EC does not provide any guidance or uniformity concerning these controls and verifications.
- There is inconsistency in practice between EU MS when a consignment is found to be in breach of the EU IUU Regulation, leading to a common border with varying levels of porosity.
- There is provision for splitting consignments on re-export from the EU, and these consignments may be split further in third countries, but there is no record of how frequently, to what extent, nor where this is done. This provides the opportunity for the insertion of IUU FAP and makes traceability impossible once the product

finally enters the EU for consumption. There is no system for recording the re-export certificates issued or processed by EU MS.

- There is no formalised system in place for supervision, monitoring and evaluation of EU MS performance; the EC provides no public record of the audits undertaken, nor their results. Whereas there is provision in the EU IUU Regulation for publishing transit arrangements, alerts and Single Liaison Offices, this has yet to be done.
- Training and support to third country CAs has been erratic and incomplete, few missions have been undertaken and the results of these have not been published.
- Traceability is key to an effective EU IUU Regulation and CCS, and this is severely compromised by differences in controls in third countries from landing to export, particularly for indirect imports (where market, coastal and port states must play a role and where the flag State is far removed from the goods in question). The establishment of controls at all stages of the production chain is the key to guarantee an effective validation of the CC at export.
- Fisheries management frameworks and traceability are generally in place in third countries exporting to the EU, but nationally caught processed products, mixed consignments and communication with EU MS pose particular challenges.
- MCS measures, including NPOA-IUUs, ratification of international conventions, flag state measures, port state measures, coastal state measures and market state measures are all applied to varying degrees in third countries exporting to the EU. However, despite some improvements, in many developing countries MCS and traceability measures are not sufficient to fully guarantee the legality of the FAP imported in the EU. Transit of FAP not in sealed containers (through third countries, between EU MS and through the EU) poses particular challenges and provides opportunities for IUU-sourced FAP to enter the EU, as do the contrasting practices between the EU IUU Regulation and the hygiene regulations.
- In some developing countries, transshipments at sea are still allowed by law, and those at sea and in port may be poorly controlled, or not at all, due to weaknesses in the EU IUU Regulation itself (which allows for transshipment at sea between third country vessels, though not in Community waters nor by EU vessels) and to abusive interpretations of it.
- Indirect imports are treated differently, depending on whether they have been processed or not; this leads to varying interpretations and practices, which are unnecessary and could lead to inefficiencies.
- In allowing copies, the interpretation of the EC of the EU IUU Regulation provides straight-forward opportunities for laundering IUU-sourced FAP; there is moreover no provision for monitoring or controlling the use of CCs and Processing Statements.
- Fishing products caught outside community waters by EU flagged vessels and not processed in third countries can bypass port and coastal state controls in third countries and can be exempt from controls under the EU IUU Regulation if entering under a T2M; this increases the chance of IUU sourced FAP entering the EU, as products deemed of EU origin are subject to reduced controls.
- It would seem that the EU IUU Regulation is justified, and that it is helpful in the fight against IUU fishing as it has contributed to traceability measures in developing countries. However, it will only be effective if fundamental improvements in its design, implementation and oversight are introduced, practiced and monitored.

4.1 Illegal, Unreported and Unregulated Fishing Activities

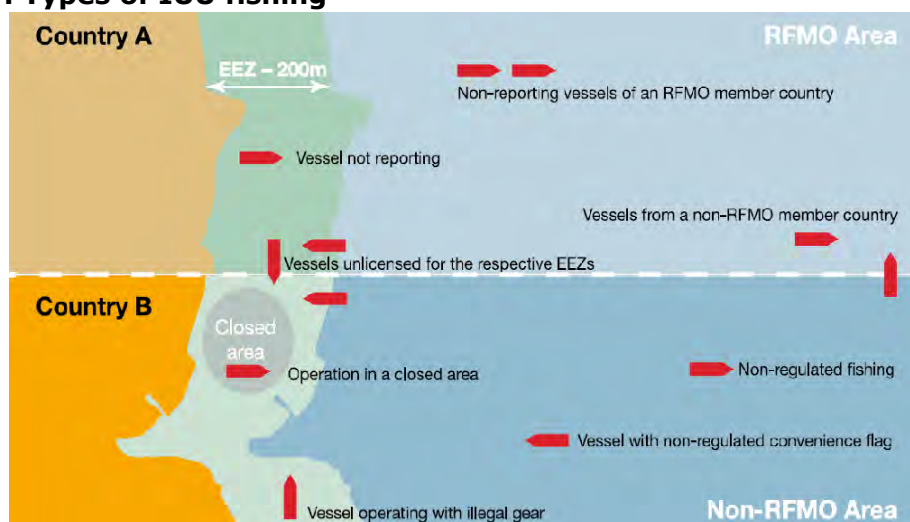
4.1.1 IUU fishing globally

Though there are signs of improvement, fish stocks worldwide and in the EU are in a parlous state (see section 2). We have shown that the demand for fishery products is likely to continue to increase, and aquaculture production will not be able to fulfil this demand. Fisheries management regimes that might protect fish stocks are dependent on knowledge of the state of fish stocks, but this knowledge is severely limited and hampered by underreporting. China is estimated to declare as little as 9% of its distant-water catches (Blomeyer *et al.* 2012, SIF 2013c), and overall catches in West Africa have been estimated to be 40% higher than those reported (Agnew *et al.*, 2009). Misinformation leads to unrealistic estimates of stocks and management regimes that are of necessity flawed.

In its Articles 2 to 4⁵⁶, the EU IUU Regulation broadly adopts the definition of Illegal, Unreported and Unregulated (IUU) fishing, of the IPOA-IUU (FAO 2001, Art. 3.1 to Art. 3.3). IUU fishing activities thus take many forms, from the use of illegal fishing methods, fishing without a licence and poaching in third countries' waters, to non-observance of both RFMO and national management regimes.

Different types of IUU fishing activities are illustrated in Figure 14 below.

Figure 14: Types of IUU fishing



Source: Blaha, n.d.

⁵⁶ 'illegal fishing' means fishing activities: (a) conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations; (b) conducted by fishing vessels flying the flag of States that are contracting parties to a relevant regional fisheries management organisation, but which operate in contravention of the conservation and management measures adopted by that organisation and by which those States are bound, or of relevant provisions of the applicable international law; or (c) conducted by fishing vessels in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organisation; 'unreported fishing' means fishing activities: (a) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or (b) which have been undertaken in the area of competence of a relevant regional fisheries management organisation and have not been reported, or have been misreported, in contravention of the reporting procedures of that organisation; 'unregulated fishing' means fishing activities: (a) conducted in the area of application of a relevant regional fisheries management organisation by fishing vessels without nationality, by fishing vessels flying the flag of a State not party to that organisation or by any other fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organisation; or (b) conducted in areas or for fish stocks in relation to which there are no applicable conservation or management measures by fishing vessels in a manner that is not consistent with State responsibilities for the conservation of living marine resources under international law.

It is impossible to determine exactly how much IUU fishing is taking place in world waters. But for some important fisheries, IUU fishing accounts for a large percentage of total catches. Weighted averages over 30 countries have been estimated by the University of British Columbia as varying between 37% and 97% of reported catches (Ganapathiraju, 2012). Reviewing the situation in 54 countries and on the high seas, MRAG (Agnew *et al.* 2009) estimated that lower and upper estimates of the total value of illegal and unreported fishing losses worldwide are between USD10.0 billion (EUR7.4 billion) and USD23.5 billion (EUR17.4 billion) annually, representing between 11 million mt and 26 million mt⁵⁷. This is largely consistent with previous independent estimates.

It is clear that IUU fishing will further threaten fish stocks that are already vulnerable.. The successful application of monitoring, control and surveillance (MCS) is key to the fight against IUU fishing (Doulman, 1993), as well as being “*the vital executive arm of fisheries management*” (Flewelling *et al.*, 2002).

With increased demand, increased effort and continued improved fishing technologies the pressure on stocks will continue to rise. Excess capacity, subsidies and poor governance indicate that in 1974 61% of global fish stocks were “underperforming assets”⁵⁸ (World Bank & FAO, 2009, p xvii & p82). By 2004 76% of fish stocks were underperforming, leading to a total loss of net benefits, expressed as foregone rents, in the order of USD50 billion (EUR37 billion)⁵⁹ (World Bank & FAO, 2009, p xvii & p83) To maximise sustainable rents from the global fishery, fishing effort should be reduced by 44% to 54% (World Bank & FAO, 2009 p42). IUU fishing and related activities threaten national, regional and international efforts to secure long-term sustainable fisheries and promote healthier and more robust ecosystems. Moreover, IUU fishing activities have an impact on societies and generate unfair competition for coastal populations relying on fishing activities. They can also threaten food security. This is particularly the case in the poorer countries of West Africa. IUU fishing activities also have an impact on the environment and marine ecosystem as prohibited activities are often destructive (e.g. use of explosives in shallow waters). Consequently, the international community continues to express its grave concern at the extent and effects of IUU fishing, referring to it as a “*global scourge*” (Damanaki, 2011) and calling for it to be addressed at all levels and on all fronts.

Often, IUU fishing is encouraged through corrupt practices, symptomatic of low levels of governance generally. A significant relationship has been demonstrated on a global scale between the level of illegal and unreported fishing and indices of governance (Agnew *et al.* 2009 p4). This is presented graphically in Figure 15.

Agnew *et al.* (2009, p4) go on to state : “*This is not to say that developing countries with poor governance records are necessarily to blame for illegal fishing, but that they are more vulnerable to illegal activities, conducted by both their own fishers and vessels from distant water fishing nations.*” Since there are strong economic drivers for illegal fishing (Sumaila *et al.*, 2006) and it occurs in situations of poor fisheries management and control (MRAG, 2005), the study expected that the level of illegal fishing would be related to fish price, governance and indicators of the control problem, such as the area of a country’s EEZ and the number of patrol vessels at its disposal, but it found no significant relationship between illegal fishing and the price of fish or the size of the EEZ or of the fishery.

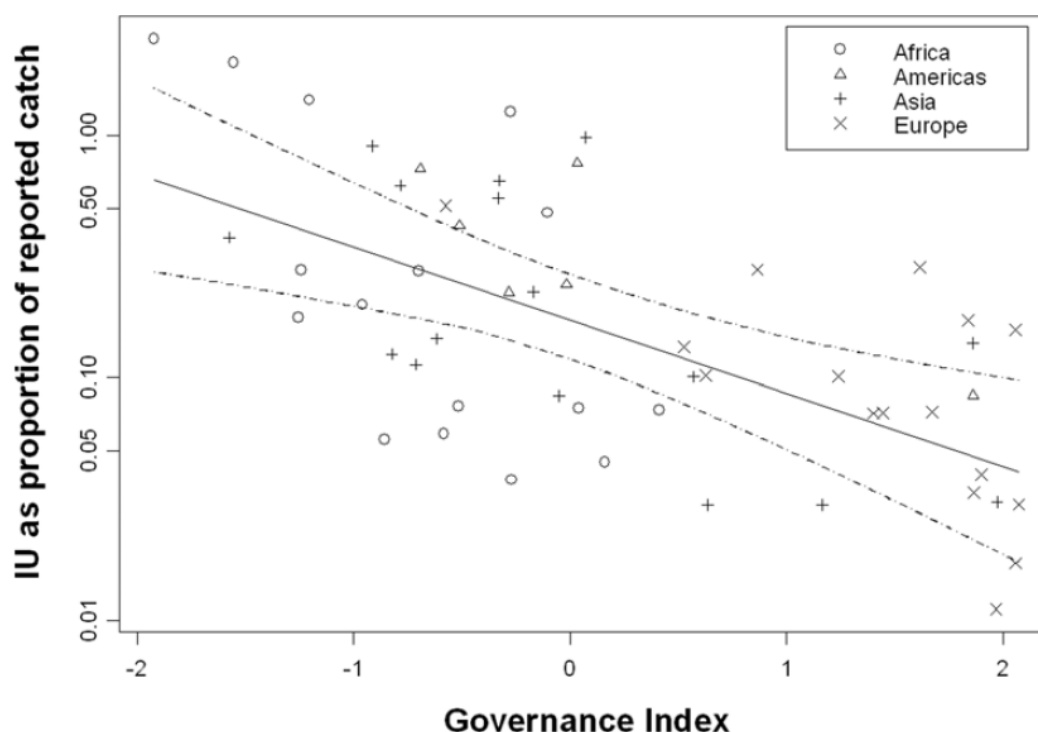
⁵⁷ The study excluded discards and unregulated artisanal catches.

⁵⁸ Fully exploited, over-exploited or depleted

⁵⁹ With an 80% confidence range of between USD37 billion and USD67 billion. The losses due to illegal fishing are not included in this estimate.

It is clear that organised crime in IUU fishing is linked to crime in other sectors, such as human trafficking, smuggling of migrants, illicit traffic in drugs, environmental crime, corruption, piracy and other security-related offences (UNODC, 2011). These links are getting increasing attention, as evidenced by the First INTERPOL International Fisheries Enforcement Conference, held in Lyon in February 2013, where project SCALE was also launched. This is an INTERPOL initiative to detect, combat and suppress fisheries crime, designed to improve the exchange of fisheries enforcement information and intelligence between countries⁶⁰. IUU fishing activities are being perceived less as a management and administrative phenomenon and more as a criminal one. This may result in increased deterrence, and does beg the question whether the provisions in the EU IUU Regulation are deterrent enough.

Figure 15: Relationship between the amount of illegal fishing (expressed as a proportion of the reported catch that is additionally taken as illegal and unreported catch) and an average of four World Bank indices of governance



Source: Agnew *et al.* (2009)

Countries suffering political crises undermining governance are particularly subject to incursion from distant water fishing fleets and from neighbouring States. Côte d'Ivoire and Somalia are two examples of this phenomenon. For some time Côte d'Ivoire did not have a single patrol vessel at its disposal to monitor its EEZ as they were destroyed during the war. The foreign companies were fully aware of this situation and took great advantage of it.

Distant water fishing nations, such as China, EU MS, Korea, Russia and Taiwan, authorise vessels to fish in the waters of these vulnerable developing countries, and there is a significant illegal fishing problem from many of these vessels (MRAG 2005; Box 2 below).

⁶⁰ <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-Scale>

Box 2: Report on IUU from South Korea

The Deep-sea fishery nation Korea disgraced

On April 10, the Korean newspaper Kyunghyang Shinmun obtained a report on the illegal, unreported and unregulated (IUU) fishing status of South Korean deep-sea fishing vessels drawn up by the Korean branch of the international environmental organization Greenpeace.

According to the report, fishing vessels of 18 South Korean firms were caught in 34 cases of illegal operations from 2010 to the end of 2012. Two-thirds of the illegal operations (22 cases) were conducted in the waters of African countries such as Liberia and Sierra Leone, with which South Korea has yet to sign a fisheries agreement, and "poor countries" such as Kiribati, an island country in the Pacific Ocean.

Over thirty deep-sea fishing vessels of 15 deep-sea fishing companies including Dongwon Industries, Silla Co., and Inter-Burgo were caught for illegal operations in the Atlantic Ocean off the coast of western Africa, including Liberia and Sierra Leone.

Last December, Liberia requested an investigation from Korea's Ministry of Maritime Affairs and Fisheries claiming that F/V Premier, Dongwon Industry's tuna purse seiner, was operating in their waters with a forged fishing license.

Source: Extracts from SIF 2013b

Developing countries, suffering in most cases more limited budgets and facilities, and a history of exploitation of their waters by foreign industrial interests, also demonstrate weaknesses in flag State controls. Some countries grant their flag to vessels whose owners are looking for little control over their activities, and do not fulfil their flag State duties properly. Article 91.1 of UNCLOS calls for a "genuine link" between the owner of a vessel and the flag the vessel flies. The International Transport Workers Federation (ITF) cites 34 flag of convenience countries (ITF 2012), where this genuine link is not honoured; not all of these are developing countries.

These generalisations hide significant regional differences (Agnew *et al.* 2009). The areas with lowest estimates of illegal and unreported catch, expressed as a percentage of reported catch case study species, comprised the Northeast Pacific (3%), the Southwest Pacific (4%), the Southeast Atlantic and Antarctic (both at 7%). Those areas with the highest incidence included the Eastern Central Atlantic (37%), the Western Central Pacific (34%), the Northwest Pacific (33%) and the Southwest Atlantic (33%).

In the Eastern Atlantic problems stem from both distant-water fleets and neighbouring states, making the most of weak coastal and port State controls. This is particularly the case in the waters of the poorer West African States. In some cases this is exacerbated by disagreements between States on their maritime border (Nigeria and Cameroun being one example), or where there is a tradition of fishing in neighbouring States' waters (Ghana and Senegal being cases in point). Where maritime borders overlap, there exist so-called grey areas, and whereas mechanisms do exist for bilateral cooperation in MCS matters, these are rarely in place. Cases in point in other regions are the waters between India and Sri Lanka (see Box 3) and those between various Central American States.

Box 3: Examples of neighbouring State incursions**Examples of neighbouring State incursions in the Indian Ocean**

LNS Udara, P 432 and Cost Guard Ship CG 42 attached to the Northern Naval Command⁶¹ arrested 26 Indian fishermen and 5 Indian Trawlers engaged in illegal fishing in the Northern seas of Sri Lanka on 05th April 2013.

They were taken into Sri Lankan Navy custody in Sri Lankan Waters off Kovilam Point and brought to Kayts Island and handed over to Fisheries Department Authorities for legal action.

The Rainbow Warrior recorded illegal fishing activities by two Sri Lankan tuna and shark boats in the Maldives Exclusive Economic Zone (EEZ) and the adjacent high seas on Friday before arriving in Colombo over the weekend to end a two-month expedition in the Indian Ocean.

"Fisheries in the Indian Ocean are being massively overexploited. Our oceans and the billions of people around the world dependent on them need better control and enforcement of fishing regulations. If we don't act now, there may be no tuna left for future generations," said Sari Tolvanen, Greenpeace International campaigner aboard the Rainbow Warrior.

"Transshipments of fish at sea are allowing illegal fishing to go undetected. These transfers of fish at sea must be eliminated and the number of fishing vessels in the region cut to end the overfishing crisis."

Greenpeace International had earlier found two illegal Sri Lankan fishing boats in the Chagos marine reserve and has called on the UK government, which established the reserve in 2010, to enforce protection of the area. It has also urged Sri Lanka to take control of its sprawling fishing fleet.

Source: SIF (2013d), Greenpeace (2012)

In the Western Central Pacific, problems stem primarily from distant water fleets, some taking advantage of RFMOs weakened by membership that includes those same distant fishing nations. The situation in this area has improved vastly in recent years, as RFMO resolutions tighten the loopholes (such as controls on longliners transiting EEZs when going from one high seas pocket to the other). In the Pacific overall, the situation has greatly improved thanks to regional cooperation through the Fisheries Forum Agency, the Nauru Agreement for purse seine fisheries, the Niue Treaty on cooperation in MCS and others, and observer programmes under the auspices of the WCPFC⁶².

Though there has generally been an improvement worldwide this trend hides significant changes over time in particular regions and leaves no room for complacency. This is why a regulation of global and universal reach, such as Council Regulation No 1005/2008 adopted the 29 September 2008 establishing a Community system to prevent, deter and

⁶¹ Of Sri Lanka.

⁶² through the 'Conservation and Management Measure for the Regional Observer Programme – CMM 2007-01'. providing for the gradual development of the ROP. The SPC/OFP has been processing observer data on behalf of their member countries There has been an increase in observer coverage as a result of CMM 2008-01 (100% coverage in the purse seine fishery starting in 2010 and 5% coverage in the Longline fishery starting 2012.

eliminate illegal, unreported and unregulated fishing (henceforth referred to as the EU IUU Regulation), is intuitively appealing.

4.1.2 IUU fishing and the EU

The European Commission, in its strategy against IUU fishing, estimates that imports of illegal products into the EU each year amount to 500,000mt, worth EUR1.1 billion (EC, 2007).

The incidence of imports of illegal products will always be a function of the proportion of illegal products worldwide. Though the biggest importer of FAP in the world, the EC provides no statistic on the consignments of IUU FAP rejected at EU borders under the EU IUU Regulation. This might have provided an indirect measure of the risks and of the incidence of IUU goods entering the EU.

There are numerous cases of false labelling of fish. Examples range from one in ten fish in Spanish markets to an average of 25% to 70% of fish being mis-labelled around the world (CPI, 2011), with 39% in the USA generally (Fishupdate, 2013) and 55% in Los Angeles, New York City and South Florida (Oceana, 2012a, b, c).

EU vessels are involved in IUU fishing activities, despite the EU's adherence, on behalf of the MS, to the important international agreements. These include UNCLOS, the UNFSA, FAOCA, the IPOA-IUU and the APSM. There are serious concerns regarding the compliance of the EU long-distance fleet with international and national measures. There are also concerns about the way products caught by EU flagged vessels outside Community waters enter the EU (see section 4.6). "In terms of numbers, the 718 EU vessels of the external fleet represent a very marginal fraction of the 88,600 units of the Community fishing fleet (0.82%). As far as catches are concerned, the estimates for the external fleet give an estimated total catch (1.2 million mt) of approximately 21% of the Community's total catch for human consumption (5.6 million mt). By major species, the external fleet's catch of fish of the tuna family represents 92% of the total Community catch within this category of species, that of shrimps (Nordic and tropical) 35%, 28% of the Community catch of cephalopods (West African and South-West Atlantic fisheries), and 18% of small pelagic catches." (EC, 2008).

The EP took early action prior to the adoption of the EU IUU Regulation to support the establishment of a system capable of deterring and preventing IUU fishing activities. The EP published important reports on flags of convenience (i.e. McKenna report) and on the implementation of the EU action plan against IUU fishing prepared by the MEP Marie-Helene Aubert which provided a solid background for the adoption of the EU IUU Regulation. Since then, the European Parliament (EP 2011b) has voiced concern about the low level of sanctions within the EU and pressurised the Commission to act against IUU fishing activities, and "*deplored*" the subsidies given to IUU operators in the past (EP 2011b, p7). It has called on the Commission to "*publish annual assessments of the performance of each Member State in implementing the rules of the Common Fisheries Policy (CFP) that identify possible weak points needing improvement, and to use all possible means, including identifying Member States when they fail in their responsibilities, to ensure their full compliance, in order to create a reliable and transparent control regime*" (EP 2011b, p6).

The French International Ship Register and the German International Ship Register are both listed by the International Transport Workers Federation (ITF) as flags of convenience (ITF, 2012). It also known that some vessels with EU interests have had their flags changed so as not to be monitored properly while operating on high seas and

also in third countries' waters. These vessels have EU citizen's beneficial ownership but carry third countries' flags. They are thus able to operate in several EEZs often of African countries switching from West Africa to the Indian Ocean. Sometimes these vessels have a parallel registration and practically fly two flags at the same time, one flag often being considered a flag of convenience. It is relatively easy and cheap to establish a complex web of corporate identities to provide very effective cover for the beneficial owners who do not want to be known (OECD, 2003).

The US government report to Congress (US 2013, p3) on 11 January 2013 listed "*ten nations as having been engaged in IUU fishing based on violations of international conservation and management measures (CMMs) during 2011 and/or 2012*". Two of these⁶³, Italy and Spain, are EU MS⁶⁴. The previous report, in 2011, cited Italy and Portugal and the one in 2009 cited Italy and France (Pew, 2013).

The EIJ (2013, p31) claims that "*12% (100 vessels) of 841 large-scale fisheries vessels flagged to the top 13 FoC registries in 2011 are owned by EU companies. Of equal concern are the 18% (143 vessels) under the top 13 FoC registries that are listed as 'owner unknown'*". In January 2011, the European Maritime Affairs and Fisheries Commissioner, Maria Damanaki, acknowledged that the issue of open registries and Flags of Convenience is "*of great concern*" and confirmed that, in accordance with Article 40 of the EU IUU Regulation, the Commission had requested EU MS to carry out enquiries to identify European beneficial owners of vessels flagged to FoC⁶⁵. EIJ has been informed that EU MS have so far not submitted any information to the Commission on nationals with interests in FoC vessels.

This clearly demonstrates the fact that flag State controls alone are not sufficient to deter EU MS from entering third country EEZs illegally, despite the introduction of VMS systems and standard log book practices within the EU. Strong coastal State measures (e.g. catch reporting, sea patrols) and port State measures are both necessary (see section 4.4.2).

The FAO is spearheading a technical consultation on flag state performance (FAO 2013a), which has resulted so far in voluntary guidelines (FAO 2013b). These call for increased control by flag States, in cooperation with and with respect to coastal State sovereignty. For this to be effected, there must be increased vigilance on the part of EU MS, and increased supervision and transparency in performance on an EU-wide scale. This can and should be afforded by the EC, as a backdrop and complement to the application of the EU IUU Regulation, as shall be seen later in this Study.

Since there are significant economic drivers to IUU (Sumaila *et al.* 2006), and subsidies form an incentive to increase fishing effort, there is a link between subsidies and IUU fishing and the overfishing that contributes to the deterioration of stocks. Though the EC has a policy of reducing or eliminating subsidies, EU Transparency report that these persist to the tune of EUR1.0 billion a year (Thurston *et al.* 2011). Moreover, some of these payments, approximately EU20.5m between 1994 and 2006, were paid directly for vessels convicted for illegal fishing (Knigge *et al.* 2011).

⁶³ The full list comprises Colombia, Ecuador, Italy Panama, Venezuela, Mexico, Korea (Rep), Spain, Ghana and Tanzania.

⁶⁴ Spain states that this is based on two cases, which at the time of drafting the report were being resolved, and thus claims that this identification "*had no basis*" (Spain 2013a, Translated).

Recommendation IUU.1 The EP must monitor the allocation of subsidies, under whatever guise, from EC funds, including the instruments under the CFP, and critically appraise the incentives they may give to IUU fishing.

Recommendation IUU.2 The EP must ensure that the EC follows up and monitors the application of Art 40 of the EU IUU Regulation regarding the identification of EU nationals in IUU activities.

Recommendation IUU.3 The EP must ensure that EU MS apply the measures in the Voluntary Guidelines for Flag State Performance, and ensure that the EC plays an overarching role in monitoring, in a transparent way, the EU's performance in this respect.

4.2 The EU IUU Regulation and Institutional aspects of its implementation

4.2.1 The legal framework

Coherence with international instruments

The preamble to the EU IUU Regulation explicitly mentions the UNCLOS, the UN Fish Stocks Agreement, the FAO Compliance Agreement, the CFP, the revision of the EU Fisheries Control Regulation (that has since been legislated with the enactment of Council Regulation No. 1224/2009 and Community Implementing Regulation No. 404/2011), the FAO IPOA-IUU and RFMO lists of vessels.

The EU IUU Regulation is one of the three pillars of the EC control system, along with the Control Regulation (Council Regulation (EC) No 1224/2009), and the Fisheries Authorisations Regulation⁶⁶. The latter is being reviewed, and there are calls for it to be amended in order to be consistent with the EU IUU Regulation, and with the control Regulation, and Regulation No. 26/2012 on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing (BFW et al, 2013). According to the IPOA-IUU *"States should take all steps necessary, consistent with international law, to prevent fish caught by vessels identified by the relevant regional fisheries management organization to have been engaged in IUU fishing being traded or imported into their territories"*. The introduction of the Catch Certification Scheme established by the EU IUU Regulation is in line with the provisions of the IPOA IUU. Indeed the IPOA IUU indicates that *"trade-related measures to reduce or eliminate trade in fish and fish products derived from IUU fishing could include the adoption of multilateral catch documentation and certification requirements, as well as other appropriate multilaterally-agreed measures such as import and export controls or prohibitions. Such measures should be adopted in a fair, transparent and non-discriminatory manner. When such measures are adopted, States should support their consistent and effective implementation"* (FAO 2001 Art 69). However it is important to indicate that The IPOA IUU mentions that *"unilateral trade-related measures should be avoided"* and that they should only be used in exceptional circumstances. This may raise concerns regarding the unilateral nature of the CCS under the EU IUU Regulation. Moreover, the IPOA IUU specifies that *"Certification and documentation requirements should be standardized to the extent feasible, and electronic schemes developed where possible, to ensure their effectiveness, reduce opportunities for fraud, and avoid*

⁶⁶ Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters

unnecessary burdens on trade.” Our study will demonstrate that these conditions are not fulfilled in practice.

The EU IUU Regulation is consistent specifically with international instruments, with the new APSM, and with the identification of countries as having engaged in IUU fishing⁶⁷ (see Table 16 below).

Table 16: Coherence with international instruments

Element of EU IUU Regulation	Provision in international instrument	RFMO measures
Port State control over third country fishing vessels	IPOA-IUU paragraphs 52-60 UNCLOS, Art 25 UNFSA Art 23 APSM Pt2, Pt3, Pt4	Various measures by: ICCAT, CCSBT, IATTC, CCAMLR, IOTC
Catch certification	IPOA-IUU paragraphs 69, 76	Various measures by: ICCAT, CCAMLR, CCSBT
IUU Vessel lists	IPOA-IUU paragraphs 81.4	Various measures by: ICCAT, IOTC, IATTC, WCPFC, CCAMLR, NAFO, SEAFO, NEAFC
List of non-cooperating States ⁶⁸	Report to Congress ⁶⁹ Identified nations ⁷⁰	
Denial of port landing and transshipment	UNFSA Art 23(3); APSM Art9	Various measures by : ICCAT, IOTC, NEAFC, CCAMLR, IATTC, IOTC
Prohibition of importation of fish and other restrictive measures		Various measures: ICCAT.

Note: adapted from Tsamenyi *et al.* (2009)

The EU IUU Regulation, in its provisions on designation of ports (Art 5) is largely consistent with the provisions in the APSM (Art 7) in this regard. The prior notification forms detailed in Annex IIA and Annex IIB of the EU IUU Implementing Regulation (EC 2009b) are largely consistent with that in Annex A to the APSM, as are those for authorisation for access to port (Art 7 of the EU IUU Regulation and Art 9 of the APSM).

Table 16 shows that the EU IUU Regulation in its design is coherent with the espoused aims of certain RFMOs. However, the Pew Environment Group has observed that RFMO measures fall far short of minimum standards indicated in the APSM. Thus, even if all RFMO measures were adhered to, MS would fall short of APSM standards: *“port State measures of these RFMOs cannot yet compare with the APSM standards: they are not sufficiently comprehensive to cover all IUU fishing activity; they are not effective enough in deterring the activities of IUU operators; and they do not establish adequate*

⁶⁷ Based on violations of international conservation and management measures, carried out in accordance with the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act.

⁶⁸ Those considered possible of being identified as non-cooperating third countries (EC 2012) are : Belize, Cambodia, Fiji, Guinea, Panama, Sri Lanka, Togo, Vanuatu.

⁶⁹ Pursuant to Section 403(a) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006

⁷⁰ These are (US 2013): Colombia, Ecuador, Italy, Panama, Portugal and Venezuela.

requirements to ensure proper transparency and information sharing among all concerned actors” (Pew, n.d. a).

Even if RFMO measures were applied and effective, there are large areas of the oceans that are not covered. The EU fleet clearly does not comply universally with the norms (see section 4.1.2).

RFMO catch documents are provided for in the EU IUU Regulation (Art 13), and may be recognised as complying with the requirements of the EU CCS, and can replace catch certificates. Thus, there is implicit recognition that the EU IUU Regulation provides for a catch documentation scheme (CDS), and explicit establishment of a Catch Certification System (CCS) (Ch. III). We shall see in section 4.4 that the WICC note and other elements convert the CCS from a CDS to another export certificate. To date, three RFMO CDSs have been accepted under the EU IUU Regulation⁷¹: CCAMLR Patagonian toothfish catch documentation scheme, the ICCAT Bluefin Tuna Catch Documentation Programme and the CCSBT Catch Documentation Scheme for Southern Bluefin Tuna.

Any unilateral or multilateral scheme to combat IUU fishing might divert illegal activities to markets that are less demanding of proof that products are not sourced from IUU activities. Thus, there is a case for a worldwide scheme for accreditation of traded fishery products. There is consistency between the EU’s list of non-cooperating countries, and the USA’s identified countries, and between the EU’s IUU vessel list and those lists kept by RFMOs. But unless other markets are equally rigorous in controlling imports, illegal catches will be diverted there. It is therefore welcomed promising development that the EU has entered agreements to fight IUU fishing with both the USA (USA-EU 2011) and Japan (Japan-EU 2012), but these agreements list generalities, falling short of concrete measures.

Recommendation IUU.4 The effectiveness of the EU IUU Regulation in combating IUU fishing activities worldwide, and its conformity with the IPOA-IUU are contingent on effective measures being put in place in other markets and eventually worldwide. With reference to the vague Agreements the EC has brokered with Japan and with the USA, the EP should ensure concrete measures are put in place.

The EU IUU Regulation and subsequent regulations

This subsection briefly outlines some of the salient aspects in the EU IUU Regulation and its associated documents, in order to give an overview of it. The EU IUU Regulation and associated documents available officially on the DG MARE web site are listed in Annex 4.

The EU IUU Regulation is placed in the broader context of the Common Fisheries Policy, established in 2002 through Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (Council 2002b), currently under review.

The legal base of the EU IUU Regulation is Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate IUU fishing (Council, 2008a). Subsequent, and complementary, to this is the primary implementing 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,

⁷¹ See Annex V of Commission Regulation 1010/2009 and Commission Regulation 202/2011.

unreported and unregulated fishing (EC 2009b)⁷². Complementary to these two central regulations are a number of Commission Regulations and Implementing Regulations, a Commission Decision, a Commission Statement, some general information, including a handbook, and various documents including notifications and notes.

The Regulations and Decisions are “*directly applicable and binding in their entirety*”, the Regulations on “*All Member States, natural and legal persons*”, and the Decisions on “*All or specific Member States; specific natural or legal persons*” (EUR-Lex, n.d.). The Commission Statement, the general information and the notifications are not binding to any degree, but they do have a strong influence on the application of the Regulation and interpreted compliance with it. Many of the notes are undated (i.e. no date of publication), have no reference, are poorly translated and poorly worded⁷³. Moreover, these notes do not have any legal value but provide important instructions on the interpretation of the EU IUU Regulation and how some of its provisions should apply. Therefore, if they are not followed by third countries and by EU MS, consignments risk being rejected.

The EU IUU Regulation establishes a “*Community system*” against IUU fishing, and indicates that this shall “*apply to all IUU fishing and associated activities carried out within the territory of Member States to which the Treaty applies, within Community waters, within maritime waters under the jurisdiction or sovereignty of third countries and on the high seas*” (article 1). Thus the scope of the EU IUU Regulation is wider than just control of imports. However, the core provisions aim at limiting the importations of IUU fishing products into the EU territory or directly landed by third country vessels or imported by consignments. The main chapters that contribute to this aim are the following:

- Chapter II Inspections of third country vessels in MS ports
- Chapter III Catch Certification scheme for importation and exportation of fishery products
- Chapter IV Community alert system
- Chapter V Identification of fishing vessels engaged in IUU fishing
- Chapter VI Non-cooperating third countries
- Chapter VII Measures in respect of fishing vessels and States involved in IUU fishing

Other chapters are also part of the system established by the EU to prevent, deter and eliminate IUU fishing activities (e.g. sanctions) but this Study focusses on the requirements concerning imports of FAP into the EU.

Chapter I lays down basic principles, such as the scope of the EU IUU Regulation, definitions of some terms used in the EU IUU Regulation and the definition of when fishing vessels are engaged in IUU fishing; these are deemed to be serious

⁷² To be referred to as the EU IUU Implementing Regulation

⁷³ one example of poor language:

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/requirement_for_validated_cc_en.pdf, whose requirement also undermines port and coastal State controls.

infringements, subject to specific ranges of sanctions in Art 42 in Chapter IX covering immediate enforcement measures and sanctions.

The definitions provided in the EU IUU Regulation will have an impact on the scope of application of its provisions. Importation “*means the introduction of fishery products into the territory of the Community, including for transshipment purposes at ports in its territory*” (Art 2.11). Territory is not defined in the EU IUU Regulation, though in some cases and some perspectives (such as rules of origin and customs) these are deemed to be in the Territory of the community by virtue of having been fished by Community flagged vessels, albeit outside Community waters. In the interest of the scope of the EU IUU Regulation as described, and its application for preventing IUU FAP entering the EU, this Study is justified in broadening the analysis of product movements to include those caught by Community vessels outside Community waters (see section 4.6).

A definition of the fisheries products is given and Annex I of the EU IUU Regulation gives a list of products excluded from the definition of ‘*fishery products*’ set out in point 8 of Article 2. According to this Annex I, freshwater fishery products and aquaculture products obtained from fry or larvae, among others, are excluded from the scope of the CCS. The latest precise list of exclusions is provided for in Commission Regulation (EU) No 202/2011 of 1 March 2011 amending Annex I to Council Regulation (EC) No 1005/2008 as regards the definition of fishery products.

The focus of the EU IUU Regulation is on the primacy of the responsibility of the flag State. Indeed the designated flag State authorities validate the CC (see Section 4.4.2). Often, vessels are operating in distant waters and therefore flag State does not always have the enough information to ensure the legality of the products caught. This underlines the importance of complementary Port State measures such as inspections of landings and transshipment, and of complementary coastal State measures. There are measures that relate to nationals engaged in IUU fishing in Chapter VIII of the EU IUU Regulation.

Chapter II of the EU IUU Regulation deals with the inspection of third country vessels in MS ports). These provisions aim at preventing the imports of fisheries products landed by third country vessels in EU ports. To that end Chapter II establishes strict conditions of access to port by third country vessels (e.g. prior notice, designated ports) and port inspection requirements (see section 4.3.2).

Chapter III contains the core provisions on FAP import requirements as it establishes the Catch Certification Scheme (CCS). The importers have the obligation to provide the CC to MS authorities, as provided by the exporters and validated by the CA of the flag State. EU importers have an obligation to provide CCs for direct (Art 12) and indirect (Art 14) imports from third countries and from recognised Catch Documentation Schemes (Art 13). MS CAs must validate CCs for exports where these are required by third countries in the framework of cooperation agreement (Art 15). MS CAs must receive CCs in advance, and carry out checks on them (Art 16) as well as verifications (Art 17). Chapter III also contains provisions on refusal of consignments (Art 18), transit and transshipment (Art 19), flag State notifications (Art 20), re-exportation from the EU (Art 21) and record-keeping (Art 22).

Regarding direct importation from a third country (Art.12), consignments must be accompanied by a Catch Certificate according to Annex II of the EU IUU Regulation (see Annex 6), which includes a statement from the master of the fishing vessel or from his representative, and which must be validated by the flag State of the fishing vessel.

For indirect imports that have passed through a third country, if they are unprocessed (Art 14.1⁷⁴), the consignment must be accompanied by the Catch Certificate(s) and documented evidence that the fishery products did not undergo operations other than unloading, reloading or any operation designed to preserve them in good and genuine condition, and remained under the surveillance of the Competent Authorities in that third country. This documented evidence can be a single transport document or document issued by the Competent Authorities of that third country.

If the products have been processed, they must be accompanied by a Processing Statement in accordance with Annex IV of the EU IUU Regulation (see Annex 7), in accordance with Art 14.2⁷⁵.

The EU IUU Implementing Regulation (EC 2009b) includes benchmarks for inspections of third country vessels in MS ports (Title I), details on the CCS (Title II) including the Simplified Catch Certificate for artisanal fishing vessels, detailed provisions for APEO status⁷⁶ in Chapter II⁷⁷, the benchmarks for verifications related to catch certificates (Ch. III), Sightings (Title III) and mutual assistance including the establishment of the Single Liaison Office (Title IV). The EU IUU Implementing Regulation amends the list of FAP to be excluded from the CCS which was contained in the Annex I of the EU IUU Regulation. The new list of excluded products which are mainly freshwater, bivalves and aquaculture products is included in the Annex XIII and is much more detailed than the Annex I of EU IUU Regulation. This list was amended a second time by Commission Regulation (EU) No 202/2011 of 1 March 2011 amending Annex I to Council Regulation (EC) No 1005/2008 as regards the definition of fishery products.

This Study is not charged with revising the substance of these documents, but these documents do have an impact on the implementation of the EU IUU Regulation. For example the Handbook, which provided guidelines and answers on the implementation of the EU IUU Regulation, is lengthy and wordy, and in places contradicts the EU IUU Regulation itself, as we will see with respect to the use of T2Ms in section 4.6 below. Moreover, all of the notes indicated in the additional information (see Annex 4) lack any formal reference, seven lack a date and are sometimes written in grammatically incorrect or confusing language. Examples of this are the WICC notes⁷⁸.

⁷⁴ Art 14.1: 'In order to import fishery products constituting one single consignment, transported in the same form to the Community from a third country other than the flag State, the importer shall submit to the authorities of the Member States of importation: (a) the catch certificate(s) validated by the flag State; and (b) documented evidence that the fishery products did not undergo operations other than unloading, reloading or any operation designed to preserve them in good and genuine condition, and remained under the surveillance of the Competent Authorities in that third country.'

⁷⁵ Art 14.2: "In order to import fishery products constituting one single consignment and which have been processed in a third country other than the flag State, the importer shall submit to the authorities of the Member State of importation a statement established by the processing plant in that third country and endorsed by its Competent Authorities in accordance with the form in Annex IV: (a) giving an exact description of the unprocessed and processed products and their respective quantities; (b) indicating that the processed products have been processed in that third country from catches accompanied by catch certificate(s) validated by the flag State; and (c) accompanied by: (i) the original catch certificate(s) where the totality of the catches concerned has been used for the processing of the fishery products exported in a single consignment; or (ii) a copy of the original catch certificate(s), where part of the catches concerned has been used for the processing of the fishery products exported in a single consignment.

⁷⁶ One of the requirements is to be in possession of a AEO provided for in Council Regulation 2454/93 on the customs code; to 26 March 2012 9,162 AEO certifications have been provided Europe-wide (<http://edouane.com/cm/index/reglementation-douane/oea/oea-operateurs-economiques-agrees.html#pourquoiue>)

⁷⁷ Only four companies have been given this status to date: two from Germany, one from Austria and one from Italy (see note of 29 March 2011 to be found on the MARE web site http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/approved_economic_operators_en.pdf

⁷⁸ IUU Regulation – Weight in the Catch Certificate – Product Code (undated, no reference) http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/weight_in_catch_certificate_en.pdf IUU Regulation –

Recommendation IUU.5 The notes and associated documents are at times poorly drafted, unclear, not referenced and undated. Given the weight that these have, and the implications to the private sector, the EP should urge the EC to review the drafts of their notes, to ensure they are in standard language, to reference them and to date them.

4.2.2 The designation of Competent Authorities

The designation of CA in the EU Member States

Under Art 22(2) of the EU IUU Regulation, the Commission must publish the MS CAs responsible for the main tasks⁷⁹ under the EU IUU Regulation, the validation of CCs, the checks and verification on CCs submitted by importers and the one responsible for validation and verification of the “re-export” certificate. Two lists have been published, one on 29 October 2008 and one on 25 November 2010 (see Annex 4), though even the last one (at April 2013) is not up to date⁸⁰. There is no specific requirement outlined in the EU IUU Regulation as to which authorities are to be nominated, and the EC does not question the relevance of the authority nominated by EU MS. This means that the authorities responsible for the different tasks can vary greatly in different countries. These can vary from fisheries departments, veterinary offices, public health offices, port authorities to customs.

In France, CCs are issued by the CA responsible for fisheries, but the checks and verifications of CCs on entry and the validation of re-export certificates are both carried out by Customs, who are not necessarily versed in matters related to IUU. There may be a strong case for a single window, manned by staff competent in all domains at points of entry, as advocated by some in this country.

In Germany the institution carrying out checks on CCs on import is the Ministry for Agriculture and Nutrition⁸¹. This office is centralised in Hamburg, and therefore in principle not privy to the details of the consignment and not able to physically inspect itself the consignments.

In Spain, CCs are issued by the General Secretariat for Fisheries⁸², and the checks and validations and re-export certificates by the Department for Control and Inspection⁸³ based in Madrid.

In the UK, CCs are issued and re-export certificates validated by the Marine Management Organisation (for England) or Marine Scotland, and the checks and verifications are delegated to the UK Port Health Authorities.

Weight in the Catch Certificate – Part II (August 2010)
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/weight_in_catch_certificate_part2_en.pdf

⁷⁹ Article 15(2) requests a notification of the Competent Authorities in a Member State for the validation of catch certificates.

– Article 17(8) requests a notification of the Competent Authorities in a Member State for checks and verifications of the catch certificates submitted by importers in that Member State.

– Article 21(3) requests a notification of the Competent Authorities in a Member State for the validation and verification of the section “re-export” of catch certificates.

⁸⁰ Spain, for example, has since nominated the Subdirección General de Control e Inspección for the tasks under Articles 17(8) and 21(3).

⁸¹ Bundesanstalt für Landwirtschaft und Ernährung

⁸² Secretaría General de Pesca.

⁸³ Subdirección de Control e Inspección.

Moreover, Single Liaison Offices in each EU MS have been set up pursuant to Article 39 of Commission Regulation 1010/2009, and these have been useful links for both Mutual Assistance and for liaison with DG MARE.

Fishery products enter the EU through designated ports under the EU IUU Regulation or through Border Inspection Points (BIPs) set up under the Health Regulations, with the exception of what are defined in the hygiene regulations as direct landings (See section 3). Since the implementation of the EU IUU Regulation and its interpretation are the responsibility of EU MS⁸⁴, it would seem reasonable to have common standards between the different EU MS. DG MARE did not give this Study access to information on the relative performance of EU MS, so it is not possible to objectively analyse this. However, there is anecdotal evidence of varying performance, and the lack of formal criteria and standards and guidelines makes this increasingly likely. The Commission's overarching role in this regard is obvious and paramount (see section 4.3.3).

Recommendation IUU.6 The EU MS are entitled to refuse consignments, there is a wide array of different CAs nominated in EU MS, and no evidence of oversight with respect to the appropriateness of CA controls. The EP should urge the EC to establish clear criteria and guidelines for their performance.

The designation of the CA in the third countries

According to Article 20 of the EU IUU Regulation third countries should communicate to the EC information on their public authorities or Competent Authorities in charge of validating the CC and attesting the information contained in the CC, by providing a flag State notification (see Annex III of EU IUU Regulation)⁸⁵. Information should also be provided on the public authorities of the Flag State in charge of registering the fishing vessels, granting and suspending fishing licences and enforcing fisheries laws. The latest list was published on the DG MARE web site on 18 March 2013⁸⁶.

In the run-up to the implementation of the EU IUU Regulation and in its first months, the EC (DG MARE) largely accepted the nominations of CAs from third countries without questioning whether these were indeed the most appropriate authorities. In some countries, such as Curacao, Egypt, Eritrea and Guinea, the authority nominated has been the Competent Authority nominated to validate the health certificate under the hygiene Regulation, which can be inappropriate as veterinary doctors usually have little knowledge about Monitoring, Control and Surveillance (MCS) measures and IUU fishing activities. However, on the other hand, they can be very familiar with processing activities and present in the processing plants, which is also necessary to ensure an efficient validation of CC in case of processed products. Thus, it is possible to have an officer that is familiar with MCS measures but not familiar with traceability aspects in processing plants, or have one that is familiar with processing operations, but not at all familiar with MCS. Both aspects are of course necessary for signing off a processed consignment with confidence.

⁸⁴ Council Regulation 1005/2009 Preamble para (19) Members States are "entitled to refuse importation".

⁸⁵ Content of flag State notifications pursuant to Article 20: "*The Commission shall request flag States to notify names, addresses and official seal prints of the public authorities situated in their territory which are empowered to: (a) register fishing vessels under their flag; (b) grant, suspend and withdraw fishing licences to their fishing vessels; (c) attest the veracity of information provided in the catch certificates referred to in Article 13 and validate such certificates; (d) implement, control and enforce laws, regulations and conservation and management measures which must be complied with by their fishing vessels; (e) carry out verifications of such catch certificates to assist the Competent Authorities of the Member States through the administrative cooperation referred to in Article 20(4); (f) communicate sample forms of their catch certificate in accordance with the specimen in Annex II; and (g) update such notifications*".

⁸⁶ http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/flag_state_notifications.pdf

This arises from confusion in the terminology applied by the EC, because the Competent Authority under the hygiene regulations were in some cases assumed by third countries to be the same Competent Authority or public authority under the EU IUU Regulation. Indeed, when the EU IUU Regulation entered into force, some countries did not understand the purpose of the CC or see the difference between the CC and the health certificate despite the regional seminars organised by the EC (DG MARE). In other countries, such as Cape Verde, the nominated CA, may appear to be appropriate, in this case the Directorate General for Fisheries, but in practice the work is conducted by health officials, with little idea about IUU fishing and MCS measures.

After the entry into force of the EU IUU Regulation, the EC (DG MARE) has paid more attention to the notifications submitted by third countries. On April 2013 several notifications were still pending, particularly for Pacific Island States⁸⁷. According to the wording of the EU IUU Regulation⁸⁸ it would seem that the acceptance of the notification is automatic and cannot be refused if the information requested in Article 20 is provided. It is not very clear on which grounds the EC is currently basing the acceptance or not of the notification. This whole procedure lacks transparency.

DG MARE has undertaken various missions to a number of countries⁸⁹ (DG MARE email of 14 March 2013) (sometimes more than once to the same country). Other countries have not been visited. The visited countries include certain Pacific island States⁹⁰, who nominated their CAs in 2009 or 2010, but whose nominations have yet (at March 2013) to be accepted.

Explicit mention is made of the validation of Catch Certificates in Article 20 and Annex III of the EU IUU Regulation. However neither the article 20 nor Annex III mention the validation of the Annex IV Processing Statements or of the CAs in States that are processing products and are not flag States. There is provision in the Processing Statement (Annex IV to the EU IUU Regulation) for endorsement by the Competent Authority and in the article 14.2, but there is no indication as if this competent authority is somehow related to the public authorities listed in the Annex III of the flag State notification. One might presume, from the fact that the Health Certificate number and date are requested on the form, that this CA is the one nominated under the Health Regulations. The Handbook, in response to whether the authority endorsing the processing statement can be the same as the one issuing the health certificate, is imprecise: *"This depends on national organisation but it must be the Competent Authority responsible for the monitoring of imported raw materials for processing and re-exportation"* (DG MARE 2009, p 44). Since there is no indication in the EU IUU Regulation as to which should be the CA signing the Annex IV Processing Statement, a Processing Statement may be signed by an authority in a processing State that has not had its CA recognised under the EU IUU Regulation. The omission is potentially significant and can create confusion. In practice, normally the designated flag State authorities validating

⁸⁷ Though the CAs of these States may not be accepted yet, they are still able to sign section 7 of the CC on transshipments (see section 4.5.2).

⁸⁸ Art 20.1 "1. The acceptance of catch certificates validated by a given flag State for the purposes of this Regulation shall be subject to the condition that the Commission has received a notification from the flag State concerned certifying that: (a) it has in place national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels; (b) its public authorities are empowered to attest the veracity of the information contained in catch certificates and to carry out verifications of such certificates on request from the Member States. The notification shall also include the necessary information to identify those authorities."

⁸⁹ Panama, Belize, Sri Lanka, Mauritania, Thailand, China, Guinea Conakry, Senegal, Indonesia, Korea, Papua New Guinea, Philippines, Taiwan, Vanuatu, Fiji, Ivory Coast [Cote d'Ivoire], Togo, Honduras, Guinea Equatorial, Cambodia, Vietnam, Philippines, Taiwan, Curacao (quoted as listed).

⁹⁰ Federated States of Micronesia, Kiribati, Marshall Islands.

the CC also validate the processing statement. Sometimes, as in Senegal⁹¹, the country has notified two different authorities: one to validate the CC (MCS officers) and one to validate the processing statement (veterinary services). This solution may make sense as the validation of the processing statement requires particular knowledge of processing activities and presence in the processing establishments. But as often the CCs are issued after the processing activities took place, it is also necessary that the validating authority has knowledge of processing activities and traceability chain in the processing establishment to effectively validate the CC. This is not always the case.

Some CAs are centralised and other are decentralised. This depends greatly on the size of the country and also of the importance and location of the fishing activities and where the processing and exporting activities take place. For example, in Morocco, Egypt, Namibia and Tunisia, the validation of the CC and processing statement is decentralised. The decentralisation allows to better verify and to be closer to fishing and processing operations. However it requires overall control from the central level, which is often missing or not sufficient and generates a certain lack of consistency within the country or between countries.

Similarly, there is no indication in the EU IUU Regulation or its implementing rules on which should be the CA authorising transshipments within a port area and validating section 7 of the regular Catch Certificate (Annex II of the EU IUU Regulation). The Handbook indicates that these authorities have to be notified to the EC (DG MARE 2009b, p39)⁹², but the point still stands that there is no provision for this CA in the Regulation itself and there is no provision for the approval or publication of the authorities approved for transshipments. At present transshipments are authorised by authorities in third countries that have not had their CA notification published by the EC (see Box 7). There is no formal procedure for vetting these authorities so that EU MS and importers can be satisfied that a diligent Authority has indeed authorised the transshipment, supervised it and validated section 7 of the CC.

There is therefore a lacuna in the EU IUU Regulation concerning the approval of authorities endorsing Annex IV Processing Statements and those authorising transshipments in a port area and validating the section 7 of the CC.

Up to 90% of imports into the EU are processed in one form or another, and most are indirect imports, which means that the processing country is different from the flag of the fishing vessel. Many products are also transhipped in third country ports. The intention of the EU IUU Regulation is to control fisheries products to guarantee the legality of the fisheries products from capture to entry into the EU. This of course will not be the case if inappropriate authorities are validating CCs, endorsing Processing Statements and authorising transshipments. The implications of this for traceability will be discussed in section 4.4.2 and for the control of transshipments in section 4.5.2.

⁹¹ *Directeur de la Protection et de la Surveillance des Pêches and Directeur des Industries de Transformation de la Pêche*

⁹² "Section 7 (transshipment authorisation within a port area) is to be filled in by the Competent Authority responsible for the control of the transshipment, in accordance to the national organization structure in that country. If a country does not authorise transshipments the respective field does not apply. If transshipment is authorised it is up to the third country to organise its control and validation procedure and to notify its relevant Competent Authority/ies to the European Commission. The notified Competent Authority for this control has to sign this part of the catch certificate."

Recommendation IUU.7 The EP should ensure that the EC establishes a mechanism for the nomination of CAs endorsing Processing Statements and Boxes 6 and 7 of the CC for transshipments. The EP should insist that the EC establish objective criteria and transparent procedures for assessing the performance of CAs in flag State notifications received from third countries in accordance with article 20 and Annex III of the EU IUU Regulation. The EP should ensure that the refusal of a flag State notification has strong legal basis.

4.3 The controls operated by the MS and the European Commission on the implementation of the EU IUU Regulation and on FAP imports

4.3.1 The control effected by MS on FAP imports and IUU documentation

This section will describe and discuss the controls effected by EU MS CAs on goods being imported into the EU.

Checks and verifications foreseen in the EU IUU Regulation

Catch Certificates must be submitted to the CA of the MS between 72 hours (general rule) and two hours before the products arrive, depending on the mode of transport⁹³, and these will be subject to verifications (Art 17).

Member State (MS) CAs “shall, on the basis of risk management, check the CC in the light of information provided in the notification received from the flag State in accordance with Articles 20 and 22” (Art 16.1). They shall check, but only on the basis of risk management, thus leaving it up to the MS to judge when they may check, as this will depend on their judgement of the risk.

There are 15 criteria laid down in Art 31 of Commission Regulation No 1010/2009 for verifications to be carried out by MS⁹⁴, and each MS is expected to establish its own risk

⁹³ According to article 16 of the EU IUU Regulation The validated catch certificate shall be submitted by the importer to the Competent Authorities of the Member State in which the product is intended to be imported at least three working days before the estimated time of arrival at the place of entry into the territory of the Community. This deadline was adapted to few transport means in the implementing Regulation No. 1010/2009 article 8 and Annex IV as follows:

Four-hour period for submission of catch certificate prior to entry into the Community for Consignments of fishery products entering the Community by airfreight

Two-hour period for submission of catch certificate prior to entry into the Community for Consignments of fishery products entering the Community by road

Four-hour period for submission of catch certificate prior to entry into the Community for Consignments of fishery products entering the Community by railway

⁹⁴ Community criteria for verifications intended to ensure that the provisions of Regulation (EC) No 1005/2008 are complied with, as referred to in Article 17 of that Regulation, shall be focused towards risks identified on the basis of the following Community criteria: (a) importation, exportation or trade in fishery products obtained from species of high commercial value; (b) introduction of new kinds of fishery products or discovery of new trade patterns; (c) inconsistencies between the trade patterns and the known fishing activities of a flag State in particular in respect of species, volumes or characteristics of its fishing fleet; (d) inconsistencies between the trade patterns and the known fishing-related activities of a third country in particular in respect of the characteristics of its processing industry or its trade in fishery products; (e) trade pattern not justified in terms of economic criteria; (f) involvement of a newly established operator; (g) significant and sudden increase in trade volume for a certain species; (h) submission of copies of catch certificates accompanying processing statements according to Annex IV of Regulation (EC) No 1005/2008, for instance when the catch has been split during production; (i) prior notification, required under Article 6 of Regulation (EC) No 1005/2008, not transmitted at the proper time or information incomplete; (j) inconsistencies between catch data declared by the operator and other information available to the Competent Authority; (k) vessel or vessel owner suspected of being or having been involved in IUU fishing activities; (l) vessel having recently changed name, flag or registration number; (m) flag State not notified according to Article 20 of Regulation (EC) No 1005/2008 or information available on possible irregularities in the validation of catch certificates by a given flag State (e.g. stamps or validation seal from a Competent

assessment methodology. This invariably leads to different methodologies of risk assessment in different EU MS.

Verifications, understood to be in-depth checks when an anomaly has been identified or is suspected, may be carried out by MS, though no threshold is set for this, unlike the 5% set for landing and transshipment operations in their designated ports (Art 9.1). There are provisions in Art 17.4 of the EU IUU Regulation where “*verifications shall be carried out, in any case*” and where discretion is in theory not allowed. These refer to where there are grounds to question the authenticity of the CC, where they have information, where they have received reports, flag states or re-exporting countries have been reported by a RFMO or where an alert has been published. But even here, there is no certainty that EU MS will act in the same manner given any particular situation, and at present no system to verify the degree of differences between EU MS.

Recommendation IUU.8 Risk assessment systems and methodology vary between EU MS, leading to a high variability in the treatment of risk. Without prejudice to the autonomy of EU MS, the EP should follow up with the EC to ensure that there is a standardised system and methodology, based on objective and quantified criteria of risk. This should be backed up by an EU-wide information system.

Record keeping and information systems

There is also no obligation on MS to record which CCs (or Processing Statements) have entered the country. The UK estimates it receives about 30,000 CCs per year (pers. Comm.), but it does not record the number of verifications; Spain received 105,762 certificates in the first two years of the CCS, both for direct and indirect imports. Out of these, 396 verifications (requests for assistance) were sent to third country authorities in 2010 and 361 in 2011. France sent 60 verifications in 2010 and 65 in 2011. France does not record the total number of CCs and Processing Statements checked, though customs does record the number of consignments. However, there is no direct correlation between these and the number of certificates, since one consignment may be accompanied by one or several certificates.

According to the EU IUU Regulation consignments of fisheries products processed in a third country should be accompanied by a Processing Statement. This will be normally accompanied by the original CCs concerned (validating flag country of the catching vessel) where the product has been processed in one lot or where the lot purchased by the processing establishment has been fully processed, and by copies if this is not the case. The latter allows for the use of photocopies of the CC accompanying the imported raw material to be processed, and the opportunities of using this in excess of the amounts of raw product are clear, unless the use of CCs accompanying Processing Statements is monitored on entry into the EU. This Study found no case where a country was monitoring the use of CCs, due to the impossibly heavy workload this would imply. Indeed, all MS consulted indicated that this would be an impossible task, until there is an electronic system, and that such a system would have to be Union-wide.

Though the list of nominated CAs in third countries is published, and has been updated⁹⁵, it consists only of the name of the countries and of the CAs accepted by DG MARE. There is no contact point indicated. Though there is provision for CAs to provide contact details

Authority lost, stolen or forged); (n) presumed deficiencies in the control system of a flag State; (o) operators concerned who have already been involved in illegal activities constituting a potential risk in respect of IUU fishing.

⁹⁵ Information on States and their Competent Authorities Notified under Article 20(1) and (2) (as of 22 August 2011*) http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/flag_state_notifications.pdf

on the Catch Certificate, this is not always done, and the way is open for forgery and false information. Ports of entry and SLOs in EU MS have had difficulties in finding out the details of the CAs in third countries, as these are not published. This hampers the efficiency with which they can conduct verifications, increases the workload significantly for each port of entry, and effectively acts as a deterrent to carrying out verifications in borderline cases.

The information provided in the nomination for the different tasks of the third country CAs (see Footnote 85) is severely limited; it is confined to the *"names, addresses, and official seal prints of the public authorities situated in their territory which are empowered"* to perform those tasks (Annex III of the IUU Regulation). There is no obligation to provide named officers or sample signatures, though some third countries do this, since it has been a requirement on the hygiene side. The EC has established a Specimen Management System (SMS), which is a set of documents available to EU MS, a repository of various documents provided by the EC on models, stamps and other information. There is no overall record of the names of authorised signatories, and no demand for security features of any kind on the CC itself (unlike the health certificates, many of which do have security features). It must be said that some countries have submitted named officers and their signatures, and that ports of entry should have access to these through their SLOs. But the records are not centrally available and the system relies on the efficiency of individual EU MS. The EC passes the information through the customs authorities in MS. These pass it on to the SLO, who then pass it on to the ports of entry, where the checks on CCs are not carried out by the SLO. Thus, BIPs and designated ports do not have up to date information and nor do they have direct access to the system, as is the case with RASFF and TRACES on the hygiene side. The system for checks is therefore time consuming and inefficient.

Recommendation IUU.9 The existing paper based system, and the large number of CCs and Processing Statements involved, mean it is impossible for EU MS to monitor, much less control, the use of CCs and Processing Statements individually. Each country is at liberty to design its own format. Collectively, this risk is compounded, as the same CCs and Processing Statements can be reused. The EP should call for the institution of a common computerised system, starting from the issuance of the standardised CC and the Processing Statements, aimed at monitoring the CCs and Processing Statements issued by all countries and entering the EU.

Differences in checks and verifications

We have seen that irrespective of the type of consignment imported, the officers responsible in EU MS for checking and verifying the CCs will variously be fisheries inspectors, health inspectors or customs officials. This depends of the differing institutional set-ups. In some countries, the controls of the IUU documentation (i.e. CC and processing statements) are centralised within the institution responsible for fisheries. All documents are received by the MS CA at the central level which are sent by emails and are scanned copies of CC and processing statements. The original documents normally accompany the consignment physically but the checks are done on the scanned copies received by email. The CA at the central level can request the original documents (CC) normally accompanying the consignment, but they do not verify the authenticity of the documents in every case. In the case of the health certificate, the exporting third country sends the certificate to the relevant BIP prior to the arrival of the consignment through TRACES system, which guarantees the authenticity of the document. In other countries, though the original documents may well be available and are checked in a decentralised manner at the port of entry, these may be customs officers (as is the case in France) with no training or experience in IUU fishing.

In some of the countries the study has knowledge of, checks are often merely documentary and limited to the information contained in the CC and processing statement without the possibility of cross checking the information contained in the document with the physical inspection of the consignment. This prevents effective identification of irregularities and of IUU products. Moreover, as competent officers are not always present at the point of entry, they only have access to part of the documentation relating to a consignment and therefore inconsistencies between different elements (health, transport, customs, invoices and CCs and Processing Statements) will be difficult to spot because physical cross-checks will not be possible. This is likely to be the case in all countries where those checking the CCs and Processing Statements are removed institutionally and physically from those conducting sanitary checks⁹⁶.

In most cases copies of CCs and supporting documents are consulted, thereby undermining any document security that may be instituted in the EU IUU Regulation. Similarly, where documentary control is centralised, goods are effectively cleared from an IUU perspective without even an identity check⁹⁷. Only if the documentary check carried out by the health officers or customs at point of entry reveals a gross anomaly will the MS CA for IUU be called.

Moreover, exporters have claimed that in one country where controls are undertaken at the central level, the officers are not available during the week end, though the MS CA assured the study that they process CCs 365 days per year, 15 hours a day (Spain, 2013b). In another country, which is also centralised, if the CC or processing statement are sent by email to the MS CA by the importer during the week end, it was reported that clearance is given automatically to Customs to release the consignment. The control should in principle be carried out after the fact by the officer at the central level but the team there does not have the capacity to check all the documents received and therefore controls are weakened.

There appear to be documentary checks in all cases in those countries visited in the context of this study, but the issue is whether those documents are rigorously checked by trained staff. However, the proportion of identity checks varies from country to country. In the UK an identity check always involves opening a select and representative number of boxes (five). When checks reveal a problem, then the same office effects verifications with the importer and the flag State. When a case is particularly complicated, it is passed up to the head office of the Marine Management Organisation (the designated CA) in London.

Since in the UK the Port Health Authority has been charged with checking for both health and IUU, and therefore the chances of identifying an anomaly are that much higher.

In the UK they also follow an established procedure from the health inspection lexicon: document check; identity check; and physical check. Easy cases are verified by the port of entry with full sight of all supporting documents, but more difficult cases are sent to the main office for detailed verification and investigation. One-hundred per cent of consignments are subject to documentary checks, but these are hampered by the fact that the place of fishing is not detailed enough. It is not clear if products were fished in the high seas, or in a particular country's EEZ, and if this is the case which countries

⁹⁶ Spain indicates that its Unit in Madrid *"has access to CCs, processing statements, as necessary; to health certificates, transport documents, invoices and all relevant information. ... the Unit has an agreement with the revenue agency (Agencia Estatal de la Administración Tributaria – AEAT-Aduanas), and the Fisheries Inspection Services also come under the same General Secretariat"* (Spain 2013a, Translated).

⁹⁷ There are concerns about consistency in identity checks (see section 3.3)

these may be. This hampers the possibility of demanding sight of licences from appropriate authorities.

In France the customs officers at the port of entry are charged with checking documents on the basis of copies of CCs and Processing Statements, and consignments can be cleared on this basis. If they perceive an anomaly they will ask the importer to provide the original documents. If the consignment is not considered risky, it will be allowed to enter and the importer will be asked to present the original documents within two months of import. In principle they consult the Single Liaison Office⁹⁸ (SLO) in Paris, which will carry out in-depth verifications.

The situation in Spain is the reverse: the CC is checked in Madrid, and if they perceive a problem, they might ask a local inspector (of which there are 100 country-wide) to inspect the consignment. The chances of finding anomalies using this system are low⁹⁹.

There are concerns that in the Netherlands, where there is a long tradition of *entrepôt* trade, the imperative is to pass the goods through the ports of Amsterdam and Rotterdam, under customs procedures, without rigorous IUU checks.

Such differences in the institutions, procedures, criteria and frequency of checks and verifications will inevitably lead to different performance of ports of entry and the fisheries industry, being international in scope and nature, will seek the weakest entry point for its products into the EU. The role of the EC in promoting a common and uniform border in the fight against IUU fishing is obvious, and the extent to which they are doing this will be assessed in section 4.3.3.

Recommendation IUU.10 Without prejudice to the autonomy institutionally of EU MS, the EP should urge the EC to assess whether EU MS are carrying out effective controls (particularly with respect to identity checks), and ensure that standardised practices are employed.

Recommendation IUU.11 In order to ensure that documentary (such as licences) and traceability checks can be effective, the EP should urge the EC to ensure that the Catch Certificate indicates the EEZs where FP were fished and/or the relevant RFMO area.

The refusal of consignments

According to the EU IUU Regulation, the EU MS may refuse importation on various grounds, either without having to request extra evidence (Art 18.1)¹⁰⁰ or after a request for assistance has been sent (Art 18.2)¹⁰¹. The number of refusals in selected countries is

⁹⁸ SLOs are established under Art 39 of the COMMISSION REGULATION (EC) No 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008

⁹⁹ The Spanish Government informs the authors (information not made available to it by the EC) that "55% of rejections of imports, based on the IUU Regulation, in all the EU since 2010 have been effected by one MS, Spain. And that there is a high number of MS (the majority) that since 2010 has not communicated any refusal of importation since 2010 based on the IUU Regulation... In 2013 Spain has effected 24 denials, for a total of 675 tonnes... These denials, form part of the results of 605 verification procedures which have been carried out by this Unit in 2013." (Spain, 2013b, Translated)

¹⁰⁰ This includes where a CC has not been submitted, the products are not the same as those indicated, the CC is not validated, the CC does not contain all the required information, indirect imports are not accompanied by the necessary (Art 14) statements, the fishing vessel is an IUU vessel, the CA is from a non-cooperating State in accordance with Art 31.

¹⁰¹ This would include receiving a reply where the importer was not entitled to the CC, the items products do not comply with existing management measures, they do not receive a reply within the stipulated deadline and they have received a reply that does not provide pertinent answers.

presented in Table 17 below. Such refusals continue to be practiced, in the UK for tuna imports in particular, related to problems with supplies from Ghana, and in Spain (Ford, 2013).

Table 17: Refusals of imports, 2010 to 2013¹⁰²

Member State	2010	2011	2012	2013
France	None	4	n/a	n/a
Germany	n/a	2	3	n/a
Spain	13	6	16	5
UK	13	9	n/a	n/a

Source: Spain 2011; personal communications with MS CAs.

Action upon refusal is determined in the following terms (Art 18.3): *"In the event that the importation of fishery products is refused pursuant to paragraphs 1 or 2, Member States may confiscate and destroy, dispose of or sell such fishery products in accordance with national law. The profits from the sale may be used for charitable purposes."*

The French authorities take this Article literally, and do not send product back to the country of origin or forward it to another country. However, most of the rejected products from Spain and the UK have been sent back or forwarded to another destination despite the fact that this is not foreseen expressly in the EU IUU Regulation. This practice of sending back the consignment is provided by the EU sanitary regulation (see section 3.3) in case of a consignment of FAP not considered in compliance with the sanitary requirements (e.g. quantities of heavy metal not respecting the legal thresholds). In such a case, the importer can decide to destroy the FAP or to send them back to the exporter of the country of origin.

In a letter to the industry (DFID 2013), the UK government advised industry of its concerns regarding the source of tuna from West Africa fisheries, and highlighted its increasing vigilance in this regard, including processed products sourced from these fisheries. However, the letter does indicate that *"rejected consignments have either to be destroyed or returned to the exporter"*.

Recommendation IUU.12 The EP should urge the EC to clarify the situation regarding what happens to rejected consignments and ensure that the same policy is pursued by all EU MS.

Sanctions

There is of course a significant difference, in terms of deterrence, between destruction or return. The destruction of a container with EUR 50,000 worth of products is a greater deterrent than its rejection for sale in another market, which will just incur administrative charges, demurrage and transport costs. If EU MS are treating IUU FAP differently, the industry will become aware of this and send their products to those countries that take a softer line.

¹⁰² Because of DG MARE's refusal to provide the EU MS biennial reports or any summary of them to the Study, it is not possible to provide a full picture.

Given the common market and free movement of goods within the EU, there is a strong case for harmonisation across EU MS, and the EC, as overseer of the implementation of the EU IUU Regulation, has the responsibility of ensuring this is the case.

Chapter VIII of the EU IUU Regulation is devoted to identification, prevention and sanction of EU MS nationals engaged in IUU fishing and related activities, without prejudice to the primary responsibility of the flag State. Member States shall not provide any “*public aid ...to those operators involved in the operation, management or ownership of fishing vessels included in the Community IUU vessel list*” (Art 40.3), though this is without prejudice to other provisions in Community law pertaining to public funds¹⁰³.

Chapter IX relates to immediate enforcement measures and sanctions¹⁰⁴. Scales of fines are indicated, as well as immediate enforcement measures such as cessation of fishing, ordering bonds, seizure of gear and catches, and immobilisation of the vessel, as well as severe accompanying sanctions of a similar nature on conviction. They are intended to “*effectively deprive those responsible of the economic benefits derived from the serious infringements*”, but are not punitive. This begs the question as to whether the intention is enough of a deterrent. The Study received no indication from the EC on the application of sanctions under this Chapter, as distinct from other tools under the CFP. There is an element of overlap and confusion among MS States (Spain, 2011).

The special case of direct landings in EU ports by third country vessels

Access to port by fishing vessels of third countries is limited to designated ports under the EU IUU Regulation (Art 5). Here one question arises related to the fact that the definition of fishing vessels excludes container vessels¹⁰⁵. Containers have comprised between 85% and 92% of volumes of imported FAP into the EU through BIPs between 2007 and 2012¹⁰⁶. Though there are claims that the proportion of goods entering in containers have increased because of stricter measures on fishing vessels, if anything the proportion of FAP entering by container has declined, the average being of 89% before the introduction of the EU IUU Regulation and 86.5% since. We have seen in section 3.4 that direct landings (as defined by the hygiene regulations) from third country vessels are allowed in non BIP ports for fresh products. According to the EU IUU Regulation, third country vessels shall give prior notice¹⁰⁷. Member States shall authorise entry into port, and will conduct port inspections of at least 5% of landings and transshipments done by third country fishing vessels. Similar benchmarks do not exist for goods entering by container. If the MS does not authorise the landing or transshipment, it will communicate this decision to the Commission¹⁰⁸. However, no consolidated record is being kept by the EC on these rejections¹⁰⁹, though this issue will apparently be addressed in the forthcoming ‘State of play’ study on the impact of the EU IUU Regulation.

¹⁰³ This may be a let-out clause allowing continued subsidies to operations related to IUU, but discussing this is beyond the scope of this study.

¹⁰⁴ These are complemented by provisions in Ch. IV of Council Regulation 1224/2009, which controls activities of EU MS vessels.

¹⁰⁵ According to article 2.5. of the IUU EU Regulation “fishing vessel” means any vessel of any size used or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, fish processing vessels, vessels engaged in transshipment and carrier vessels equipped for the transportation of fishery products, except container vessels”.

¹⁰⁶ 2007: 86%; 2008: 88%; 2009: 92%; 2010: 88%; 2011: 87%; 2012: 85%. Source FVO (TRACES)

¹⁰⁷ EU IUU Regulation Article 6 “1. Masters of third country fishing vessels or their representatives shall notify the Competent Authorities of the Member State whose designated port or landing facilities they wish to use at least three working days before the estimated time of arrival at the port...accompanied by a Catch Certificate...”

¹⁰⁸ The CFCA is delegated receipt of these in Commission Decision 2009/988/EU

¹⁰⁹ Reference meeting in DG MARE on 14 March 2013.

4.3.2 Controls by EU MS on exports and re-exports

Member States must validate CCs for their exported products if so required by third countries (Art 15) normally in the framework of the cooperation (Art 20 (4)), of which there are seven at present (EC, nd)¹¹⁰. They must also produce Catch Certificates where products are processed in third countries, as a T2M (see section 4.6) is not an acceptable supporting document for the Annex IV Processing Statement. The controls effected by EU MS on their fisheries vessels, within Community waters and abroad, are determined by the *Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy* (Council, 2009), and it is these controls that are effected by EU before issuing the CC.

Where the products are to be re-exported from the EU, the MS must validate the re-export section of the original CC when it is the whole consignment and of a copy when it is for part of the products imported (Council 2008a, Art 21.1) and in the case of re-exporting processed products. This is of course the practice, but there is a significant risk that copies of CCs are used in excess of the quantities re-exported, as there is no record of the use of CCs and the way consignments have been split. On arrival in the third country for processing, the consignment may be split further, before return to the EU under a processing statement bearing several CCs. Where FAP are re-exported and then reimported into the EU under a processing statement bearing several CCs (as happens in particular with whitefish), the use of copies of copies of Catch Certificates makes traceability virtually impossible when the product finally re-enters the EU.

Where products are fished by EU vessels and pass through the EU for re-export to a third country that requires a Catch Certificate, or that will process the product, a CC will be required on entry into the EU, along with the T2M discussed in section 4.6. Thus these two sets of documents can accompany the same consignment, highlighting the possibility of one set being used to justify another consignment.

A significant number of re-export certificates are validated (see Table 18)¹¹¹.

Table 18: Re-export certificates validated

Member State	2010	2011
France	22	36
Spain	344	729
UK	52	53

Source: Spain (2011); personal communications with MS CAs.

During the visits conducted in the framework of this study, France cited the Export Control System, and indicated that customs monitor the products to ensure they leave the EU, but the fisheries authorities in Spain and the UK declared they do not yet do so. Spain and the UK do verify the Bill of Landing and transport documents including container numbers before validation.

¹¹⁰ Iceland, Madagascar, Norway, Thailand, Ivory Coast, Tunisia, Kuwait.

¹¹¹ These figures are an underestimate, since there is no national database in France, regarding re-exports. For this country, the figures in the table below reflect those re-export validations conducted by customs, but when there are several CCs, only one CC is recorded in the Customs system.

Recommendation IUU.13 The EP must insist that the EC puts in place a system whereby re-exports are subject to strict controls in order to ensure traceability: electronic system for monitoring the split of consignments and paper-based records on documents themselves, to ensure that EU MS can trace the origin and trajectory of FAP if they are re-imported into the EU.

4.3.3 The European Commission's control on MS implementation of the EU IUU Regulation

DG SANCO, through the FVO, has a formalised system of inspections and controls of EU MS CAs and BIPs (see section 3.1). These follow an agreed and regulated methodology. Inspectors' reports, and the agreed action plans are published on DG SANCO's web site¹¹². The EU IUU Regulation has no such provision for formalised audits or inspections of MS CAs. According to the information provided to this Study, DG MARE has undertaken visits to MS CAs and MS designated ports, but the results of these missions or of the resulting action plans are not published, and they have not followed a standardised methodology agreed with third countries or with EU MS.

In the context of the EU IUU Regulation, the EU MS CAs, designated ports and BIPs are not subjected to any regular and standardised monitoring or evaluation. This is in contrast to the provisions and practices under the hygiene regulations, monitored by DG SANCO. Since 2010, when the EU IUU Regulation came into force, Germany has been subject to 18 inspections by DG SANCO, whose reports are available (at February 2013), France to 17, Spain to 14 and the United Kingdom to 16.

There are meetings taking place between EU MS and the Commission on implementation of the EU IUU Regulation, through an *ad hoc* IUU Working Group¹¹³, and these have been useful for exchanging information between EU MS.

The European Fisheries Control Agency (EFCA) participated in national training effected in MS at a national level in 2010, in Cyprus, Lithuania and Poland, and in 2011 in Malta. There are occasional training sessions undertaken in Vigo by the EFCA for staff from EU MS¹¹⁴. Trainees have included fisheries officials, customs and veterinary officers.

The IUU Working Group and the EFCA training can be useful fora for exchanging information and experiences. However, they have revealed stark differences in the application of the Catch Certification Scheme in different MS, such as the degree of inspection, verification and the treatment of landings passing to¹¹⁵ other countries.

Given that one of the fundamental principles of the EU IUU Regulation is the application of a common measure throughout the EU (hence a Council Regulation), the variability in the application of the EU IUU Regulation by EU MS is a major weakness, and may encourage importers to send product to the less rigorous entry points. Just as the Council has expressed its concern about the "*wide discrepancies*" in the application of the CFP, this is bound to be the case with the EU IUU Regulation. It is too early to point to statistical evidence that this is the case, especially since the EC is not publishing information on the implementation of the EU IUU Regulation and it did not provide this Study any information on this subject. However, there are concerns with respect to the

¹¹² http://ec.europa.eu/food/fvo/ir_search_en.cfm

¹¹³ EFCA (2009, 2010, 2011) The EFCA set up a IUU Working Group, concerned with the tasks assigned to the EFCA. This met twice in 2010 and once in 2011, when it was discontinued.

¹¹⁴ 2009: 4 sessions with 47 participants; 2010 5 sessions; 2011 4 training workshops

¹¹⁵ The author has avoided the term transit, as the definition varies between the IUU Regulation, Customs and the hygiene package.

controls on fishery products at BIPs that are not designated fishing ports and which are the location for high container and entrepôt trade. For example there exist anecdotal concerns that in the Netherlands, where there is a long tradition of entrepôt trade, the imperative is to pass the goods through the ports of Amsterdam and Rotterdam, under customs procedures, without rigorous IUU checks.

The common market, and in particular the EFTA, has a basic principle concerning the common external border that EFTA member countries create, with free movement of goods internally. The sanitary regulations create a common EU frontier with the BIPs, which control the entry of goods into the EU. After entry, they are controlled by national inspectors; Schengen countries do the same for their members regarding visits¹¹⁶. It is odd that the EU IUU Regulation, conceived after all of these, and with the benefit of their accumulated wisdom, does not apply the same principles.

The EU IUU Regulation has created designated ports for fishing vessels landing and transshipping (Art 5), and laid down norms for port inspections (Art 9 – Art 11), but we have seen in section 2.4 that up to 92% of FAP enter in containers, and these do not have to enter designated ports under the EU IUU Regulation, though they do have to enter BIPs under the Health Regulations. The controls at entry points for fishery products under the hygiene rules are subject to close supervision and standardisation from the Commission, in the form of audits, publicly available reports, and the TRACES system, but the EU IUU Regulation envisages no such controls or standardisation for goods entering in containers, and merely relies on the interpretation of the EU IUU Regulation by individual EU MS. Until there is a common front, importers will play with the differences they experience in the controls effected by EU MS.

The EC (DG MARE) must publish transit arrangements (Art 19.2), but there is no record of this being done. Chapter IV lays down a Community Alert System, similar to the RASFF under the hygiene package. Though Art 23.1 indicates that alerts will be published on the Commission web site, no such alert is to be found there. There is also no record of the SLOs being published in the Official Journal, as provided for in the implementing Regulation (EC 2009b, Art 39).

There is provision under Art 55.1 of the EU IUU Regulation that MS submit biennial reports to the Commission by 30 April of the following year, and certain countries have done this¹¹⁷, in accordance with a questionnaire template provided by the Commission. On occasion this Study has been provided this by a Member State CA¹¹⁸, and these have provided important inputs to this Study.

These are potentially an invaluable source of information and reflection for the Commission, which should form the basis of a thorough review of the EU IUU Regulation and its implementation, as will be seen in this Study.

Recommendation IUU.14 The EC's monitoring and supervision of the implementation of the EU IUU Regulation is opaque, patchy and incomplete, thus undermining the effectiveness of the system. The EP must insist on the EC adhering to the provisions in the EU IUU Regulation on publication of SLOs, transit arrangements and

¹¹⁶ See the Schengen Agreement of 1985, the Convention Implementing this of 2000.

¹¹⁷ DG Mare did not provide the Study with these reports or of an indication of which EU MS had complied, despite a formal request for these from the European Parliament. France, Spain and one other country (which asked for the report not to be cited as a source) provided their reports directly to the authors of the Study.

¹¹⁸ DG MARE did not see fit to provide the Study with this invaluable source of feedback.

alerts, on the establishment of a publically available programme of audits to MS countries and publication of the results of these audits on its web site, on the provision of coherent and standardised training and support in the implementation of the EU IUU Regulation to EU MS, as well standard procedures, and on the publication of the biennial reports on the implementation of the EU IUU Regulation from EU MS.

4.3.4 The European Commission's control on the third countries implementation of the EU IUU Regulation and the EC's general oversight and coordination of implementation of the EU IUU Regulation

Training and support

Before the implementation of the EU IUU Regulation, the Commission, with the help of the EFCA (for Bogota and Johannesburg in 2009), effected five regional training seminars for developing countries (EFCA 2009, 2010, 2011)¹¹⁹. Many third countries did not attend, but the reasons for this are unclear. They were of a limited duration, two to three days. The attendees were not necessarily the appropriate officers, as many of the nominations for CAs had not yet been accepted. The training materials provided were inadequate: they amounted to two "*Brochures*", one a copy of the EU IUU Regulation and the other a copy of Commission Regulation No. 1010/2009 and Commission Regulation No. 86/2010, all of which is freely available on the internet. Since then, there has been no training by DG MARE organised for third countries. However, some assistance has been provided by a series of notes (see Annex 4) and by a helpline provided through an email address which CAs have access to (companies in third countries must seek clarification through their own CAs). Further assistance has been provided through a project¹²⁰ financed by Europeaid for developing countries, 51¹²¹ of which were given help in 2011 and 2012 concerning the implementation of the EU IUU Regulation. All but four of these had had their flag State notification accepted¹²².

DG SANCO has had a long-standing programme of help to third countries and Member States (see chapter 3), better training for safer food, which "*trains Member State and candidate country national authority staff involved in official controls in these areas. This aims to keep participants up-to-date with EU law in these areas and should help to ensure more harmonised and efficient controls. Efficient controls are an essential factor in maintaining high levels of consumer protection, animal health and plant health. Harmonisation of controls should help to create a level playing field for food businesses. Training is also organised specifically for third, particularly developing country participants so as to familiarise them with EU requirements.*"¹²³ DG MARE has no such programme.

Missions undertaken in third countries

As with MS CAs (see section 3.1) DG SANCO, through the FVO, has a formalised system of inspections and controls of third country CAs and their establishments (see section

¹¹⁹ Johannesburg (South Africa) for English speaking African countries, Ho Chi Minh (Vietnam) for all Asian countries, Bogota (Colombia) for all Latin America and Caribbean, Douala (Cameroun) for Arab countries and West Africa and Noumea (New Caledonia) for Pacific countries.

¹²⁰ Accompany developing countries in complying with the implementation of Regulation 1005/2008 on IUU fishing EuropeAid/129609/C/SER/Multi

¹²¹ Angola, Antigua & Barbuda, Argentina, Bangladesh, Cape Verde, Colombia, Costa Rica, Cote d'Ivoire, Curacao, Ecuador, Egypt, El Salvador, Fiji, Federated States of Micronesia, Gambia, Ghana, Guatemala, Guinea, Guyana, India, Indonesia, Kenya, Kiribati, Madagascar, Malaysia, the Maldives, Marshall Islands, Mauritania, Mauritius, Mexico, Morocco, Mozambique, Myanmar, Namibia, Nicaragua, Nigeria, Panama, Papua New Guinea, Peru, the Philippines, Senegal, Seychelles, Solomon Islands, Sri Lanka, Surinam, Tanzania, Thailand, Tunisia, Uruguay, Vanuatu, Vietnam

¹²² Federated States of Micronesia, Kiribati, Marshall Islands, Vanuatu

¹²³ http://ec.europa.eu/food/training_strategy/

3.1). These follow an established methodology. Inspectors' reports, and the agreed action plans are published on DG SANCO's web site. According to article 20 (4) of the EU IUU Regulation, *"The Commission shall, where appropriate, cooperate administratively with third countries in areas pertaining to the implementation of the catch certification provisions of this Regulation, including the use of electronic means to establish, validate or submit the catch certificates and, where appropriate, documents referred to in Article 14(1) and 14(2)"*. According to paragraph c of this article, *"such cooperation shall aim to provide for the conduct of on-the-spot audits by the Commission or a body designated by it to verify the effective implementation of the cooperation arrangement."* However, no instrument has been adopted so far to regulate these audits. The IUU EU Regulation itself does not provide strong legal basis to undertake these kinds of audits in third countries.

Since 2010 the European Commission, through DG MARE, and with the assistance of the EFCA¹²⁴, has been undertaking audits in notified third countries. These are sometimes preceded or followed up by bilateral or political dialogue missions on IUU issues.

The aim of these missions was mainly to evaluate the implementation of the Catch Certification Scheme (CCS) and the firmness of the MCS system in place in the visited country including an evaluation of the flag State, port State and coastal State measures with regards to the international standards (i.e. FAO agreements). DG MARE does not make the list of the countries they have visited publically available, though this Study was informed of the countries that have been visited¹²⁵. In case of non-compliance, these visits could lead to the identification of non-cooperating third countries¹²⁶. The mission reports are also not published, in contrast to the FVO reports which are published on the DG SANCO website. These reports are neither communicated to the European Parliament and nor to the EU MS. Neither did this Study have access to these reports. The opacity existing around these missions in the notified third countries exporting to the EU makes impossible to understand the position of the European Commission with regards to the risk of imports of IUU products into the EU from these visited third countries.

Given the importance of traceability (see section 4.4), there is a strong case for formalised and transparent system of audits in third countries to assess whether the standards of MCS in these countries can be judged to be equivalent to those applied in the EU.

List of non-cooperating countries

Chapter VI and VII of the EU IUU Regulation relates to the identification of non-cooperating third countries and to the potential measures which could be taken against them once listed. Article 38 lays down the action in respect of non-cooperating third countries. This includes the prohibition of imports of fishery products caught by fishing vessels flying the flag of that country, prohibition of the purchase, reflagging and chartering of such vessels, prohibition of private trade arrangements concerning the

¹²⁴ In accordance with Commission Decision 2009/988/EU of 18 December 2009, Article 1(b) *"upon request from the Commission, provide for the conduct of on-the-spot audits, alone or in cooperation with the Commission, to verify the effective implementation of agreed cooperation arrangements with third countries in accordance with Article 20(4), second subparagraph (c) of Regulation (EC) No 1005/2008"*; the EFCA reports missions in 2010 to Belize, Panama and Sri Lanka (CFCA 2010) ; in 2011 to China (2), Guatemala, Guinea Conakry, Indonesia, Korea, Mauritius, Papua New Guinea, Senegal, Thailand, Togo (EFCA 2011).

¹²⁵ To 14 March 2013. Panama, Belize, Sri Lanka, Mauritania, Thailand, China, Guinea Conakry, Senegal, Indonesia, Korea, Papua New Guinea, Philippines, Taiwan, Vanuatu, Fiji, Ivory Coast, Togo, Honduras, Guinea Equatorial, Cambodia, Vietnam, Philippines, Taiwan, Curacao

¹²⁶ EU IUU Regulation Art 31.1: *"The Commission, in accordance with the procedure referred to in Article 54(2), shall identify the third countries that it considers as non-cooperating third countries in fighting IUU fishing."*

exploitation of the fishing resources of such countries, and prohibition of joint fishing operations and fishing agreements.

In accordance with Art 32 of the EU IUU Regulation¹²⁷ the European Commission published through a Commission Decision (EC 2012) a list of eight third countries, which it deems possible of being as identified as non-cooperating third countries¹²⁸. It is hard to see how the Commission Decision is indeed binding (despite the binding status of Decisions¹²⁹), since it is the Council that establishes the list of non-cooperating countries (Art 33) and the Commission is merely "*notifying the third countries that the Commission considers as possible of being identified as non-cooperating third countries*".

Together, FAP from the potentially listed countries in the Commission Decision amounted to EUR113.5 million in 2011 and comprised 0.6% of imports of FAP into the EU in the same year. They comprised only 2.2% of the value of imports from these particular countries (see Table 19).

Table 19: Value of imports from notified non-cooperating states, 2010 & 2011 (EUR)

	2010			2011		
	Total	FAP	%	Total	FAP	%
Belize	105,215,138	4,035,507	3.84%	82,580,976	6,694,219	8.11%
Fiji	40,356,226	421,311	1.04%	68,319,444	689,867	1.01%
Guinea	472,013,955	2,061,177	0.44%	471,206,420	1,346,675	0.29%
Cambodia	906,431,849	-	0.00%	1,337,933,375	-	0.00%
Sri Lanka	2,190,672,163	113,093,624	5.16%	2,407,715,396	65,138,226	2.71%
Panama	646,203,359	40,044,680	6.20%	383,719,714	39,459,084	10.28%
Togo	220,545,738	146	0.00%	320,829,396	667	0.00%
Vanuatu	195,808,499	305,238	0.16%	96,769,931	178,516	0.18%
Total/ Average	4,777,246,927	159,961,683	3.35%	5,169,074,652	113,507,254	2.20%

Source: Eurostat

EU MS citizens and companies have significant interests in operations involving these countries. Trygg Mat (2012) conducted an analysis of fishing vessels flagged to these eight countries and found that 27% of vessels with known owners are owned by EU-based companies, 24% of the vessels with foreign operators are operated by EU-based companies, EU-based companies are involved in one or other capacity in 66 of the vessels, including two vessels on RFMO IUU lists, there is involvement of 50 companies from 14 different EU member States and there are more vessels controlled by EU-based

¹²⁷ Art 31.1: "The Commission shall, without delay, notify countries concerned of the possibility of being identified as non-cooperation third countries in accordance with the criteria laid down in Article 31."

¹²⁸ These are Belize, Cambodia, Fiji, Guinea, Panama, Sri Lanka, Togo, Vanuatu

¹²⁹ See section 4.2.1.

companies than by any other single State. However, most of the countries on the list are not important trading partners with the EU. Fiji lost its listing with DG SANCO in 2008 and only regained it around 2010. Cambodia, Guinea and Togo are not authorised on the DG SANCO list to export to the EU, so the impact of non-cooperating country status is likely to be minimal.

According to Article 33.1¹³⁰ of the EU IUU Regulation the Council shall decide on a list of non-cooperating third countries; this decision has yet (at April 2013) to be made.

General oversight and evaluation

Under Art 55.2 of the EU IUU Regulation, on the basis of the biennial reports from EU MS, the EC must provide a report every three years to the European Parliament and to Council, based on the biennial EU MS reports and their own observations, but there is no deadline provided for this. The EC had not submitted this by June 2013.

The EC shall undertake an evaluation of the impact of the Regulation by 29 October 2013 (Art 55.3 of the EU IUU Regulation). EU MS have been asked to provide inputs to this evaluation in a general manner, but have not been provided any template or guidance as to how these should be carried out, so there is a real chance that the opportunities provided by this evaluation may not be fully appropriated.

As indicated in the previous sections each MS is free to record the Catch Certificates, Processing Statements and other documents falling under the provisions for indirect importation (Art 14.1) in its own way. There are various mentions of electronic means of communication in the EU IUU Regulation, but there is no standardised system foreseen for monitoring the issue, use and control of Catch Certificates and Processing Statements. Nor has the EC put a system in place to record the issue of CCs and Processing Statements or their use on importation into the EU. This is in stark contrast to the existence of the TRACES scheme managed by DG SANCO (see section 3.2), and the schemes managed by EU Member States with respect to customs, such as DELTA in France. Thus, the European Union is operating in a vacuum with respect to its supervision of the use of CCs and associated documents. The implications of this for traceability are profound.

Recommendation IUU.15 The EP should insist, as it has done for the CFP annually, that the EC publishes its own biennial assessments of the implementation of the EU IUU Regulation, including the EC's own activities in support of and in evaluation of both MS and third countries, statistics on CCs and Processing Statements received, rejections of consignments from Member States, MS performance, third country performance, the system of alerts, the information system and cooperation with third countries.

4.4 Assessment of traceability conditions and potential sourcing from IUU fishing

4.4.1 The concept of traceability

In 2002, the EU's General Food Law (Council 2002a, Regulation 178/2002 Article 18) came into force requiring compulsory traceability for food and feed operators. Article 4 of

¹³⁰ Art 33.1: "The Council, acting by qualified majority on a proposal from the Commission, shall decide on a list of non-cooperating third countries. »

Council Regulation No 104/2000 also came into effect, mandating that all fishery products be labelled with the commercial designation of the species, the production method (if farm raised), and the catch area or production location (Council 1999). European Community Commission Regulation No 2065/2001, Article 8 (EC 2001), pertains to detailed provisions for the application of EU Regulation No 104/2000 and requires that all chilled, frozen, smoked fish or fillets, and shellfish, when offered for retail sale, be labelled in accordance with EU 104/2000. This information must be provided at each stage of the marketing chain, either by direct labelling or acceptable commercial documentation. In 2004, TRACES (Trade Control and Expert System) was introduced to control import and export of live animals and animal products to the EU.

To enforce CFP rules, a control system, established in 2009 (Council, 2009, Regulation 1224/2009; Article 58) and implemented in 2011 (Commission implementing Regulation (EU) No 404/2011), was designed in part to ensure that fish products can be traced back throughout the supply chain. At every point along the chain, for every consignment of fish, information must be provided that proves the legality of the catch. Since enforcement and verification at sea can be costly, checks at every point in the chain are conducted at ports of landing or transshipment, during transport, and in processors and at markets. The control system applies to all fishing in EU waters, all fishing conducted by EU vessels in any waters, and recreational fishing on sensitive stocks and aquaculture regulated at the EU level (e.g. eel or Bluefin tuna).

The Catch Certification Scheme attests that a given product from a given vessel has been fished according to national, regional (e.g. RFMOs recommendations) and international laws. The CC must accompany the consignment, and therefore the document should provide for all necessary information to ensure full traceability of the product. There is no definition of traceability in the EU IUU Regulation. However, the concept of traceability is central to hygiene controls, such as HACCP, and labelling schemes. The principle applied in the hygiene sphere is normally one of “*one up one down*”, where at any given point it must be possible to determine where a given batch has come from and where it went to. From a labelling perspective, the traceability usually refers to the origin of the product, and in some cases, its exact provenance. This is proving to be more common, as movements such as FishWise attest.

Traceability has become a high profile issue in the fisheries marketing sector, as the public’s concern has risen, and certain industries have taken the initiative in ensuring that the customer can trace the product he or she buys back to source (Boyle 2012).

Regulation (EC) No 854/2004 of The European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (Council 2004), in its article 2.2 makes reference to the definitions laid down in Regulation (EC) No 178/2002 (Council 2002a), where traceability is defined as the “*ability to trace and follow a food, feed, food-producing animal or substance intended to be, or expected to be incorporated into a food or feed, through all stages of production, processing and distribution*”. Labelling regimes go further, by allowing the consumer to know the exact provenance of a product. It is imperative that traceability in the context of the EU IUU Regulation implies the assurance that the product has been fished legally. The question of traceability of the product in the context of the CC and the EU IUU Regulation is extremely important as the CC is validated before the product is exported which means often after the processing process when it takes place. The EC made very clear that the CC should only be issued when the consignment is ready for export to the EU and contain the weight and species exported to the EU. Therefore the challenge in terms of traceability is to ensure the origin of the

fishery products exported to the EU (i.e. fishing vessels and catch area) at all stages (i.e. from the landing site to the export of the final product) is legal.

The question, therefore, to be answered regarding traceability, is whether the officer controlling the consignment at any particular time can verify with a good degree of certainty whether the FAP were caught legally.

4.4.2 The controls operated by exporting third countries

The complexity of the system: the need to establish a traceability back to the landing site

Issuing the Catch Certificate and traceability

Due in part to the explicit references and parallels with Catch Documentation Schemes, and in part to the name of the primary certification measure in the EU IUU Regulation (i.e. Catch Certificate) many third countries interpreted the Catch Certificate as a record of what was caught by a particular vessel, and would be issued at landing. This would be validated by the flag State on landing, or before transshipment. Thus, on the introduction of the scheme there were many Competent Authorities who validated Catch Certificates with the total amount landed or caught. On export, these would accompany the consignment to the EU without necessarily reflecting exactly the weight of the consignment being exported to the EU. Others interpreted the Catch Certificate as being more akin to the Health Certificate, which accompanies the FAP in a consignment and must reflect those goods exactly.

Due to this confusion, in August 2011 the EC published two notes indicating that the weight indicated in the Catch Certificate should be the same as that of the consignment. The first is undated, and the second is dated August 2011¹³¹ (WICC). On receipt of this instruction, some countries, such as Thailand, established a system whereby a first CC on landing (a parent CC) would be complemented by a second CC (a child CC) on export referring to the first one, but that in itself proved to be contrary to the requirements of the EU IUU Regulation according to the EC.

The detailed table in the note of 24 May 2011 still provides for the signature and stamp of the master of the fishing vessel, but export can take place long after the product has been landed, and it has been sold, split and resold, and at the time of export the Master of the fishing vessel may no longer be available. This undoubtedly causes significant problems for traceability, as the catch certificate is far removed from the moment of landing. The Handbook indicates that it should be the Master or his representative who signs the Catch Certificate, so in many cases it is the latter who signs. Sometimes a scanned specimen of signature is appended by the exporter on the CC or detailed annex attached to it. There is no guidance, however, as to who the representative should be. In some cases, it can quite simply be the export agent, rather than a body linked directly to the fishing vessel.

This puts the onus on control and traceability on third country CAs from the moment and place of export back to, through the processing and handling stages, the landing site and

¹³¹ IUU Regulation – Weight in the Catch Certificate – Product Code (undated, no reference) http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/weight_in_catch_certificate_en.pdf and IUU Regulation – Weight in the Catch Certificate – Part II (August 2010) http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/weight_in_catch_certificate_part2_en.pdf

the control of the vessel. So, whereas the *raison d'être* of the EU IUU Regulation is flag State control, elements of port and market State control play heavily in the equation.

In order to ensure full traceability, flag State and coastal State controls must be at play when fishing activities are being carried out. These will include, but will not be limited to Vessel Monitoring Systems, log books, observer programmes and at-sea inspections, including sea and air surveillance.

Coastal State and port State controls must be in effect on landing; these may include landing declarations and quayside inspections.

Market State controls must be in effect from landing through transport to the processing storage establishments, entry into the facility, checks on traceability within establishments, checks on loading for export.

Fisheries management framework

All of these elements must be regulated through a comprehensive set of legal and regulatory tools, and must be in the context of a solid fisheries management framework, implying basic stock assessment, something we have seen in section 2.1 does not even apply to the European Union, let alone in third countries.

The authors' experience in more than half of the third countries whose notifications have been accepted by DG MARE indicates that a large number of countries have fisheries management plans, there are generic fisheries management measures in place regarding gears, zones and species, there are input (capacity and effort) controls in place, and output controls (see Table 20).

Table 20: Fisheries management framework in selected third countries

Indicator	Yes	No	Qualified	Qualifying comments
Are there fisheries management plans?	24	15	9	Some countries have drafts but these are not implemented
	50%	31%	19%	
Are there generic fisheries management measures applying to gears/zones/etc. (prohibitions, seasons, minimum species sizes, prohibited species, etc.)?	41	0	7	Remaining countries partial application
	85%	0%	15%	
Are there input (capacity and effort) controls in place in any fisheries?	26	13	9	
	54%	27%	19%	
Are there output (landing volumes) controls in place in any fisheries?	19	22	7	
	40%	46%	15%	

Source: Authors' experience in 48 countries covered by Accompanying developing countries in complying with the Implementation of Regulation 1005/2008 on IUU Fishing EuropeAid/129609/C/SER/Multi

In terms of the linkages with international fisheries management organisation measures, there are equally diverse pictures among third countries. In some countries, these are adopted by decree or by directive in a tool such as the national gazette, in others it is by Regulation, which is a more burdensome system. Some countries also apply these measures in any case, without any specific regulatory or legal instrument, since membership of the organisation allows for their direct application according to international law.

Finally, it must be possible for the CA to verify all these elements, or be satisfied that all these elements are adequately controlled and monitored, on validation of the Catch Certificate, a declaration to “*certify that such catches have been made in accordance with applicable laws, regulations and international conservation and management measures.*” (Council 2008a, Art 12.3).

Elements of traceability

For that to be the case, elements of traceability control need to be in place. These include, but would not be limited to, logbooks, landing declarations, inspection reports on landing, sales notes, transport documents and factory entry logs. A summary of an assessment made by the authors of their experience in 48 countries is presented in Table 21. The details of the situation in any country are what matter, and this is particularly the case where specific products may be for export to the EU or not. Some countries have established particular supplementary traceability measures to ensure an efficient validation of the CC at export only applying to EU export. In this case, controls are minor for the products sold on the local market and sometimes also for the ones exported to countries outside the EU. This duality of system is not recommendable.

The introduction of logbooks has not been an easy process in developing countries and there are still fisheries in countries which are not covered by the use of a logbook. Indeed logbooks are often mandatory for foreign industrial vessels and in the fisheries regulated by a RFMO (e.g. tuna fisheries). In the case of artisanal and semi industrial vessels, the use of a logbook is difficult, especially in developing countries. The same comment can be made for trawlers of medium size fishing in their EEZ in West Africa where often no standardised logbook exist and catch are reported on a sheet of paper. In most of the cases landing declarations prior landing are also only provided by industrial vessels. Like for the logbook they often do not apply in developing countries to national vessels not fishing for highly migratory species under the auspices of an RFMO. Inspection reports are drafted in case of industrial landings only if an inspector is available, which is not always the case. Weaknesses also lie in sales notes, where that may be relevant, and in transport documents, often from the quayside to the factory. However, factory entry logs are widely applied, and this may result from the professionalization of that sector and the introduction of HACCP and other principles associated with the hygiene package. Overall, as would be expected, full traceability is more difficult in the artisanal sector than in the industrial sector, but this must be balanced against the damage that these fisheries do, the scale of activities and the costs and benefits of any MCS regime. Some countries especially in Asia (e.g. Malaysia) and also in North Africa (e.g. Morocco) have introduced some further MCS measures to allow proper checks when validating the CC to ensure the traceability of the products. These measures included the introduction of logbook, landing declaration and first sale note. Overall, the EU IUU Regulation has been an incentive for developing countries to strengthen their traceability system.

Table 21: Elements of traceability in selected third countries

Indicator	Yes	No	Qualified	Qualifying comments
Are logbooks mandatory?	39 81%	5 10%	4 8%	In some cases, these elements will not be applied or be relevant to all fisheries
Are landing declarations mandatory?	33 69%	12 25%	3 6%	
Are sales notes mandatory?	14 30%	31 66%	2 4%	

Indicator	Yes	No	Qualified	Qualifying comments
Are product transport documents mandatory?	26	18	2	
	57%	39%	4%	
Are factory entry logs mandatory?	34	10	3	
	72%	21%	6%	
Does the system in place enable full tracing of <u>artisanal</u> catches (individual vessel landings to container)?	8	20	13	Some countries were known not to export artisanal products
	20%	49%	32%	
Does the system in place enable full tracing of <u>industrial</u> catches (individual vessel landings to container)?	21	11	13	Some countries were known not to export industrial products
	47%	24%	29%	
Does the document trail appear to be effectively implemented in artisanal fisheries?	12	15	10	
	32%	41%	27%	
Does the document trail appear to be effectively implemented in industrial fisheries?	30	8	7	
	67%	18%	16%	
Does the system comprise formal and planned verification routines?	28	12	7	
	60%	26%	15%	

Source: Authors' experience in 48 countries covered by Accompanying developing countries in complying with the Implementation of Regulation 1005/2008 on IUU Fishing EuropeAid/129609/C/SER/Multi

Nationally-caught processed products

Particular problems exist for the export of processed products (see below). Whereas for products processed in a country other than the flag State of the vessel (indirect imports under Art 14 of the EU IUU Regulation) an Annex IV Processing Statement was required, for imports processed in the flag State (direct imports under Art 12 of the EU IUU Regulation) a Catch Certificate was required. This has been confirmed in one of the notes published on 24 May 2011 by the EC, which also provides information on how some third countries have dealt with this anomaly, particularly when various fishing vessels have been involved. The EC provides an example of a table that countries may use to detail the source of the product, the amounts and the resulting processed product. This is based on what some countries have done, and in conclusion DG MARE states: "*The Commission welcomes the support received from third countries and their positive approach to implement the IUU Regulation*". Such a statement illustrates the passive approach to the implementation of the Regulation, and underlines the need for clear guidance for third country CAs, exporters and Member States from DG MARE. As a consequence third countries use a multitude of different ways of presenting processed products in their CCs, and this weakens the controls that EU MS are able to effect on imports. It would have seemed logical that the concept of a processing statement apply to both direct and indirect imports, thus ensuring coherence between the two systems. A note is to be found on the DG MARE web site, indicating that additional information can be provided in Annex to a CC, but this has no formal reference and nor does it bear any legal weight.

Mixed consignments

Moreover, there is the case of mixed consignments: land-based processing establishments do receive products from both national and foreign fishing vessels, and these are processed and exported to a particular country together. Therefore the consignment is accompanied by a set of national CCs indicating the processed weight covering the national raw material processed, and another set of documents including an Annex IV (Processing Statement), with copies or in some rare cases originals CCs attached covering the imported raw material processed. This does not raise particular

problem in terms of traceability but add some complexity for the exporters concerning the documentation.

Recommendation IUU.16 The two different systems regarding processed products create uncertainty and confusion. The EP should urge that the FAP processed in the same country as the flag State should be subject to Processing Statements with CCs attached, as is the case for those processed from foreign vessels.

The case of artisanal fisheries

Fisheries products caught by artisanal vessel are allowed to use a simplified catch certificate under the implementing Regulation (EC 2009b). This allows for the catches of several vessels to be associated with one Catch Certificate. The control of artisanal fisheries poses particular problems for developing countries, due to its diffuse and diverse nature, limited technology, limited staff and often poorly developed legal and management regimes.

These factors result in CCs for artisanal products being formulated and validated with insufficient information and few guarantees that the statements made may be true. This does not mean that artisanal fisheries should be subject to particular rigour. Indeed for example the introduction of detailed logbook in the artisanal sector is a non-sense and would be almost impossible to implement especially in developing countries. Two factors are at play. The first factor is that the appropriateness of the management regime has to be balanced against the risks to the sector of overexploitation; even if the management regime is weak, there may be little risk of overexploitation. On the other hand, certain artisanal regimes are eroding stocks and are riddled with illegal and destructive practices. The other factor is the cost of ensuring that IUU is eliminated against the benefits accruing from that enforcement (see Box 4). It can become extremely difficult, logistically, and uneconomic for the CA to satisfy itself that the statements on the CC are true.

Box 4: Artisanal fisheries improvements and challenges

Artisanal fisheries improvements and challenges

Some countries, such as the Gambia, Madagascar, Morocco and Senegal, have introduced new measures to strengthen the control over artisanal fisheries as a result of the catch certificate and the EU IUU Regulation. As information is required on the boats in the simplified CC, the Gambia and Senegal have both accelerated the process of registration of artisanal vessels. Senegal has introduced a first sale note filled in at landing site to cross check when validating the simplified CC. A first sale note is filled in for every canoe landing its products. This is very difficult to implement considering the large number of artisanal landings taking place at the same time. There exist suspicions that under one first sale note and one canoe, catches of other canoes are covered. The catches can come from canoes not having a licence but sometimes the incentive is merely to limit the paperwork.

There is no record EU-wide as to the proportion of imports originating from artisanal fisheries. Until there is a record of this, it is impossible to assess the extent of products from the artisanal sector. What can be said with certainty is that the situation will vary enormously from country to country, and the effectiveness of the Catch Certification Scheme for artisanal fisheries must be assessed on a case-by-case basis.

Some consignments, especially the containers of frozen products (20mt) can contain processed products obtained from raw material supplied by thousands of artisanal fishing

boats as small quantities are caught. The list of supplying vessels accompanying the CC will have to present information of these thousands of vessels even though simplified compared to the regular CC (i.e. no call sign, no signature of the master of the vessels). The work of the officers validating the CC but also for the exporter preparing the documentation is colossal. Therefore the verifications of the boat information are rather superficial in many cases. Fresh products also represent a particular challenge for the officers and exporters as the time is very short for making proper verifications.

Finally the definition of artisanal fisheries according to the Commission Regulation No. 1010/2009¹³² (article 6) makes that many boats however catching small quantities and remaining in the coastal areas fall under the regular CC foreseen in the EU IUU Regulation (See Annex 6). For example Maldives tuna vessels remain around the Maldivian atolls, use pole and line (a sustainable and selective fishing gear) and fish little quantities of tuna. Therefore a consignment of frozen skipjack caught by pole line vessels will be made up also of thousands of vessels like for the vessels filling in the criteria laid down in the article 6 of the Commission Regulation No. 1010/2009. Other similar examples (e.g. Egypt) demonstrate that the current criteria defining artisanal fisheries are not appropriate and that more categories of vessels should be covered by the simplified CC. This amount of paper also lead to difficult controls at the EU border but also by the validating flag authorities which cannot check the veracity of the information contained in these infinite list of vessels.

Single Liaison Offices

Title IV, Mutual Assistance, of the Commission Regulation No. 1010/2009 does indicate that the Single Liaison Office (SLO) is to aid communication with third countries, and Art 39.1 provides for the publication of this list in the Official Journal; the study found no reference to this list on the DG MARE web site (see section 4.3.3). Third countries appear not to have access to the details of the SLOs. Thus, when they have a particular query with respect to exports to a particular EU MS, they have no easy way of finding out which office they should refer to. This hampers the third country CA's ability to provide necessary support to its industry to facilitate trade, fight IUU and pre-empt problems.

Third countries have also suffered from the legacy of the ancient fisheries tradition of open access to resources, until the application of EEZs under UNCLOS in the early 1980s, and subsequent to this, unequal power relations between foreign fleets and the State on the one hand and between industrial fisheries and artisanal fisheries on the other. Exacerbating this situation is weak governance (as demonstrated in section 4.1.1) and difficulties in the application of good measures linked to limited experience, training and government resources.

The importance of the MCS measures and legislative tools in exporting countries

The experience of the authors of this Study, in more than half of the countries whose notifications have been accepted by DG MARE, has indicated that in all countries there are monitoring, control and surveillance (MCS) tools at the disposal of third countries and which are being applied. As in EU Member States, the application of these measures varies from country to country but also from a region to another

IPOA-IUU and National plans of Action

According to the IPOA-IUU adopted by the FAO in 2001, *"States should develop and implement, as soon as possible but not later than three years after the adoption of the*

¹³² This Article shall apply to third country fishing vessels: with an overall length of less than 12 metres without towed gear; or (b) with an overall length of less than 8 metres with towed gear; or (c) without a superstructure; or (d) of less than measured 20 GT.

IPOA, national plans of action to further achieve the objectives of the IPOA and give full effect to its provisions as an integral part of their fisheries management programmes and budgets". At least every four years after the adoption of their national plans of action, States should review the implementation of these plans. States and RFMOs should also report to FAO on progress with the elaboration and implementation of their NPOA-IUU. To date few of the third countries exporting to the EU and in particular developing countries have adopted a NPOA-IUU. Over the visited countries in the framework of the EU project assisting developing countries in the implementation of the EU IUU Regulation only nine have formally adopted a NPOA-IUU, but a significant proportion has drafted these (see Table 22), though they have yet to be adopted. It is difficult to have clear picture on how many NPOA-IUU have been adopted worldwide as the members of FAO do not seem to inform the FAO properly. Indeed on the FAO website only 14 NPOA IUU have been published so far¹³³.

Often NPOA-IUUs are a pure copy paste of the FAO IPOA-IUU and are not tailored to the national context and specificities. It also often happens that essential aspects like setting cooperation mechanisms among flag State authorities, coastal state authorities and Port State authorities are not foreseen in the NPAO-IUU.

Some NPOA-IUU are sophisticated and comprehensive but not implemented and not communicated to the relevant agencies involved in flag State, coastal State and port State duties. In developing countries, the NPOA-IUU may not be drafted in consultation with these relevant agencies but only by the Ministry in charge of fisheries with the support of an external consultant.

Adopting a comprehensive and tailored NPOA-IUU in consultation with all relevant agencies involved in MCS measures is crucial as it will provide the basis and general framework to fight IUU fishing activities on all fronts.

Table 22: National plans of action in selected third countries

Indicator	Yes	No	Qualified	Qualifying comments
Is there an NPOA-IUU or similar planning document in place for MCS framework development	9	28	11	Some of these are drafted but not formally accepted
	19%	58%	23%	

Source: Authors' experience in 48 countries covered by the project "Accompanying developing countries in complying with the Implementation of Regulation 1005/2008 on IUU Fishing" EuropeAid/129609/C/SER/Multi

Ratifications of International Relevant Conventions

The EU IUU Regulation is closely related to the FAO Compliance Agreement¹³⁴, the FAO Port State Measures Agreement (not yet entered into force) and the FAO IPOA-IUU. The United Nations Convention on the Law of the Sea (UNCLOS) and the UN Fish Stocks Agreement also set out the principles of cooperation among States and sustainable management of fisheries resources.

Table 23 below presents the ratifications of these international instruments by ten biggest exporters of FAP to the EU. The ratification of these instruments creates

¹³³ <http://www.fao.org/fishery/ipoa-iuu/npoa/en>

¹³⁴ Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas

obligations towards the ratifying country which supersede national legislation. Therefore once a country is party to these instruments, its legislation cannot contravene these obligations and should be normally revised in conformity with the provisions of these instruments.

Table 23: Ratification, accession or succession to international instruments by ten largest exporters of FAP to the EU

Rank	Notified countries	UNCLOS, 1992	FAOCA, 1993	UNFSA, 1995	ASPM ¹³⁵ , 2009
1	Norway	1996	1994	1996	2011
2	China	1996	No	No	No
3	Iceland	1985	No	1997	Signed 2009*
4	Vietnam	1994	No	No	No
5	Thailand	2011	No	No	No
6	United States	No	1995	1996	No
7	Ecuador	2012	No	No	No
8	Morocco	2007	2001	2012	No
9	India	1995	No	2003	No
10	Argentina	1995	1996	No	No

Sources: [http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks](http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#Agreement%20for%20the%20implementation%20of%20the%20provisions%20of%20the%20Convention%20relating%20to%20the%20conservation%20and%20management%20of%20straddling%20fish%20stocks%20and%20highly%20migratory%20fish%20stocks)

MCS measures and legislative tools

According to the FAO IPOA-IUU, national legislation should address all aspects of IUU fishing in an effective manner. To address all these aspects, national legislation should cover flag, coastal and port State responsibilities. Without a strong legal basis, countries will struggle to effectively prevent and deter IUU activities. Flag State, Coastal State and Port State measures all together form the MCS system. Having in place a strong MCS system is a necessary precondition to having an effective CCS. Indeed efficient and effective validation of the CC and other related IUU documentation relies on a strong MCS system (e.g. VMS, logbook, landing declaration, inspection reports). Without such a strong system the validation of the CC will not fully guarantee that the FAP are IUU free. In some countries where MCS measures are weak the validation of the CC is virtually automatic and short on cross checks. The verifications are limited to the information contained in the CC (e.g. list of licenced fishing vessels). However the validation process varies widely from one country to another.

Flag State responsibilities

Flag State responsibilities are fundamental to the application of the CCS. It is the responsibility to ensure that the CC is a truthful statement. The authors of this Study have collated experience from 48 third countries, and this is summarised in Table 24 below. The vast majority of countries commercial fishing operations fall under a formal authorisation and licensing regime. This is also the case for the marking of industrial

¹³⁵ * Pursuant to Article 29, the Agreement shall enter into force thirty days after the date of deposit with the Director-General of FAO of the twenty-fifth instrument of ratification, acceptance, approval or accession. Therefore, signature does not count in this regard.
http://www.fao.org/fileadmin/user_upload/legal/docs/2_037s-e.pdf

fishing vessels, and for a centralised record of such authorisations. Weaknesses become more pervasive with respect to fishing vessels operating beyond the national jurisdiction. Whereas the FAOCA (Art 3) determines that vessels must be authorised by the flag State to fish outside their jurisdiction, this is not the case in many countries. Indeed, countries having fisheries legislation older than ten to fifteen years often do not have provisions on authorising fishing vessels to operate beyond the waters under their jurisdiction. Among the ten top exporters to the EU, some of the countries are implementing a system of authorisation to fish beyond national waters, if not in third countries EEZ at least on the high seas (e.g. China). Vietnam's basic law of 2003 indicates that organisations and individuals engaged in fishing operations shall hold fishing licenses but no particular reference is made to operations beyond national waters. Some countries like Fiji, Morocco, Solomon Islands and Sri Lanka are reviewing their legislation. These drafts foresee a system of authorisation to operate beyond the waters under their jurisdiction. Fiji and Sri Lanka decided to adopt a special act on offshore fisheries. The aim of this new legislation is to ensure that these countries fulfil their flag State duties and properly monitor the vessels operating on the high seas or in third countries' EEZs.

Often flag States do not ensure that the vessels requesting an authorisation to operate beyond the waters under jurisdiction have received an authorisation to operate the concerned third countries EEZ. This leads to the situation where the flag State does not even know where the vessel operated and whether these activities were legal. The lack of cooperation between the flag State, coastal State and Port State is a key issue to successfully eradicate IUU fishing activities. Unfortunately, this cooperation has often been scarce despite the existence of regional organisations (e.g. FFA, SADC).

Vessels operating beyond national waters have at times no functioning VMS or the vessel's VMS is not adequately monitored. This is often the case in Africa where tuna vessels are equipped with the VMS but fisheries authorities are not able to follow their signal as the VMS centre is dysfunctional or only working partially (e.g. Côte d'Ivoire, Ghana, Mozambique, Senegal). But again the situation varies from one country to another. For example, Seychelles has a very good VMS centre in Victoria with well-trained officers. The introduction of VMS in fisheries legislation is also something recent and it is not a legal obligation in all exporting countries to the EU. For most of the tuna fishing activities regulated by RFMOs it is an obligation for the vessel operating beyond waters under jurisdiction and above a certain size (20 meters or 15 meters). However some countries still struggle to implement these provisions and transpose them in their national legislation facing strong opposition fishermen and high costs of operation. It can also happen that in practice all industrial fishing vessels are equipped with VMS but that there is no legal provision in national legislation making it compulsory (e.g. Fiji).

To ensure proper flag controls, the regulation of the registration of fishing vessel must be contingent on cooperation between the agency in charge of issuing the flag and the one issuing the fishing licence. The procedure to register fishing vessel is often contained in shipping act and in many cases there is no particular provisions to ensure that the registration of a vessel will not lead to IUU fishing activities. For example in some countries it is possible to register a fishing vessel without applying for or being granted a fishing licence at the same time. In various cases no proper check is undertaken on the history of the vessel to verify potential IUU background of the vessel or the owner. It is very rare to see this condition as a legal condition to not register a vessel. In most cases, the procedure for registering a vessel requires a certificate of deletion to avoid double registration. However if the authority in charge of registering the vessels does not properly check, it can lead to double registration. Some countries also practice the double registration despite the fact that their legislation does not foresee such a possibility. This is a recurrent problem which can be found in various countries.

To cope with legal gaps, obligations will be imposed through the practice or for example in the licence conditions like in the Pacific region. However, without legal basis, no sanction can be applied, the opposability of the measures cannot be imposed and rules cannot be enforced.

It must be stressed that these weaknesses, in particular that of monitoring VMS and cross-checking the validity of licences have also exposed the EU long-distance fleet. Thus, the implications for increased rigour in third countries in the application of flag State responsibilities, also applies to the EU fleet.

Table 24: Application of flag State responsibilities in selected third countries

Indicator	Yes	No	Qualified	Qualifying comments
Do all domestic commercial fishing operations (art. & ind.) fall under a formal authorization/licensing scheme?	45	1	2	Exceptions include where there is only partial application, or where certain sectors may be excluded
	94%	2%	4%	
Are there clearly defined regulatory standards for the marking of industrial fishing vessels?	40	5	2	
	85%	11%	4%	
Does the State maintain a centralized and up-to-date record of all licensed industrial fishing vessels?	40	4	3	
	85%	9%	6%	
For vessels fishing in waters beyond national jurisdiction, are they duly authorized to do so?	20	15	3	
	53%	39%	8%	
For vessels fishing in waters beyond national jurisdiction, is the State actively monitoring the activities of these vessels through VMS?	15	11	13	
	38%	28%	33%	
For vessels fishing in waters beyond national jurisdiction, is the State demanding copies of licenses held in third State jurisdictions?	13	18	7	
	34%	47%	18%	
Is it possible to register a fishing vessel without applying for/being granted a fishing license at the same time?	14	27	6	
	30%	57%	13%	

Source: Authors' experience in 48 countries covered by the project "Accompanying developing countries in complying with the Implementation of Regulation 1005/2008 on IUU Fishing" EuropeAid/129609/C/SER/Multi

Port State measures

Although the Catch Certificate is a declaration validated by the flag State, the application of port State measures is of equal importance to the Catch Certification Scheme. We shall see that products of EU origin pass through third country ports (see section 4.6), as do those of third country origin (see section 4.5). Lax port State controls have a direct influence on the control of illegal fishing (from a MCS perspective) as well as on the traceability of the product in question (the operation of the CCS). It is worth noting that in global MCS methodology, port State measures have only recently been the subject of particular focus, precisely because of the weaknesses in flag State responsibilities and in the difficulties of applying coastal State measures in poorer countries. Indeed as surveillance at sea is made difficult where there are extensive EEZs (often the case for

small islands countries) and is very expensive, port State measures can be cost-effective. The Agreement on Port State Measures (APSM) was only passed in 2009, and still (at May 2013) it has not come into force¹³⁶. The majority of countries do apply port State measures (see Table 25 concerning the countries covered by the EU project assisting countries in the implementation of the EU IUU regulation), but this is far from being the case in all countries. In particular, in many countries ports have not been designated (meaning that landing of certain species or certain vessels should take place in a certain port), and though port entry and exit is controlled by the port authorities, they are not necessarily fully controlled by the fisheries authorities from an IUU perspective. In the case of foreign fishing vessels landing, customs will almost always be involved. And if the products are destined for export, systematic veterinary controls will be undertaken.

The implementation of port State measures is a major challenge for developing countries. Indeed they often lack a complement of well-trained fisheries inspectors. In many developing countries human resources are a problem particularly in ports where the landing and transshipment activities are intense, such as Tema in Ghana, Dakar in Senegal or Abidjan in Côte d'Ivoire. In general most of the countries exporting to the EU try to inspect a certain proportion of industrial vessels prior to landing or transshipments. Some developing countries focus the inspection on foreign fishing vessels. However it is often very difficult for the fisheries inspectors to monitor the entire landing or transshipment operations, and inspections can be cursory. The monitoring of the entire landing can ensure that no prohibited species have been caught and was well hidden but also to get the accurate figures of actual landed or transhipped weight per species. Not all the countries request this information to the captain (e.g. cargo manifest) or to the customs when the operations are completed and rely on estimation given in the logbook or landing declarations. RFMOs promote the adoption and introduction of port State measures and monitoring of entire landing and transshipment operations (often around 5% of the operations). This provision can be difficult for developing countries to respect, since they face huge turnover in their ports (e.g. Indian Ocean, Pacific). In some countries, such as Mozambique, systematic inspections have been introduced, though these may not be comprehensive.

As for flag State duties, it is rare to find detailed port State measures in developing countries legislation. These should include prior notice and landing declarations, designated ports (even though in some countries all operation take place in one port or two) and authorisation to access port. However in practice, various developing countries request industrial fishing vessels (especially foreign ones) to provide prior notice. The prior notice is sometime accompanied by a declaration of the species and quantities per species intended to be transhipped or landed. The name and flag of the vessel normally appear but the information request varies from a country to another. The prior notice of arrival accompanied by comprehensive information is essential to undertake an efficient IUU background check on the vessel requesting access to port. Many countries undertaking this type of control limit their verifications to the list of IUU vessels kept by the RFMOs. However some fishing vessels involved in IUU fishing activities do not systematically appear on an IUU list and therefore other sources should be explored.

Some RFMOs recommendations on port State measures includes provisions on designation of ports, on prior notice of entry into port, port entry authorisation, denial of

¹³⁶ Pursuant to Article 29, the Agreement shall enter into force thirty days after the date of deposit with the Director-General of FAO of the twenty-fifth instrument of ratification, acceptance, approval or accession. There are only five to date (March 2013); these are Chile, EU, Myanmar, Norway and Sri Lanka, though 25 have signed http://www.fao.org/fileadmin/user_upload/legal/docs/2_037s-e.pdf

use of port and inspections and standardised information on port inspections (e.g. GFCM¹³⁷, IOTC¹³⁸).

In practice, access to port is not authorised by the ministry in charge of fisheries but by the port authorities, who do not normally undertake IUU background checks and rarely cooperate with the fisheries administration. The fisheries inspectors are often not informed of the arrival of the fishing vessels. The lack of cooperation between the port authorities and the fisheries authorities is a recurrent problem in developing countries. However port State measures are gradually being introduced in the legislation of countries exporting to the EU. For example, Morocco is currently drafting a legislation aiming at tackling IUU fishing issues by introducing legal provisions on port State measures including authorisation to enter the port which should be granted by the Ministry in charge of fisheries. Unfortunately this draft legislation limits the authorisation to landing and transshipment operations. Therefore if a vessel visits a port for other reasons (e.g. refuel, repair or supply) it will not be covered by the legislation. This example demonstrates the complexity of introducing port State measures in the legislation as the aim should be to stop any IUU fishing vessels entering a port.

Finally container vessels are not regarded as fishing vessels and therefore often not covered by port State measures even though the ASPM is not very clear about the application of the ASPM to container vessels¹³⁹.

Table 25: Application of selected port State measures in selected countries

Indicator	Yes	No	Qualified	Qualifying comments
Have national ports been designated for industrial fisheries transactions?	25	14	7	Sometimes partly applied or only in special circumstances, such as under RFMO conditions, or only in the main industrial port
	54%	30%	15%	
Are fisheries authorities monitoring industrial fishing vessel movements in and out of relevant ports?	27	6	13	
	59%	13%	28%	
Is a formal port entry request and authorization scheme for industrial fishing vessels in place/operational?	26	15	5	
	57%	33%	11%	
Are port inspections carried out by fisheries officers/inspectors on a regular/planned basis in relevant ports (industrial f.v.)?	32	7	6	
	71%	16%	13%	

Source: Authors' experience in 48 countries covered by the project "Accompanying developing countries in complying with the Implementation of Regulation 1005/2008 on IUU Fishing" EuropeAid/129609/C/SER/Multi

¹³⁷ The GFCM recommendation 2008/1 on a regional scheme on port state measures to combat IUU fishing in the GFCM are.

¹³⁸ The IOTC Resolution No. 10/11 on Port State measures

¹³⁹ Each Party shall, in its capacity as a port State, apply this Agreement in respect of vessels not entitled to fly its flag that are seeking entry to its ports or are in one of its ports, except for: (a) vessels of a neighbouring State that are engaged in artisanal fishing for subsistence, provided that the port State and the flag State cooperate to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing ; and (b) container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing.

However, even when a State endeavours to apply control measures, there can be difficulties.

Coastal State measures

As for the Flag State and Port State measures, Coastal State measures vary from one country to another (see Table 26). Coastal State measures allow for a coastal State to properly monitor fishing activities taking place in its own EEZ. Various countries exporting to the EU face particular difficulties with monitoring entry into and exit from their EEZ, for lack of resources in some cases, but also from a weak legislative framework. Few countries have adopted provisions which oblige foreign fishing vessels to declare their entry into and exit from their EEZ. In case countries have this kind of provisions, the obligation is often limited to licensed fishing vessels (e.g. Solomon Islands current fisheries law) or carries no obligation to report catches retained on board (e.g. Seychelles subsidiary legislation). This lack of control also results from a certain lack of support from RFMOs whose members have historically resisted moves to oblige their vessels to report entry and exit from EEZ they are purportedly passing through. This has been the case in particular of EU MS' resistance to reporting to Coastal States in the Pacific. However some countries that are currently revising their fisheries legislation intend to include such an obligation (e.g. new fishing bill in Solomon Islands).

Properly controlling fishing activities in the EEZ also implies having a licence system and keeping an updated register of licensed fishing vessels. Concerning industrial fishing vessels, most of the legislation of exporting countries to the EU foresees that all fishing vessels should have a fishing licence to operate in their EEZ. This is the main tool to regulate the activities in the EEZ. However, few countries are using licensing system as a tool to limit the number of vessels operating in their EEZ. Often it is more an administrative document bringing revenue to the State. Without a limited number of licences based on the status of the resources, the licence system will lose a great part of its usefulness. Moreover, the introduction of licence system in the artisanal sector in Africa is partial. Here again seldom is a limit put on the number of artisanal boats authorised to fish. This is of course not the case everywhere. In Morocco, the number of artisanal boats operated is strictly regulated and limited.

According to the IPOA IUU, Coastal States should avoid licensing a vessel to fish in its waters if that particular vessel has a history of IUU fishing. It is very rare to find such a legal provision in the legislation of countries exporting to the EU. In practice few exporting countries to the EU undertake IUU background checks on foreign vessels applying for a fishing licence. When some do, they limit the verifications to the IUU lists of RFMOs. As explained previously this cannot be sufficient and verifications should go beyond these lists.

Concerning reporting obligations, logbooks are often in place in third countries exporting to the EU. In the South Pacific and particularly the members of FFA, their requirements are almost universal and uniform. In West Africa, countries are beginning to insist on such requirements. The Indian Ocean Region and the Americas fall somewhere in between (Kuemlangan, 2000). Much of the reporting requirements in legislation of the FFA members were initially targeted at foreign fishing vessels. To this end and in order to ensure a common regulatory regime applied to these vessels, the members of FFA established the Harmonised Minimum Terms and Conditions for Foreign Fishing Vessel Access (MTCs). The MTC does not have any legal value and should be transposed into national legislation. However, some Pacific Island States were applying the MTC directly to the licence conditions. The legal value of the obligations contained in the licence may be limited if these are not foreseen in the basic legislation.

Reporting catches on a regular basis (i.e. weekly ideally) is an useful way of monitoring fishing activities in the EEZ. Some countries require vessels operating in their EEZ to provide regular catch reports indicating the quantities and species caught and retained on board. When it exists, this obligation often only applies to foreign vessels. Moreover few countries do have legal provision on weekly catch report. This is an issue as the logbook sheets are often used for statistical purpose and means to monitor catches are missing.

The EU control regulation, (EC) No 1224/2009, prohibits transshipments at sea in community waters (see Section 4.5.2). Transshipments at sea can escape control by Flag or Coastal states and therefore constitute a possible way for operators to carry illegal catch. This is why the EU only authorises transshipment operations in the Community in designated ports. However few countries exporting to the EU have provisions within their legislation prohibiting transshipment at sea. RFMOs such as ICCAT, WCPFC or IOTC prohibit transshipments at sea or confine it to specific circumstances¹⁴⁰. However not all members of these RFMOs have transposed into their legislation this prohibition or apply them in practice. Illegal transshipments at sea in West Africa have been reported frequently and seem to be a real problem in this region (Environmental Justice Foundation (EJF), 2013)¹⁴¹.

Crucial elements of an effective MCS system are prosecution and sanctions. Most of the countries exporting to the EU have in their legislation various sanctions, including fines, suspension or withdraw of the licence, seizure, forfeiture and sale of catches, gears and in specific cases of the vessels. Deterrent and effective sanctions are necessary to ensure that the law will not be breached. However, many countries, especially the ones having old legislation do not have deterrent legal tools. The EU IUU regulation indicates that Member States shall impose a maximum sanction of at least five times the value of the fishery products obtained by committing the serious infringement. The legislation of exporting countries to the EU normally foresees fines in US dollars or local currency. The adoption of fixed sum raises problems as values evolve over the years. In many cases, the value of the fines or the chances of being caught are both too low to be deterrent. Moreover in case of fishing without a licence few countries distinguish the offence made by a foreign vessel or by a national. If many countries have legislation providing for imprisonment, it is very rare in practice that captain or vessel's owner are sent to gaol. Finally if many countries have the possibility in their legislation to withdrawn a fishing licence, in most of the cases the fishing authority does not have the possibility of de-registering a fishing vessel as this competence is in the hands of another authority, and licensing provisions are not linked to the nationality of the flag. Without such a possibility, fishing vessel which has committed IUU fishing activities can keep the flag of a country and go and fish somewhere else if there is no proper monitoring in the port and very strict measures in place (e.g. artisanal boats destroyed in Morocco).

Many States in the Indian Ocean, Caribbean and South Pacific have adopted a process of compounding offences in order to deal swiftly with fisheries offences (Kuemlangan, 2000). The compounding procedure gives the chance to the offender not to be prosecuted in exchange of paying the fine immediately. For minor offence it gives the chance for the authority in charge of fisheries to collect the money faster than it would be at the court. The problem is that often the compound procedure lack transparency as the decision often only belongs to the Minister in charge of fisheries who can take

¹⁴⁰ Example, ICCAT Recommendation 06-11 establishing a programme for transshipments "Except under the special conditions outlined below in Section 2 for transshipment operations at sea, all transshipment operations of tuna and tuna-like species in the ICCAT Convention area must take place in port".

¹⁴¹ See for example <http://www.ejfoundation.org/oceans/issues-pirate-fishing> and http://ejfoundation.org/sites/default/files/public/ejf_transshipments_at_sea_web_0.pdf

arbitrary decision without any control. A better solution might be to have a compound Committee recommending the fine to be paid or the release of any vessel or article seized.

The enforcement of legislation is also a key issue in third developing countries exporting to the EU. Very often, the number of inspectors is limited and do not allow a full coverage ensuring the control of the landings especially at night and over the week end. Exporting countries to the EU normally have relevant legal basis allowing for inspections. Most of the time fisheries legislation indicates the power of the inspectors and which officer have the authority to undertake inspection of fishing vessels, establishments and vehicles and to seize FAP and fishing gears. However, in some countries inspectors have limited powers. In Ivory Coast for example, sanitary inspectors realise inspection of fishing vessels to verify compliance with fisheries legislation. However the basic fisheries legislation does not authorise the sanitary inspectors to do so.

Table 26: Application of selected coastal State measures in third countries

Indicator	Yes	No	Qualified	Qualifying comments
Are responsibilities and mandates for MCS provided for in the Basic Fisheries Law?	36 75%	6 13%	6 13%	Partially applied or only as per RFMO requirements, or applied to foreign vessels
Do authorities monitor entries and exits of <u>licensed</u> industrial fishing vessels into and from waters under national jurisdiction (EEZ)?	26 57%	17 37%	3 7%	
Do authorities monitor entries and exits of <u>non-licensed</u> industrial fishing vessels into and from waters under national jurisdiction (EEZ)?	16 36%	17 38%	12 27%	
Does the law provide for such information to be submitted by fishing vessels (licensed and/or un-licensed) entering/exiting national waters?	27 57%	14 30%	6 13%	
Are catch data from foreign industrial operators in the EEZ obtained and recorded?	22 58%	6 16%	10 26%	
Are inspection and law enforcement data recorded, analysed and summarized in reports in a recurrent manner?	20 43%	14 30%	12 26%	
Are such reports (see previous) of sufficient detail to permit the assessment of MCS effectiveness over time?	14 33%	23 55%	5 12%	
Are applicable penalties for foreign IUU fishing operators dissuasive (i.e. at a minimum, fully deny the economic benefits derived from such operations)?	22 47% 19%	17 36% 58%	8 17% 23%	

Source: Authors' experience in 48 countries covered by the project "Accompanying developing countries in complying with the Implementation of Regulation 1005/2008 on IUU Fishing" EuropeAid/129609/C/SER/Multi

Market-related measures

Market related measures are of relevance to the traceability of products within third countries, particularly where there is landing and sale for onward shipping or where there are processing operations located some distance from the port of entry of the goods. Table 27 shows that the industrial sector is relatively well regulated, but concern does arise with respect to the artisanal sector, where there can be a tradition of informal marketing arrangements. Often these feed the market for fresh products to the EU, where traceability is less of a concern. But nevertheless, an adequate regime of sanctions is important to dissuade operators from trading in obviously illegal products. As the table below demonstrates sanctions against operators involved in buying, processing and/or marketing of IUU fishery products are implemented in various countries.

Table 27: Application of selected market State measures in third countries

Indicator	Yes	No	Qualified	Qualifying comments
Do penalties in the law cover operators involved in the buying, processing and/or marketing of IUU fish?	28	19	1	None
	58%	40%	2%	
Are fish buyers/dealers registered/licensed?	36	12	0	
	75%	25%	0%	
Are processors registered/licensed?	43	3	0	
	93%	7%	0%	
Are exporters registered/licensed?	43	5	0	
	90%	10%	0%	

Source: Authors' experience in 48 countries covered by the project "Accompanying developing countries in complying with the Implementation of Regulation 1005/2008 on IUU Fishing" EuropeAid/129609/C/SER/Multi

Recommendation IUU.17 The EP should ensure that the EC's audits of third countries evaluate the application of the full range of flag State, coastal State, port State and market State measures, to ensure that these are appropriate with respect to the products being handled for export.

4.5 Impact of transit, transshipments and indirect imports on sourcing from IUU fishing

4.5.1 Transit and splitting consignments

Transit and splitting consignments on arrival is allowed under the Customs Regulation (*Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the*

implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code Art74) (EC 1993), as long as they remain under customs supervision¹⁴².

The EC Transit Manual¹⁴³ (TAXUD 2004) describes the main functions of transit from a European Customs and Taxation Union perspective: *"Main functions of transit: Transit is a customs facility available to operators who move goods across borders or territories without paying the charges due in principle when the goods enter (or leave) the territory thus requiring only one (final) customs formality."*

According to the EU IUU Regulation, when goods arrive in the Community in one MS but are destined by transit to another MS, where they are placed under a customs procedure, they will be inspected in the country of destination (Art 19.1); if they are placed under a transit procedure to another place within the same MS, the goods may be inspected at the point of entry or at the point of destination, and MS are to inform the EC of the arrangements and these are to be published on the EC web site. There is no publication of this kind, so one may assume that there is no clarity between MS and the EC on these arrangements, which leaves a question mark on controls once they have entered the Community, and certainly on the oversight provided in this regard by the EC. Thus, the EU IUU Regulation appears to mirror the EU Customs Regulation in its arrangements for transit.

Under the EU hygiene regulations, all goods that enter a MS must be inspected at the BIP, by experienced officers trained in the matter pertaining to the fisheries trade; this is an EU wide and standardised set-up. After passing the BIP, the responsibility for monitoring and controlling hygiene and protecting the consumer lies with the authorities within the MS, depending on the national structure. The EU IUU Regulation's procedure is different, with no safeguard in place as to the capacity of the inspectors at the final destination. Since all FAP in transit (or otherwise) are already inspected from a documentary, identification and physical perspective at the BIPs under the hygiene Regulations, the addition of rigour regarding IUU matters would not be a significant additional burden (Dawes 2012). Indeed, those countries that have identified manpower and time as significant constraints in their biennial reports (France, Germany, Spain) are those that have centralised their systems (Germany, Spain) or imposed those systems on a service other than the existing BIP (France).

When goods arrive in France (and this seems to be the case for most EU MS), if they are for another EU MS, the customs authorities only check the existence of CC; controls are expected to be effected in EU country of destination. This is consistent with the reading of the EU IUU Regulation at present.

When FAP arrive in France from another EU State where the lot has been split (but not controlled), in accordance with Art 19.1, then only copies of the *"global"* (that is, the original CC before the consignment was split) CC will accompany the goods. The *"global"* CC is therefore for a greater quantity of goods than that presented in any particular EU MS. No control is possible on the use of that CC. The only controls are those effected to ensure the coherence of different documents (such as bills, transport documents, insurance documents).

¹⁴² "1. The products declared for release for free circulation in the European Union shall be the same products as exported from the beneficiary country in which they are considered to originate. They shall not have been altered, transformed in any way or subjected to operations other than operations to preserve them in good condition, prior to being declared for release for free circulation. Storage of products or consignments and splitting of consignments may take place where carried out under the responsibility of the exporter or of a subsequent holder of the goods and the products remain under customs supervision in the country(ies) of transit".

¹⁴³ (TAXUD/801/2004) http://ec.europa.eu/taxation_customs/resources/documents/customs/procedural_aspects/transit/common_community/transit_manual_en.pdf

Every time the CC is copied, the amount of “*legal*” fish is doubled, because there are two CCs for the same amount of original FAP. There is no provision in the system for recording when and to what extent consignments are split.

Transit through the EU to a third country

There are many cases where products enter the EU from one third country, then go to another third country for processing and then return to the EU. This can occur at least once (see Box 5).

Box 5: Cases of transit through the EU in the whitefish industry

Cases of transit through the EU in the whitefish industry

Of particular relevance to the transit of goods through the EU from one third country for onward transport to another third country for processing and then return to the EU is the whitefish industry. Because there is no possibility under the existing paper-based system to obtain statistics, it is impossible to put numbers on different scenarios, but the UK cites several cases in point, just with respect to the whitefish industry, which serve to illustrate the reality and complexities that EU MS face.

Scenario 1 Russia to Norway to the Netherlands to China to UK

In this case the fish is normally landed direct from the Russian fishing vessel into Kirkenes in Norway.

Scenario 2 Russia to the Netherlands to China to UK

In this case the fish may be landed into Murmansk and then loaded onto a reefer for onward transportation to the Netherlands or transhipped at sea onto a reefer and transported to the Netherlands – usually to Velsen or Eemshaven in the Netherlands. Then it will be shipped to China for processing before going to the EU for a second time.

Source: Dawes (2012)

Particularly where FAP have arrived from third countries in an EU port for transit¹⁴⁴ to a third country for processing, there is uncertainty regarding whether Port State Controls or the EU IUU Regulation should be followed. Where the fisheries products are landed in the EU and stored in a customs warehouse, the interpretation is normally that it is not an import, and therefore not subject to the EU IUU Regulation import requirements. According to existing interpretation in most cases, CC checking and verification is not required, and since there has been no import, a re-export certificate does not need to be issued. *“These consignments are usually traded/broken down within the EU customs warehouse and sold with a copy of the CC”* (Dawes 2012). Fisheries Products, caught by third country vessels, in transit through the EU, are normally sold on to a third country for processing, and then re-enter the EU with a Processing Statement and photocopies of several CCs, which themselves do not indicate where the catch was landed, *“by the time this consignment arrives, carrying out a meaningful verification of the documentation is near impossible”* (Dawes 2012). There is no record of how many photocopies have been made or of when consignments are split.

This transit and customs arrangement under the EU IUU Regulation is other than that applied from a sanitary perspective, where the FAP must be controlled every time they are handled. Under sanitary practices, every time a consignment is converted into a new consignment a new health certificate is issued; this places the responsibility on the

¹⁴⁴ According to Customs, goods are defined in transit even if they are doing so in bulk and not in containers bearing the same seal throughout.

sanitary CA where this handling takes place to monitor *all* handling: imports, transit, exports and processing.

Under the hygiene regulations, third country fish cannot enter the EU as transit *or* import without health checks being carried out. The requirement for the EU IUU documentation to be checked does not create an additional barrier *if carried out at the same time*. This is clearly not the case where all checks are centralised (e.g. Germany and Spain) and where the general customs system is dominated by a multitude of goods (e.g. France) and a prerogative to expedite processing (e.g. the Netherlands), as is clearly the case from a customs perspective. In France, the customs officers are charged with an additional check that they know little about, and frustrations regarding the paperwork involved.

If there is verification the first time a product enters the EU before being sent to a third country for processing and then importation into the EU for consumption, the verifications are less complex and therefore more effective. If left to the moment of final import, after the product has passed through the EU once (or sometimes twice) already, the task of verification is that much more difficult. Thus, there appears to be a case for verification at every stage and in particular at early stages when product passes through EU MS.

Recommendation IUU.18 Transit from a customs perspective has undermined controls from an IUU perspective, especially when FAP are not in sealed containers and landed in bulk quantities. The EP should urge the EC to ensure that questions regarding IUU origin of the FAP should be verified every time a product is handled, to ensure that all safeguards are in place. There should be no exception regarding goods in transit to another EU MS: all goods entering the EU should be assessed from an IUU perspective.

Transit outside the EU

The same concerns are echoed when transit takes place outside the EU. In section 4.6 we shall see how goods of EU origin escape checks, but the same concerns arise in third countries regarding goods of third country origin.

Goods often pass through third countries on the way to the EU, not only for processing, but also for being unloaded and loaded into containers. The Catch Certificate indicates information on the vessel (e.g. name of the vessel), and it has certain transport details (Appendix to the CC), but it does not show the port of landing of the product and date of landing. Because of this omission, the point of entry into the EU MS cannot know the full trajectory of the consignment, and is hampered in its ability to verify the checks that might have been performed.

There are two fundamental weaknesses with the current system of adopting pure transit procedures: one is weakened port and coastal State controls (increased chances of IUU fishing passing undetected), and the other is loss of traceability regarding split lots (the opportunity of laundering).

It is beyond the remit of this Study to comment on transit procedures used for customs purposes in third countries or in the EU, and these are well-established internationally. But these are not sufficient to safeguard against the possibilities of illegal fishing and of laundering product. As with the hygiene measures in place to safeguard human health, there must be good practices with respect to safeguarding the possibility of IUU products entering the EU market. The imposition on third countries by the EU of precise measures with respect to their control of FAP and IUU fishing may well be deemed from a trade

perspective to be a technical barrier to trade. For this reason, it is important to establish both transparent criteria for controls on entry to the EU, which is not possible with the existing system, and to respect the application by third countries of good MCS practices that will reduce the chances of unsubstantiated CCs being signed.

Box 6: Tuna trade transit through third countries

Tuna trade transit through third countries

Tuna is the most valuable import for FAP into the EU. The fact that it is a highly migratory species fished on the high seas and in third countries' EEZs, which passes through various stages of trade and processing, makes traceability and IUU controls particularly difficult.

Scenario 1: Product caught by South African vessels in Namibia's EEZ is offloaded in Luderitz, and put, by pallet, into containers for road transport to Cape Town and thence to the EU. In 2010, the South African CA would not validate the CC for its vessels until it had received a statement from the Namibian CA (in accordance with Art 14.1bii of the Regulation), stating that the products had been caught legally and had not been manipulated unduly. This allows the Namibian CA, quite rightly, to exercise port State and coastal State controls on those vessels and their product, as they cannot truthfully issue such a statement before being satisfied that the product has been sourced legally. However, in contradiction to this sensible provision, since 2010, Namibia and South Africa understand from EU sources that such a statement is not necessary in this case, as it is claimed that the product has not been landed, and can be covered by a transit procedure. Thus, product can in practice enter the EU under a CC that has only suffered flag State controls on a distant-water fleet, bypassing the opportunity to effect port and coastal State controls. Because of this emphasis on customs controls and procedures, the system may be significantly weakened from an MCS perspective.

Scenario 2: Tuna caught in the West and Central Pacific Ocean and third countries' EEZs in the region, landed in the Philippines, for onward transport (defined as transit) to Thailand, where it is imported and sold to various establishments for processing, and then exported to the EU from these different establishments.

Again, there are opportunities for evading port State controls in the Philippines if a purely transit approach is taken, and for mixing of IUU products covered by CC validated by the country of origin of the imported raw material in Thailand if the use of CCs is not monitored and traced at each stage of splitting the consignment. Vital opportunities for MCS controls and for traceability controls are missed.

4.5.2 Transhipments

Transhipment is defined in the EU IUU Regulation as: "*the unloading of all or any fishery products on board a fishing vessel to another fishing vessel*" (Art 2.10). In turn, a fishing vessel means : "*any vessel of any size used or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, fish processing vessels, vessels engaged in transhipment and carrier vessels equipped for the transportation of fishery products, except container vessels*".

When goods have been transhipped and go by sea to another MS, the first country shall inform the destination country of this fact, but the onus of inspection is on the destination country (Art 19.3).

Transshipment in port may take place for product that has been caught by third country vessels, and the product may have three destinies (see Box 8). For the part transhipped from the fishing vessel to a reefer, section 7 of the CC must be filled in before the CC is validated, according to a note issued by the EC in 2011¹⁴⁵. For the part landed for processing eventually a CC will be produced to accompany a Processing Statement. For the part loaded into containers, no MCS measure takes place as the goods are regarded in transit. Clearly, this reinforces the case already made for comprehensive audits of the realities in third countries.

However, there is no requirement in the EU IUU Regulation for a CA to be nominated for this task. Thus, under the EU IUU Regulation, any authority may do so; in some cases this will be the fisheries authorities, in some the port authorities and in some customs (see Box 7). This allows transshipments in port under the auspices of an authority that might not supervise such a transshipment from an IUU perspective, thus evading port State controls and coastal State controls, and making it impossible for EU MS to check the legitimacy of transshipments.

Box 7: Transshipment in the Pacific

Transshipment in the Pacific

In August 2010 a vessel flagged to El Salvador, whose CA has been notified, tranships tuna in Kiribati to a Panamanian reefer. This is endorsed by Kiribati Customs. According to the CC, the fisheries authorities are not involved in this, and nor has the nomination of the CA in Kiribati been accepted by the EC. This product can then be transported by the Panamanian reefer to any destination to be processed. The CC has been validated by the Salvadorian CA, but no check from a fisheries perspective has been effected in Kiribati. This is perfectly within the letter of the EU IUU Regulation, but exposes a weakness: the system relies on flag State controls and customs procedures, totally bypassing any port State or coastal State control from an IUU perspective.

Box 8: Transshipment in the Indian Ocean

Transshipment in the Indian Ocean

French and Spanish flagged vessels land part of their catch for processing in the Seychelles, and part of the catch is transhipped to a reefer vessel for transport to the EU or loaded into containers. The part of the fisheries products that is transhipped is only subject to flag State controls, though the activity is taking place in a third country port, and the EU MS flagged vessels have been fishing in the region, either on the high seas or in EEZs. The portion that is loaded into containers is considered to be in transit so is not subject to port or coastal State controls. The portion of the catch that is processed is landed in the Seychelles and may be subject to port State and coastal State controls (though this is reportedly rarely the case that an inspector is present), but the portion that is transhipped to a reefer is subject in principle to control when section 7 of the CC (transshipment in port) is signed. This scenario demonstrates a weakness and there would seem to be a case for including provision as a matter of course for port State and coastal State controls¹⁴⁶.

¹⁴⁵ http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/transshipment_requirement_en.pdf

¹⁴⁶ Spain states that "Spain as a MS complies with community norms as well as those of ICCAT, IOTC and other RFMOs in relation to the controls and inspections of Spanish-flagged vessels, while it is necessary that coastal and port States increase these inspection templates and their levels of guarantee and control of these. Spain is in favour of these controls and inspections being conducted in those ports, but it cannot abandon its compliance with its activities with respect to the norms and controls in force on its flagged vessels." (2013a, Translated)

There would seem to be a strong case for transshipments to be allowed in port and for CCs to be validated by an authority nominated by the government of the port State for the purposes of the EU IUU Regulation, and that this CA be notified to the EC. This would allow for recognition of that authority and for proper quality controls and audits to take place of the capacity and performance of such authorities. Controls should be effected by the port State to ensure that licences and log books are in order, illegal fishing activities have not taken place on the high seas or in an EEZ, and provisions should be made for verification with the flag State if necessary.

These standards and rules must also apply for vessels flying the flag of an EU Member State, in particular where these products are transhipped for further processing in another country before being transported to the EU (see Box 8).

Under the EU Control Regulation transshipment at sea is banned in Community waters¹⁴⁷ for EU flagged vessels. There are good reasons for this, which do not form part of the remit of this Study. However, suffice it to say that the underlying *raison d'être* is the risk of relying solely on flag State control for supervising these operations. Thus, according to the Control Regulation, all transshipments by EU flagged vessels must take place in port.

The preamble, paragraph 11, of the EU-IUU Regulation restricts transshipments outside Community waters unless under the auspices of an RFMO.¹⁴⁸

It is thus surprising, in the context of the difficulties that many third countries have in exercising controls and being able to afford good MCS (see section 4.4.2), that the CC includes provision for this transshipment at sea as well as in port for third country vessels. Moreover, recent events regarding illegal transshipment discovered in West African waters (Baker 2013, EJP 2013, Box 9), have demonstrated the risk (by no means confined to this part of the World).

Box 9: Illegal transshipment in West Africa

Illegal transshipment in West Africa

Case Study Sierra Loba transshipment at sea in Guinea.

In November 2012, EJP investigated the Curacao-flagged reefer Sierra Loba, which brought fish to the port of Busan in Korea. Several Korean-flagged vessels in Guinea and Gabon were authorised by coastal States to tranship fish at sea onto the Sierra Loba, including fish that was illegally caught. Among them was the Poong Lim 12, which EJP documented fishing illegally in the Inshore Exclusion Zone (IEZ) in Sierra Leone only 10 days before the date of the transshipment. The IEZ is an area where industrial fishing is legally prohibited. The Sierra Loba also transhipped in Guinea with the Five Star and the Kummyeong 2 (both Korean-flagged vessels), which are considered 'fugitive IUU vessels' in Sierra Leone after committing offences and subsequently fleeing to Guinea.

¹⁴⁷ COUNCIL REGULATION (EC) No 1224/2009, Article 20.1 "Transshipments at sea shall be prohibited in Community waters. They shall be allowed only subject to an authorisation and to the conditions laid down in this Regulation in ports or places close to the shore of Member States designated for this purpose, and in accordance with the conditions laid down in Article 43(5)."

¹⁴⁸ "Transshipments at sea escape any proper control by flag or coastal States and constitute a usual way for operators carrying out IUU fishing to dissimulate the illegal nature of their catches. It is therefore justified for the Community to authorise transshipment operations only if they occur within the designated ports of Member States, in ports of third countries between Community fishing vessels, or outside Community waters between Community fishing vessels and fishing vessels registered as carrier vessels under the auspices of a regional fisheries management organisation."

Case Study Seta 73.

In March 2011, EJF documented the illegal transshipment of the Seta 73 with the Seta 70, Marcia 707, 515 Amapola and Medra. The four vessels had been documented by EJF fishing illegally in the IEZ of southern Sierra Leone during the two months prior to the transshipment. Consequent investigations by the EU revealed numerous other IUU transshipments undertaken by the Seta 73 in other West African countries including Liberia, Guinea and Guinea Bissau.

Source: Extracts from EJF 2013

There would appear to be plain *prima facie* case for eliminating the possibility for transshipment at sea, except under very well defined and precise conditions. And where this has taken place, that EU MS put in place obligatory controls and verifications to ensure that the transshipment was properly monitored, not only by the flag State, but also by the coastal State of RFMO.

Recommendation IUU.19 The EP should insist that the EC includes mechanisms for ensuring that appropriate CAs are vetted for endorsing transshipments at sea and in port in third countries, and that CCs are controlled to this effect. Transshipment at sea should be banned if it takes place without verified supervision under a recognised RFMO or coastal State CA.

4.5.3 Indirect imports

Products that are not processed

Article 14.1¹⁴⁹ of the EU IUU Regulation provides for indirect imports of products that have not undergone processing. These must be accompanied by the original CCs, and documented evidence, which “*where appropriate, the single transport document...*” or a document issued by the CAs of the third country.

Indirect imports of unprocessed products are in many cases arriving in EU MS with the CC and a single transport document. It is worth remembering that there is no provision in the Regulation that this single transport document needs to be checked by the CA nominated under the IUU Regulation, and the Regulation clearly states that this should only be used, “*where appropriate*”. There is no guidance when this is to be the case. This allows for goods to pass “*in transit*” or simply through third countries under a transit and customs procedure. This lack of clarity and control from an IUU perspective provides a loophole whereby goods can enter the chain. It is important that the appropriateness of the single transport document be defined, and a safe obligation would be that this is only valid if a sealed container has arrived and left that third country. In all other cases, there are opportunities for including IUU sourced products, and this must be safeguarded by the CA nominated by the third country under the EU IUU Regulation.

¹⁴⁹ 1. In order to import fishery products constituting one single consignment, transported in the same form to the Community from a third country other than the flag State, the importer shall submit to the authorities of the Member States of importation: (a) the catch certificate(s) validated by the flag State; and (b) documented evidence that the fishery products did not undergo operations other than unloading, reloading or any operation designed to preserve them in good and genuine condition, and remained under the surveillance of the Competent Authorities in that third country. Documented evidence shall be provided by means of: (i) where appropriate, the single transport document issued to cover the passage from the territory of the flag State through that third country; or (ii) a document issued by the competent authorities of that third country: — giving an exact description of the fishery products, the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used, and — indicating the conditions under which the fishery products remained in that third country.

In these cases, Article 14.1bii should apply, as has been the practice in Namibia (see Box 6): *“a document issued by the Competent Authorities of that third country: — giving an exact description of the fishery products, the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport”*. The EU IUU Regulation does allow for the use of a customs document in its article 14.1bi: *“where appropriate, the single transport document issued to cover the passage from the territory of the flag State through that third country”*, but there is no guidance as to when this is the case. This clause allows for laxity with respect to the application of port and coastal State controls. Moreover, in most of the cases when fishing products are loaded into containers in a third country port for onward export, the article 14.1bi cannot apply as there is not such a single transport document. In such a case fishing vessel offload products into containers which will then be transported by a cargo and accompanied by a transport document. Therefore in this particular situation the application of the article 14.1bii is essential.

It would seem prudent to clarify this issue, and the safest form of control is when a sealed container passes through a third country bearing that same seal on entry and on exit. In any other circumstance, there are opportunities for mishandling the consignment.

Recommendation IUU.20 The EP should see that the EC introduces measures to ensure that indirect imports of unprocessed products only enter the EU with an appropriate declaration from the nominated CA *giving an exact description of the fishery products, the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport and a declaration that the goods stayed under the surveillance of the CA in the third country the product has passed through, in all cases.*

Processed products

Article 14.2¹⁵⁰ of the EU IUU Regulation provides for indirect importation of processed products.

Since the existing system is paper based, it is heavily influenced by document security; this is particularly the case for indirect imports. In the majority of cases a consignment of raw material will be split, and traded in parts, and distributed to a number of processing establishments. Regarding tuna canneries, in most of the cases the CC is issued by the flag State CA based on the information contained in the certificate of delivery issued by the cannery and sent to the CA. The certificate of delivery is filled in after sampling and sorting. The weight, the species and information on the fishing vessel appearing in the CC are therefore provided by the cannery directly without even the intervention of the local fisheries authorities if they are not present at landing or at entry into the plant. The CA will only intervene for the validation of the processing statement. The validation of the CC can be totally disconnected from the landing operation which is the moment when the legality of the fishery products is certified. The validation of the CC in the case of tuna canneries relies on a commercial document provided by the processor. This case is

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

very frequent as tuna cans are most of the time processed with imported foreign raw material.

The EU IUU Regulation provides for attaching copies of CCs to Processing Statements on export, but does not specify requirements for controlling certified consignments that are split.

In one case, when the totality of a landing is used by a processing plant, and the CC reflects this amount, the risks are less acute and the statement in the WICC note can be taken to be realistic¹⁵¹.

In the other case, it would seem that in a large proportion of product (it is impossible to determine the scale because of the weaknesses inherent in the system) landings are split among traders and processors. Thus, the amounts that each processor receives will be less than the documented photocopy of the CC indicates. This is the case for all processing activities in third countries that use product from another third country or sourced from an EU vessel. This study has demonstrated that most product entering the EU is in processed form. Since EU MS do not keep accurate records of the Processing Statements and the CCs entering their country, it is impossible to indicate with accuracy what the scale of this risk is, much less the extent of its abuse.

In any case as original CCs are almost never sent to the EU or used in processing countries, in both cases copies of CC can be made if none is controlling their use.

There is the potential for IUU fish to be introduced into the system as described by Hosch (2012) as The Great Laundromat effect and depicted in Figure 16.

The opportunities for reusing CCs or channelling the product of illegal activities through these Processing Statements and CCs are self-evident from the way the system is set up.

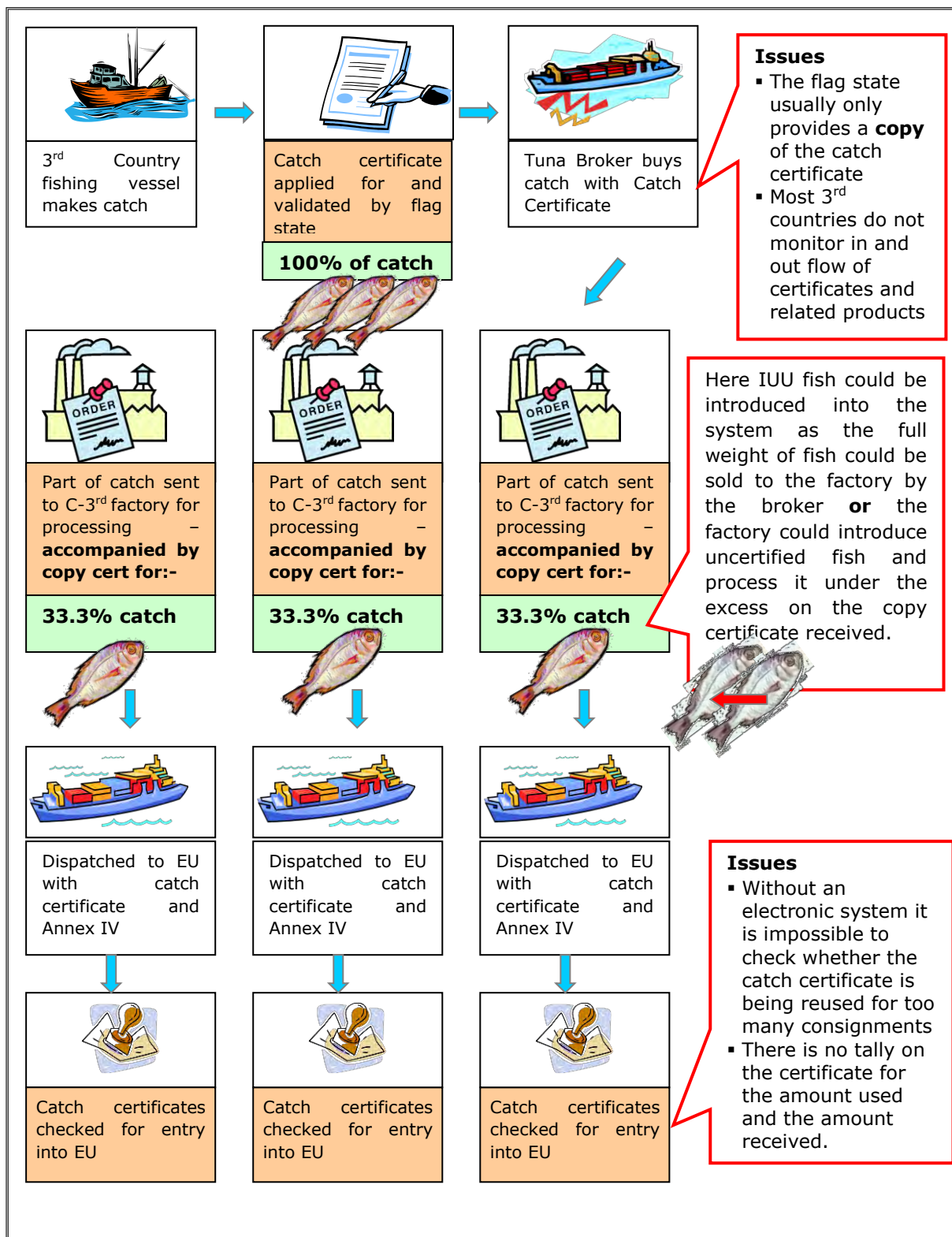
The dangers in the system described above are mitigated when CCs are issued for the amounts entering the cannery, but not eliminated.

This could be partly resolved by requiring the re-export document to be completed where part of the consignment is shipped out of an EU country (practice in this regard varies between EU countries) *and* by introducing a record of landing/ receipt for completion in the third country or a record of the weight purchased by the processing factory.

One of the answers is a system whereby issuing certificates is registered in an electronic depository accessible to both Competent Authorities of EU MS and of third countries. This would allow for accounting for the use of CCs and of Processing Statements, but it would not tell the importing MS if the fish in the consignment is indeed the same fish.

For this, one needs to maintain batch integrity. The EU MS could query the issuing flag State on the originality of the document, which is a favourable indication, but the issuing flag State is not able to indicate how many times the CC has been used nor the destiny of the product.

¹⁵¹ "In cases of indirect importations of processed products Annex IV of Regulation 1005/2008 must be used and in these cases a catch certificate from other flag States can contain the weight of the full import into the processing country which in most cases will consist of the entire landing. »

Figure 16: Indirect imports of processed products and associated issues

Source: Dawes (2012), Based on Hosch (2012)

Box 10: Some scenarios of indirect importation in the whitefish industry**Some scenarios of indirect importation in the whitefish industry**

There are many different scenarios concerning indirect imports. Many of these are encountered frequently.

As well as the two involving transit through the EU demonstrated in Box 5 (Russia – Norway – (sometimes via Holland) China – UK and Russia – Holland – China – UK), there exist another scenario in the whitefish trade that the UK Port Authority at Felixstowe cites:

Scenario 3 Russia (overland) - China - UK

Since the introduction of more detailed checks over Russian exports, there seems to be a slight increase in the use of the overland transportation route from Murmansk to St Petersburg. In this case the transport details on the catch certificate will detail the container number that the fish was transported in and a copy bill of lading can be used to demonstrate the movement of the container by ship from St Petersburg to China.

The models above underline the importance of maintaining consignment identity throughout the journey undertaken by the FAP but also to have the possibility to establish a link between the landing of the fishing products and the moment that the CC is issued to certified (e.g. when the cannery receive the fish) the legality of the products.

Recommendation IUU.21 The EP should ensure that the EC set up a system whereby each time a consignment is split the use of the original CC is recorded in a database available to CAs in third countries and EU MS, so that EU MS may check the use of the CCs accompanying consignments on entry into the EU. There should be a full electronic system of issuing CCs under the EU IUU Regulation by EU MS and by third countries, and a record of the use of each one of these by processing countries and EU MS importing and re-exporting countries.

4.6 Comparison of standards required from third countries & EU Member States

Rules of Origin with respect to FAP

The Rules of Origin (RoO) with respect to FAP are contained in Council Regulation (EEC) No 2913/92 establishing the Community Customs Code and in Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of the Community Customs Code. Article 22 of 2913/92 states that non-preferential origin shall be given for applying Customs Tariff of the European Communities. Goods originating in a country shall be those wholly obtained or produced in that country, which means (Art 23): "(e) *products of hunting or fishing carried on therein*¹⁵²; (f) *products of sea-fishing and other products taken from the sea outside a country's territorial sea by vessels registered or recorded in the country concerned and flying the flag of that country*; (g) *goods obtained or produced on board factory ships from the products referred to in subparagraph (f) originating in that country, provided that such factory ships are registered or recorded in that country and fly its flag.*"

¹⁵² This includes the Territorial Sea.

According to Article 24, goods that have been processed may be deemed to originate where they were processed¹⁵³. Products fished by EU MS vessels or processed on board may also be exempt¹⁵⁴. Such a condition is already covered by Article 23.

Definitions of originating products are further defined in a similar vein in Art 75 and Art 99 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (EC 1993). The latter further defines origin from vessels that are owned at least 50% by nationals, where master and officers are nationals, and where at least 75% of the crew are nationals. These conditions would apply to vessels fishing on the high seas.

These Rules of Origin would permit the issue of a Certificate of Origin from the relevant Member State of the EU in appropriate cases, from a customs perspective, or quite simply an indication to Customs as to how the product should be treated on entry.

How the Rules of Origin and the Certificate of Origin affect the checks carried out on entry to the EU

Specific provisions exist in subsection 5 of Commission Regulation No 2454/93 (Art 325 to Art 336) and Annex 43, where the format for a form T2M is to be found (see Annex 5). The T2M proves the Community status of the product¹⁵⁵, and it must be used where goods are transported directly to the customs territory of the Community¹⁵⁶. The T2M is an original document issued by the customs office of the base port of the Community vessel (Art328), and the details of the vessel are inserted on issue. In the T2M form there is provision for indicating the catch (Box4) processing (Box6), and the form is to be signed by the Master of the FV whenever he tranships, or, crucially, lands products in a port outside the Community for subsequent consignment to the EU¹⁵⁷.

¹⁵³ "Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture."

¹⁵⁴ Article 188 states: "the following shall be exempt from import duties when they are released for free circulation: (a) products of sea-fishing and other products taken from the territorial sea of a third country by vessels registered or recorded in a Member State and flying the flag of that state; (b) products obtained from products referred to in (a) on board factory ships fulfilling the conditions laid down in that subparagraph."

¹⁵⁵ Article 325 states: "A T2M form ... shall be produced to prove the Community status: (a) of the products of sea-fishing caught by a Community fishing vessel, in waters other than the territorial waters of a country or territory outside the customs territory of the Community; and (b) of the goods obtained from such products on board that vessel or a Community factory ship, in the production of which other products having Community status may have been used"

¹⁵⁶ Article 326 states that the T2M must be used where the goods are "transported directly to the customs territory of the Community (a) by the Community fishing vessel which caught the products and, where applicable, processed them; or (b) by another Community fishing vessel or by the Community factory slip which processed the products following their transshipment from the vessel referred to in point (a); or (c) by any other vessel onto which the said products and goods were transhipped from the vessels referred to in points (a) and (b), without any further changes being made; or (d) by a means of transport covered by a single transport document made out in the country or territory not forming part of the customs territory of the Community where the products or goods were landed from the vessels referred to in points (a), (b) and (c)."

¹⁵⁷ "(a) tranships products to one of the vessels referred to in point (b) of Article 326 (1) which processes those products; (b) tranships products or goods to any other vessel which will not process them but take them directly either to a port in the customs territory of the Community or to another port for subsequent consignment to that territory; (c) without prejudice to Article 326 (2), lands products or goods in a port in the customs territory of the Community; (d) lands products or goods in a port outside the customs territory of the Community for subsequent consignment to that territory." (Art329). He must also complete and sign the declaration in Box 11, which states "the products referred to in box 4 have shown in box 10 processing which as been recorded on page... of the logbook and the resulting goods are shown in box6".

Where the goods go to a third country or territory, the certification in box 13¹⁵⁸ must be completed and endorsed by the customs authorities of that country or territory (Art332). There is provision for splitting a consignment (Art333), and in this case an “extract” will be made, using an original form from the booklet. This extract refers to the number of the original T2M. The authorities may request “*all relevant documents*” (Art334) when checking, but there is no indication as to what these might be.

It is important to note that there is no mention of the legality of the catches in these documents, and that the certification is by customs authorities in third countries, not by fisheries authorities. Similarly, Box C of the form, on entry into the EU, is to be completed by the customs office. There is no indication in the T2M or in its notes that the legal origin of the goods is to be checked.

Fisheries products caught by EU vessels outside the community are transhipped and/or offloaded and loaded into containers in a third country’s ports using this formality, as we have seen in section 4.4.2. The CA in the relevant EU MS will only validate a CC if the products will be processed in a third country to be then exported to the EU. In the other case, a T2M is signed by the vessel operator.

Article 2.13 of the EU IUU Regulation states that “*‘exportation’ means any movement to a third country of fishery products harvested by fishing vessels flying the flag of a Member State, including from the territory of the Community, from third countries or from fishing grounds*”. Based on this definition, we argue that products transhipped or moved to a third country should be considered as exports from the EU¹⁵⁹. To move them to an EU port of entry, by whatever means, would therefore require their importation into the EU, since Art 2.11 states “*‘importation’ means the introduction of fishery products into the territory of the Community, including for transshipment purposes at ports in its territory*”. Art 12.2 of the EU IUU Regulation states that “*fishery products shall only be imported into the Community when accompanied by a catch certificate in conformity with this Regulation*”.

Article 15(1) of the same Regulation states that “*The exportation of catches made by fishing vessels flying the flag of a Member State shall be subject to the validation of a catch certificate by the Competent Authorities of the flag Member State, as established in Article 12(4), if required within the framework of the cooperation laid down in Article 20(4)*”. Where the first part of this clause obliged EU MS to provide the CC, the latter part provides a let-out clause.

However, the Handbook is unambiguous. It details the specific scenario relating to catches of EU MS vessels: “*It is important to note that catches done by EC vessels which, following their export are indirectly imported to the Community in their processed or unprocessed form from a third country must be accompanied by a catch certificate validated by the flag EU Member State*” (DG MARE, 2009b p20). This is an important clarification, because practice has it that if the products are processed, the EU MS will provide a CC, thereby being subjected to CC controls and other controls in the Third Country, but if they are offloaded and loaded into a container, EU MS practice is not to issue the CC, and third countries can be instructed not to request one.

¹⁵⁸ This states : « *The undersigned customs authority, hereby certifies that the products and/ or goods referred to in boxes 4 and/ or 6 were under customs supervision throughout their stay and have undergone no handling other than the (sic) necessary for their preservation.* »

¹⁵⁹ DG MARE appears not to hold this position.

We have seen in section 4.5 what the implications of this indirect importation are for the likelihood of IUU products entering the EU, with specific reference to transit, and offloading and loading.

The Handbook (DG MARE 2009b p 56), contradicts the statement on its page 20, explicitly saying that product “*in transit in a third country on its way to the Community should be accompanied by a T2M form. If a T2M exists the products do not need be accompanied by a catch certificate as they are not imported into a third country*”. The handbook states that they have been under the surveillance of the Competent Authorities of that third countries (p50), but the problem is that these authorities are normally custom authorities and therefore not dealing with MCS of fisheries products and nor are they the CA nominated under the EU IUU Regulation. In most of the countries where these types of loading/unloading operations happen it has been observed that no fisheries inspector is monitoring these operations. The EU vessels tranship into carrier or load their catches into container without any checks to prevent IUU products leaving the third countries’ ports. Customs in these countries often do not consider that these operations are imports and so controls are limited. Moreover the catches transhipped and offloaded into containers are not in sealed boxes but in bulk quantities. The operations of transhipments and loading into containers can also take several days where no fisheries inspectors are present to monitor the operations. Freezer containers can lie on the docksides for several days without often any type of surveillance or record at the fisheries authorities. This situation creates a loophole which could lead to the introduction of IUU fishing products even though caught by EU vessels outside EU waters. But these operations are not considered as importations, the argument being that the fish does not touch the ground but is directly loaded into the container like in the case of transshipment between a carrier and a fishing vessel. However the nature of these operations clearly seems to fall under the definition of exportation of the EU IUU Regulation.

Box 11: Prohibited shark species confiscated in Spain

Prohibited shark species seized in Spain

In February 2013 an EU vessel unloaded prohibited shark species in Sao Vicente, Cape Verde, and loaded the catches in bulk into containers, using a T2M, and thus without fisheries control in Cape Verde, as determined in the Handbook (see Annex 4). These illegal catches were loaded onto a Panamanian-flagged container vessel destined for Leixoes, a Portuguese port, to enter and be transported to Vigo in Spain under a transit procedure. On arrival in Portugal the authorities noticed that the consignment contained Silky sharks, a prohibited species under ICCAT¹⁶⁰. The Portuguese authorities alerted the Spanish authorities and sent the containers on to Vigo, where they were inspected. The consignment, of 4,514kg was confiscated, and a fine of EUR5,000 imposed on the owner of the vessel.

Source: Fisheries Inspectorate, Vigo

We have seen that according to our interpretation of the definition of “*exportation*” in Article 2 of the EU IUU Regulation, the consignments should be considered as exported from the EU, and therefore having entered a third country. Thus, if they are to enter the EU subsequently, we argue that they are in effect indirect imports and not direct imports. Indirect imports should be reimported into the EU with a CC under indirect import procedures delineated in Article 14. The EU IUU Regulation provides no definition of

¹⁶⁰ ICCAT 2011 Recommendation 11-08 RECOMMENDATION BY ICCAT ON THE CONSERVATION OF SILKY SHARKS CAUGHT IN ASSOCIATION WITH ICCAT FISHERIES
http://www.iccat.int/Documents/BienRep/REP_EN_10-11_II_1.pdf

transit, though it does refer to transit in Article 19, in another context altogether (see section 4.5.1). This Study would maintain that from an IUU perspective, and in this context, transit should only be accepted where a sealed container enters and leaves a third country or the EU intact. This is clearly not the case when FAP are loaded into a container in bulk quantities, and whether they have touched the ground or not is irrelevant.

Whereas the EU IUU Regulation requires that consignments imported to the EU accompanied by a CC to be subject to checks and verifications, those goods under T2Ms are under no such obligation. Though these fisheries products are caught abroad, in the waters under the jurisdiction of third countries, or on the high seas, they are not subject to the same scrutiny as fisheries products caught by third country vessels in the same circumstances. From a fisheries management perspective, and from a conservation point of view, this is a significant weakness of the system. IUU products, irrespective of their origin (EU vessels or third countries' vessels), should not enter the EU. To that end equal controls should be undertaken on FAP entering the EU, whether fished by EU vessels or by third country vessels.

We have seen that some consignments of fishing products, caught by EU vessels in third countries' waters, or on the high seas, are classed as of EU origin, and therefore escape the controls on importation that third country consignments are subjected to. Thus, the onus falls on the application of flag State responsibilities in MS States and coastal and port State responsibilities in third countries.

Flag State controls are the cornerstone of the Catch Certification Scheme enshrined in the EU IUU Regulation. According to Article 12 of the EU IUU Regulation, fishery products shall only be imported into the Community when accompanied by a Catch Certificate. Whereas catches from third country vessels are subject to this explicit validation, we have seen this is not the case for all fishing products caught by EU vessels outside EU waters. Where products have been landed and then processed for onward shipment to the Community, they do have to be accompanied by a Processing Statement in accordance with Annex IV of EU IUU Regulation. EU Member States, in these cases, do provide Catch Certificates, as do third countries, and so in these cases the controls can be judged to be equivalent between those applied to products of EU origin and those of third country origin. Thus, where flag States validate Catch Certificates, the obligations for EU Member States and third countries are comparable, subject to the relative inherent weaknesses in flag State controls, discussed in section 4.4.2.

Where a product enters on a T2M, there is no explicit requirement that there be certification that the product has been caught in accordance with controls. Arguably, EU vessels are still under the EU Member State flag State controls and obligations, but we have seen that even EU Member States have been judged lacking in rigour in this regard.

Because FAP of EU origin pass through third country ports under the jurisdiction of customs procedures inherent in the T2M, they can escape the controls that port States apply in both EU Member States and in third countries. The hygiene package (see section 3.3) does oblige vigilance by the last port of call, because the Health Certificate must be issued by the CA of the port of departure. This is not the case for EU products under the existing practices with the T2M and the way the EU IUU Regulation is being applied.

Where the flag State authority is the same as the Coastal State, the Coastal controls are inherent in the certification under the Catch Certificate. However, where the fish has been caught in waters other than the flag State, the coastal controls will only be as good as the MCS measures that are in place in that coastal State. These can be very weak, particularly where a developing country has limited financial, material and human

resources and where it can be subject to industry pressure, and governance is weak. RFMOs do provide certain safeguards, particularly where the Catch Documentation Scheme has been accepted under Article 13 of Council Regulation No 1005/2008¹⁶¹. EU Member States must be particularly vigilant where products are caught in waters other than that of the flag State validating the Catch Certificate.

The risks of IUU products entering the EU as a result of the use of the T2M can be reduced by applying the Catch Certificate and control procedures on all products caught by EU vessels outside EU waters, processed or not processed, so that verifications and risk assessments applied are the same as the ones applied to fishery products imported into the EU from third countries. This would apply to those products fished outside Community waters and passing through third country ports or transhipped onto third country vessels.

Recommendation IUU.22 EU vessels and their products entering port in third countries should be subject to the same controls as third country vessels, and the full range of coastal State and port State controls should be applied by these third countries on EU flagged vessels where transhipments and offloading and loading operations in containers take place. Products fished outside community waters by EU MS vessels, passing through third countries, should be accompanied by a CC (to be issued only when accompanied by documentary evidence in Art 14.1bii of the EU IUU Regulation, on export from the third country) rather than a T2M. The EP should insist on the EC making this clear to third countries and EU MS, and the confusion engendered by the handbook should be amended.

4.7 Evaluation of effectiveness of current system to prevent laundering

This Study has found that the EU IUU Regulation is an appropriate instrument in the fight against IUU Fishing worldwide and reducing demand in the EU for FAPs sourced from IUU fishing. The establishment of the CCS can potentially prevent the imports of IUU FAP into the EU but unfortunately several factors undermine the effectiveness of this unique instrument.

There are three main areas of concern regarding the effectiveness of the implementation of the EU IUU Regulation, the subsequent interpretation of the EU IUU Regulation and the extent to which EU consumers are protected from FAP sourced from IUU activities. The first is institutional oversight and transparency; the second relates to the technical aspects of traceability; and the third is the effectiveness of the EU IUU Regulation in the fight against IUU fishing activities globally.

Institutional oversight and transparency

There is a common market in the EU, and hence a common border with third countries. Generally speaking, once goods have entered one Member State, they are free to circulate and be consumed within the remaining members. For this to be effective, harmonisation, coordination and consistency between EU MS is necessary. This study has exposed certain weaknesses. One is the acceptance by the EC, in some cases without question, of the nominations from both EU MS and from third countries of their CAs under the EU IUU Regulation, and opacity in the criteria and procedures for acceptance of these nominations (section 3.3). Within the Catch Certification Scheme is the validation of CCs and Processing Statements by certain authorities. There are lacunae in the EU IUU

¹⁶¹ At present these comprise those in Annex V to Commission Regulation 1010/2009 and Art 2.3 of Commission Regulation 202-2011: *Dissostichus* spp, CCSBT Bluefin Tuna and ICCAT Bluefin Tuna

Regulation with respect to the nomination of CAs for Processing Statements and for transshipments in port or at sea (section 4.5.2). The terminology used in the EU IUU Regulation differs for the validation of the processing statement (i.e. “*competent authorities*” (article 14.2) and for the validation of the CC (i.e. “*public authorities of the flag State*” (Annex III)). The EU IUU regulation is silent on the validation of the sections related to transshipments but the EC has provided indications on this on the handbook. According to the handbook section 7 should be filled in by the “*competent authority responsible for the control of the transshipment, in accordance to the national organisation structure in that country*”. Without formal acceptance of CAs in these fields, it is not possible for EU MS to assess whether the name, signature and stamp on processing statements and in boxes 6 and 7 are right.

Further undermining the effectiveness of the implementation of the EU IUU Regulation are the quality of oversight afforded by the EC, as evidenced by the notes issued (section 4.2.1), and the lack of clarity with respect to the destiny of rejected consignments (section 4.3.1).

Furthermore, the monitoring and supervision of the EU IUU Regulation by the EC to date has been opaque, patchy and incomplete. Until this is improved, accountability will be limited, and the required checks and balances will not be in place. There are existing provisions in the EU IUU Regulation that are not being instituted at all (e.g. alerts), and those that are being instituted are not being recorded (e.g. SLOs, audits, biennial reports) nor being standardised (e.g. training, procedures). This applies to actions with respect to EU MS (section 4.3.3), actions with respect to third countries and transparency and the availability of data generally (section 4.3.4). No information is available on the reasons and number of rejected or blocked consignments since the entry into force of the EU IUU Regulation. This makes it impossible to evaluate the actual impact of this Regulation on the imports of IUU FAP into the EU.

Traceability and controls in third countries and EU MS

The CCS is potentially a tool for ensuring that a product has been sourced from legal fishing activities. Unless traceability is guaranteed, this is not possible. However establishing full traceability back to catches is difficult considering the complexity of the movements and different stages the fishing products go through before reaching the EU borders (section 4.4 and section 4.5). Often products imported to the EU have been caught in one country, traded several times and processed in other countries, which can lead to difficulties in properly checking the CCs and other related documentation and ensuring their authenticity. The validation of the CCs before the export of the consignment to the EU created a real challenge for the CA in third countries wishing to efficiently validate the CC to really guarantee the legality of the catches and to establish traceability measures all along the production, processing and marketing chain. We have seen (section 4.4.2) that in developing third countries (but not only) MCS measures are often not strong enough to guarantee the legality of the fish caught. However without a strong MCS system and well trained officers present to inspect the fishing vessel, also during unloading and transshipment operations, the CC will remain an administrative document providing little or no guarantee. Other issues and difficulties remain, like the specificity of the artisanal sector, difficulties in monitoring it and the paper work it generates (section 4.4.2).

Risk assessment and control practices vary widely between EU MS. Without prejudice to the autonomy afforded to EU MS as to how they organise their administrations, until practices are harmonised, risk assessment is standardised and information exchange and systems are improved (section 4.3.1), there will continue to be weak entry points that

the private sector can exploit. Thus, the consumer will be at risk of consuming illegally sourced FAP, and deterrence to IUU fishing reduced.

The existing system is paper based, despite the existence of EU electronic system allowing the electronic transmission of health certificates (i.e. TRACES), and customs documents. This leaves the door wide open to document misuse and abuse, for imports into the EU and exports from it (use of CCs and Processing Statements) and in re-exports from the EU (re-export sections of the CC) and their subsequent re-importation into the EU. The obvious solution to this is a uniform standardised electronic system (perhaps linked to TRACES and customs tools) that both exporting and importing countries have access to in order to check the use and destiny of the product recorded in any CC. Until this is done, the EU consumer will not be protected, and product will continue to be laundered (section 4.3.2).

The impact of the EU IUU Regulation on IUU fishing

This study has shown that IUU fishing continues to be a scourge and though there are signs of improvement, it continues to be a threat to the fishing resources of coastal States and the high seas worldwide (section 4.1). The EU IUU Regulation is to be welcomed, as it has significantly raised the profile of IUU fishing in both exporting and importing countries, and the need for good MCS and traceability in transit, processing and exporting countries. Moreover it has led in several countries to the adoption of new MCS measures to ensure an effective validation of the CC. It is consistent with international instruments (section 4.2.1) but even if measures related to institutional oversight and traceability are fully implemented, its effectiveness worldwide will be contingent on other major markets applying strict and effective measures, an eventual global scheme for traded fishery products, and the application of coherent port State measures, flag State measures, and respect for coastal jurisdictions. Until these measures are in place, the EU consumer will not be fully protected, particularly in the face of EU involvement in IUU activities, weak flag State and port State controls and disrespect for coastal State sovereignty. To avoid FAP of IUU origin being redirected to other markets, the international community needs to reflect on the possibility of introducing a global system preventing and deterring IUU fishing activities, by building on the lessons learnt from the EU IUU Regulation.

The fight against IUU fishing is dependent on a degree of deterrence. EU MS treat rejected consignments differently, leading to large differences in effective sanctions when illegal shipments are discovered (section 4.3.1). To that end clarity and guidance from the EC is necessary.

The EU IUU Regulation has a potentially powerful role in contributing to the fight against IUU fishing by both EU MS and by third countries. Both EU MS and third countries face difficulties in this regard. The audits done by the EC of third countries' MCS measures are a necessary corollary to the documentary checks carried out by EU MS, but as long as these are carried out with no standard methodology and the results of these audits are not made public, the system's legitimacy with respect to fighting IUU will be open to accusations of technical barriers to trade, and of arbitrary judgement and blacklisting (section 4.3.4).

There are wide disparities and inconsistencies in the interpretations with respect to goods and consignments in transit (or not), being transhipped (or not) and being regarded as indirect imports (or not), which leads to significant opportunities for laxity in the application of flag, port, coastal and market State measures, and the passage of IUU sourced products through EU MS and through third countries (section 4.5).

This is also the case with respect to products fished by the EU MS distant water fleet, where origin is deemed to be EU, and on this basis, port State and coastal State controls are relaxed or omitted entirely (section 4.6). The community origin of these products should not be an excuse to relax the application of good port State and coastal State MCS measures. Equivalent controls to the one applied to FAP coming from third countries should be applied.

The novelty of the EU IUU Regulation and recent years of implementation combined with the complexity of the trade flow in the fishing industry have played a role in the difficult and challenging implementation of the CCS established under the EU IUU Regulation. However, a full transparent, objective and comprehensive evaluation on the implementation of the EU IUU Regulation is necessary to deal with the weaknesses presented in this report and address them. Unless this is done the potential of the EU IUU Regulation in fighting IUU fishing and preventing the importation of IUU FAP into the EU will remain hypothetical.

The application of the measures recommended in this Study will hopefully build on the progress made to date, and enable the EU IUU Regulation to become an effective part of an ever increasing range of measures worldwide to combat IUU fishing.

List of recommendations

The authors of this study proposed a set of 11 recommendations related to the chapter on safety and quality and 22 recommendations related to the chapter on safety and quality which are listed below.

RECOMMENDATIONS RELATED TO THE CHAPTER ON SAFETY AND QUALITY:

Recommendation H.1 The EP should follow up with the European Commission the issues related to transshipment rules and see whether harmonisation has been achieved since the adoption of the guidance document.

Recommendation H.2 The EP should follow up with the European Commission on strengthening the prescriptive content of Regulation (EC) No 882/2004 in order to standardise inspection practices in MS BIPs.

Recommendation H.3 The EP should follow up with the European Commission regarding the development of further capacity building through the Better Training Safer Food initiative in inspection processes followed at MS BIPs to ensure equivalence in food import inspection processes.

Recommendation H.4 The EP should follow up with the European Commission that a central register of signatories, stamps and health certificates should be established to facilitate the review of documentation at EU MS BIPs.

Recommendation H.5 The EP should follow up with the European Commission regarding the integration of local BIP computer programmes with TRACES to facilitate communication between BIPs within EU MS.

Recommendation H.6 The EP should ensure that FAP landed by freezer vessels operating outside EU waters are submitted to sanitary controls at the BIP to the same standards and criteria as for other imported FAP.

Recommendation H.7 The EP should ensure that the EU MS systematically and properly record the notifications in the RASFF system to allow for effective ongoing monitoring and surveillance of foodborne risks.

Recommendation H.8 The EP should ensure that the EC establish cooperation with Vietnamese authorities in order to reduce the risks linked to the salmonellae and other issues related to FAP produced in the country.

Recommendation H.9 In cooperation with the EC, the EP should strongly support training in EU MS on the use of RASFF database and iRASFF and especially on recording information.

Recommendation H.10 The EP should ensure that the EC closely follow up the situation in countries (both EU MS and third countries) where FVO missions identified serious short comings in compliance with EU sanitary legislation. The EP should guarantee that the EC does not adopt arbitrary decisions penalising certain third countries against others suffering similar sanitary conditions.

Recommendation H.11 The EP should ensure that FVO missions concerning FAP in third countries are conducted as often as necessary.

RECOMMENDATIONS RELATED TO THE CHAPTER ON IUU LEGISLATION:

Recommendation IUU.1 The EP must monitor the allocation of subsidies, under whatever guise, from EC funds, including the instruments under the CFP, and critically appraise the incentives they may give to IUU fishing.

Recommendation IUU.2 The EP must ensure that the EC follows up and monitors the application of Art 40 of the EU IUU Regulation regarding the identification of EU nationals in IUU activities.

Recommendation IUU.3 The EP must ensure that EU MS apply the measures in the Voluntary Guidelines for Flag State Performance, and ensure that the EC plays an overarching role in monitoring, in a transparent way, the EU's performance in this respect.

Recommendation IUU.4 The effectiveness of the EU IUU Regulation in combating IUU fishing activities worldwide, and its conformity with the IPOA-IUU are contingent on effective measures being put in place in other markets and eventually worldwide. With reference to the vague Agreements the EC has brokered with Japan and with the USA, the EP should ensure concrete measures are put in place.

Recommendation IUU.5 The notes and associated documents are at times poorly drafted, unclear, not referenced and undated. Given the weight that these have, and the implications to the private sector, the EP should urge the EC to review the drafts of their notes, to ensure they are in standard language, to reference them and to date them.

Recommendation IUU.6 The EU MS are entitled to refuse consignments, there is a wide array of different CAs nominated in EU MS, and no evidence of oversight with respect to the appropriateness of CA controls. The EP should urge the EC to establish clear criteria and guidelines for their performance.

Recommendation IUU.7 The EP should ensure that the EC establishes a mechanism for the nomination of CAs endorsing Processing Statements and Boxes 6 and 7 of the CC for transshipments. The EP should insist that the EC establish objective criteria and transparent procedures for assessing performance of CAs in flag State notifications received from third countries in accordance with article 20 and Annex III of the EU IUU Regulation. The EP should ensure that the refusal of a flag State notification has strong legal basis.

Recommendation IUU.8 Risk assessment systems and methodology vary between EU MS, leading to a high variability in the treatment of risk. Without prejudice to the autonomy of EU MS, the EP should follow up with the EC to ensure that there is a standardised system and methodology, based on objective and quantified criteria of risk. This should be backed up by an EU-wide information system.

Recommendation IUU.9 The existing paper based system, and the large number of CCs and Processing Statements involved, mean it is impossible for EU MS to monitor, much less control, the use of CCs and Processing Statements individually. Each country is at liberty to design its own format. Collectively, this risk is compounded, as the same CCs and Processing Statements can be reused. The EP should call for the institution of a common computerised system, starting from the issuance of the standardised CC and the Processing Statements, aimed at monitoring the CCs and Processing Statements issued by all countries and entering the EU.

Recommendation IUU.10 Without prejudice to the autonomy institutionally of EU MS, the EP should urge the EC to assess whether EU MS are carrying out effective controls (particularly with respect to identity checks), and ensure that standardised practices are employed.

Recommendation IUU.11 In order to ensure that documentary (such as licences) and traceability checks can be effective, the EP should urge the EC to ensure that the Catch Certificate indicates the EEZs where FP were fished and/or the relevant RFMO area.

Recommendation IUU.12 The EP should urge the EC to clarify the situation regarding what happens to rejected consignments and ensure that the same policy is pursued by all EU MS.

Recommendation IUU.13 The EP must insist that the EC puts in place a system whereby re-exports are subject to strict controls in order to ensure traceability: electronic system for monitoring the split of consignments and paper-based records on documents themselves, to ensure that EU MS can trace the origin and trajectory of FAP if they are re-imported into the EU.

Recommendation IUU.14 The EC's monitoring and supervision of the implementation of the EU IUU Regulation is opaque, patchy and incomplete, thus undermining the effectiveness of the system. The EP must insist on the EC adhering to the provisions in the EU IUU Regulation on publication of SLOs, transit arrangements and alerts, on the establishment of a publically available programme of audits to MS countries and publication of the results of these audits on its web site, on the provision of coherent and standardised training and support in the implementation of the EU IUU Regulation to EU MS, as well standard procedures, and on the publication of the biennial reports on the implementation of the EU IUU Regulation from EU MS.

Recommendation IUU.15 The EP should insist, as it has done for the CFP annually, that the EC publishes its own biennial assessments of the implementation of the EU IUU Regulation, including the EC's own activities in support of and in evaluation of both MS and third countries, statistics on CCs and Processing Statements received, rejections of consignments from Member States, MS performance, third country performance, the system of alerts, the information system and cooperation with third countries.

Recommendation IUU.16 The two different systems regarding processed products create uncertainty and confusion. The EP should urge that the FAP processed in the same country as the flag State should be subject to Processing Statements with CCs attached, as is the case for those processed from foreign vessels.

Recommendation IUU.17 The EP should ensure that the EC's audits of third countries evaluate the application of the full range of flag State, coastal State, port State and market State measures, to ensure that these are appropriate with respect to the products being handled for export.

Recommendation IUU.18 Transit from a customs perspective has undermined controls from an IUU perspective, especially when FAP are not in sealed containers and landed in bulk quantities. The EP should urge the EC to ensure that questions regarding IUU origin of the FAP should be verified every time a product is handled, to ensure that all safeguards are in place. There should be no exception regarding goods in transit to another EU MS: all goods entering the EU should be assessed from an IUU perspective.

Recommendation IUU.19 The EP should insist that the EC includes mechanisms for ensuring that appropriate CAs are vetted for endorsing transshipments at sea and in port in third countries, and that CCs are controlled to this effect. Transshipment at sea should be banned if it takes place without verified supervision under a recognised RFMO or coastal State CA.

Recommendation IUU.20 The EP should see that the EC introduces measures to ensure that indirect imports of unprocessed products only enter the EU with an appropriate declaration from the nominated CA *giving an exact description of the fishery products, the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport and a declaration that the goods stayed under the surveillance of the CA* in the third country the product has passed through, in all cases.

Recommendation IUU.21 The EP should ensure that the EC set up a system whereby each time a consignment is split the use of the original CC is recorded in a database available to CAs in third countries and EU MS, so that EU MS may check the use of the CCs accompanying consignments on entry into the EU. There should be a full electronic system of issuing CCs under the EU IUU Regulation by EU MS and by third countries, and a record of the use of each one of these by processing countries and EU MS importing and re-exporting countries.

Recommendation IUU.22 EU vessels and their products entering port in third countries should be subject to the same controls as third country vessels, and the full range of coastal State and port State controls should be applied by these third countries on EU flagged vessels where transshipments and offloading and loading operations in containers take place. Products fished outside community waters by EU MS vessels, passing through third countries, should be accompanied by a CC (to be issued only when accompanied by documentary evidence in Art 14.1bii of the EU IUU Regulation, on export from the third country) rather than a T2M. The EP should insist on the EC making this clear to third countries and EU MS, and the confusion engendered by the handbook should be amended.

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- FVO website http://ec.europa.eu/food/fvo/ir_search_en.cfm ;
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- www.regulations.gov
- www.fsis.usda.gov
- www.foodsafety.gov
- www.foodprotection.org
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- www.seafish.org
- www.fishwatch.gov
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- FAO reports published on the subject <http://www.fao.org/publications/en/>
- FVO reports http://ec.europa.eu/food/fvo/ir_search_en.cfm and comments sent by the inspected third countries following the FVO missions
- FVO country profiles for the 27 EU members States especially on http://ec.europa.eu/food/fvo/country_profiles_en.cfm (e.g. report on import controls not carried out at border inspection posts and specific issues at selected border inspection post)
- List of third countries authorised to export to the EU <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006D0766:EN:NOT>
- List of processing establishments for each authorised countries allowed to export to the EU https://webgate.ec.europa.eu/sanco/traces/output/non_eu_listsPerActivity_en.htm#

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- Sanitary EU legislation Eur-lex <http://eur-lex.europa.eu/en/index.htm>
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IUU

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- Website stop illegal fishing activities: <http://www.stopillegalfishing.com/> ;
- Website of the NGOs involved in the fight against IUU fishing activities:
- European Justice Foundation <http://ejfoundation.org/oceans> <http://ejfoundation.org/shrimp>,
- Pew Charitable Trusts http://www.pewtrusts.org/our_work_category.aspx?id=126;
- Greenpeace <http://www.greenpeace.org/international/en/campaigns/oceans/>
- Website illegalfishing.info <http://www.illegal-fishing.info/> and
- FAO and RFMO website and relevant reports:
 - <http://agritrade.cta.int/en/layout/set/print/Fisheries/Topics/Market-access>
 - <http://www.seaaroundus.org>
 - <http://www.portstateperformance.org/>

ANNEXES

ANNEX 1: COUNTRY CASE STUDIES CONCERNING COMPLIANCE WITH THE EU HYGIENE PACKAGE

CASE STUDY - ECUADOR

1. Production and trade information

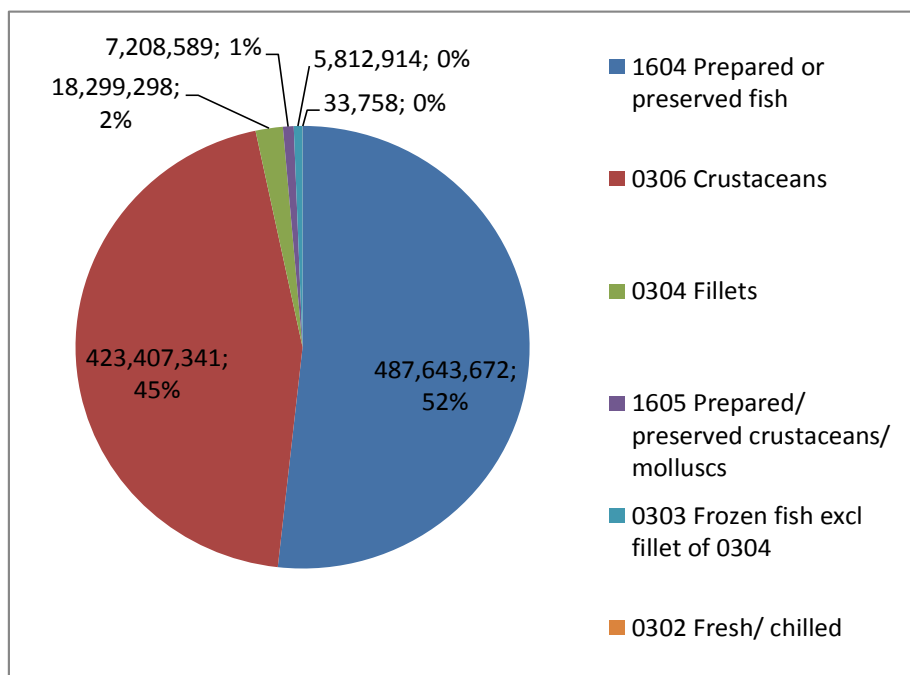
Ecuador is one of the largest producers of both wild caught fishery products, and of farmed products. In 2011, Ecuador's total fisheries production was about 663,600 tonnes of which 391,700 tonnes were derived from capture fisheries (FAO, 2013c). Tuna is Ecuador's main industrial fishery, comprising 50% of total marine catches. In 2009, the industrial fleet consisted of 159 vessels over 24 meters, of which 83 were purse seiners. Ecuador's pelagic fishery consists mainly of sardines, anchovies and mackerel. The pelagic fishing fleet is composed of 152 vessels. Ecuador produces fishmeal, most of which is used as feed in shrimp farms. In 2011, fish meal production was 108,000 tonnes. In 2011 total aquaculture production was 308,900 tonnes, including 223,260 tonnes of whiteleg shrimp from brackishwater shrimp ponds and 48,000 tonnes of tilapia grown in freshwater. In 2012 Ecuador was the fourth largest source of imports of FAP into the EU in terms of value, and the sixth in terms of volume. These amounted to EUR 942 million, 5.1% of all FAP imports in terms of value, and 202,321mt, 4.1% in terms of volume.

These comprised:

- Tunas, various spp. Exported canned or loined and whole frozen for further processing.
- Shrimp. Exported frozen. While being a close second in the EU share, 99% of exported volumes originate from aquaculture and only 1% from capture fisheries. (These can be easily distinguished by the differences in colour and size).
- Other fish. various spp. Exported frozen and fresh. Includes aquaculture tilapia, small pelagics preserves and whitefish. The volume from capture fisheries within this group exported to the EU is fairly minimal.
- Lobster, *Panelises spp.* Frozen tails, are occasionally exported from the Galapagos where free divers harvest them. Very low volumes annually due to the strong restrictions in the fishery.

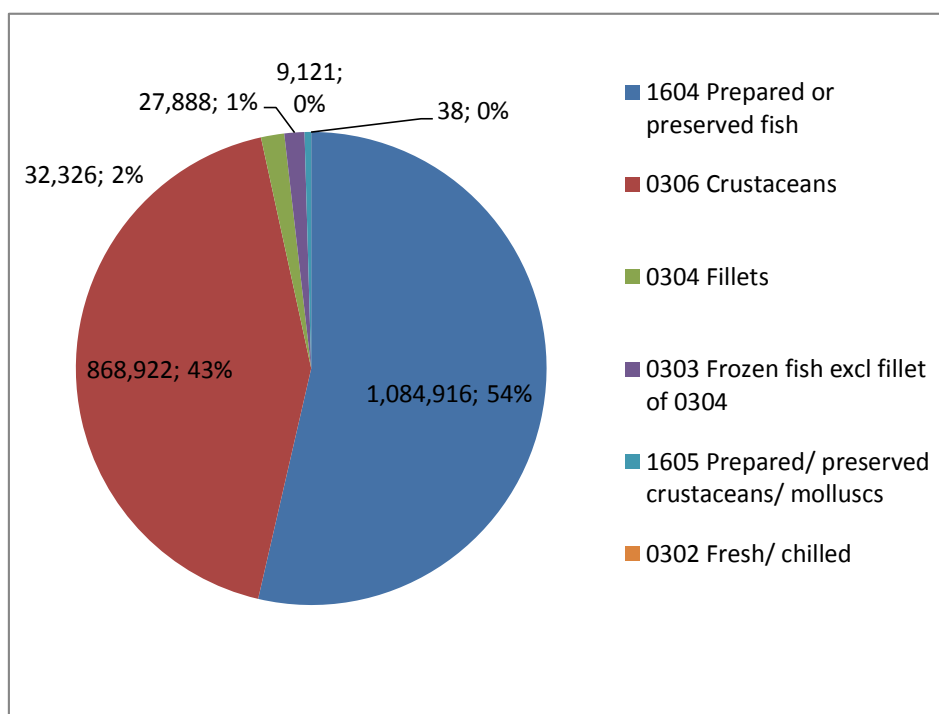
The composition of imports into the EU is shown in Figures 17 and 18.

Figure 17: Imports of Fishery and Aquaculture products into the EU27 from Ecuador in 2012 (EUR)



Source: Eurostat

Figure 18: Imports of Fishery and Aquaculture products into the EU27 from Ecuador in 2012 ('00kg)



Source: Eurostat

There are 67 processing plants and 45 freezer vessels listed with DG SANCO (last publication on 8 April 2013)¹⁶². Thirty-seven of the processing plants are approved for aquaculture products. Shrimp and tilapia are the two products sourced from aquaculture. Ecuador produced 176,609mt of shrimp in 2011; 89,187mt (50%) of this was exported to the EU. Filleted tilapia production amounted to 8,098mt, of which 920mt (11%) were exported to the EU (DG SANCO 2012). Approved establishments can only process shrimp and tilapia from approved farms, and these farms can only source larvae and fry from approved hatcheries and feed from approved suppliers. Lists of approved food and feed business operators are published on the National Fisheries Institute (*Instituto Nacional de Pesca* – INP) website. In 2012 there were 22 fish meal producers, 12 feed mills, 148 hatcheries, 1,194 aquaculture farms approved, ten primary processors of shrimp and 30 processing plants.

Approximately 22 plants specialise in capture fisheries, particularly for tuna. The majority of these tuna and “*pesca blanca*” plants are located in Manta with easy access to pelagic fishing grounds, however there are also two large ones based in Posorja near Guayaquil.

As well as those products sourced from aquaculture, mainly comprising shrimp, products from wild caught fisheries originate from various sources:

- Industrial domestic catch, landed nationally, exported whole frozen or as processed or frozen or prepared or preserved products.
- Industrial national fleet, RFMO zoned catch, landed overseas, transhipped, and sent back to the country to be processed and exported as frozen or prepared or preserved products.
- Industrial foreign catch, landed nationally, exported whole frozen or as processed or frozen or prepared or preserved products.
- Industrial foreign catches, transhipped in port and exported.
- Artisanal domestic catch, landed nationally, processed and exported as frozen or prepared or preserved products.

2. The institutional framework

The main institution responsible for fisheries administration, regulation, control, development of industrial and artisanal fisheries and the sustainable management of fishery resources is the Undersecretariat for Fisheries Resources (*Subsecretaría de Recursos Pesqueros* – SRP)” (<http://www.subpesca.gob.ec/>).

Ecuador is listed in Annex II of Commission Resolution No 2006/766, and is thus approved for certification of fishery and aquaculture products. The CA, within the Ministry of Agriculture, Livestock, Aquaculture and Fisheries (*Ministerio de Agricultura, Ganadería, Acuacultura y Pesca*) since 2007, is the INP¹⁶³, which is based in Guayaquil with one delegation in Manta. It is also responsible for fisheries research, capture statistics and the observer programme for the purse seine tuna industry.

To undertake relevant analysis the INP has the following laboratories:

- Chemical and microbiological food product laboratory accredited by the Ecuadorian Accreditation Organisation (Organismo de Acreditación Ecuatoriano- OAE) for 18

¹⁶² https://webgate.ec.europa.eu/sanco/traces/output/EC/FFP_EC_en.pdf

¹⁶³ www.inp.gob.ec

parameters under ISO 17025 standards. It can carry out analyses for heavy metals, antibiotic residues, toxins, bromides and microbiological parameters.

- Laboratory for the sampling of products for aquaculture, which is accredited for white spot syndrome virus (Virus del Síndrome de la Mancha Blanca - WSSV), infectious hypodermal and haematopoietic necrosis virus (Virus de la Necrosis Hematopoyética Infecciosa - IHNV), Infectious Mionecrosis Virus (Virus de la Mionecrosis Infecciosa - IMNV) and Salmonella spp.
- Laboratory for the chemistry of water and sediments.
- Biology.

Presently there is little official interaction between SRP and INP, even though the former monitors the activities of the fishing vessels. Simple data sharing could go a long way to achieving reinforced controls on the sanitary aspects and traceability of products.

Ecuador has a large number of establishments listed and approved. Though the structures have been judged to be compliant and able to provide guarantees, and the national control plan and residue monitoring plans provide an adequate management framework, the number of staff was until 2013 severely limited. The sector is faced with new technology and challenges with respect to the controls required, particularly in aquaculture. The new recruits, as well as older staff, will need formal and practical training, under the umbrella of a training plan. Moreover, the qualifications on recruitment of the INP staff, often originating in biology, aquaculture and food production, do not always conform to the veterinary requirements of a sanitary CA (Blaha 2005, pers comm).

3. The legislative framework

The basic fisheries law is the Law of Fisheries and Fisheries Development (*Ley de Pesca y Desarrollo Pesquero, Decreto Supremo 178*) of 1974, whose Regulation was issued in the same year (*Decreto Supremo 759*).

The Ecuadorian Quality System (*Sistema Ecuatoriano de la Calidad*) was established legally through Law 2007-76¹⁶⁴, and provides the legal framework for ensuring quality foodstuffs. Under this umbrella, the government can issue ministerial resolutions, such as those issued on 17 December 2012 covering frozen shrimps and prawns¹⁶⁵ and fresh, chilled and frozen fish¹⁶⁶.

A national system was established in 2003, which covers the processes of ensuring the quality of fisheries, aquaculture and the environment (*Sistema de Aseguramiento de la Calidad Pesquera, Acuicola y Ambiental* – ACPAA). This includes the control of fisheries products, overall residue monitoring plan (RMP), as well as food business operator's own checks on residues and contaminants in the context of HACCP, and the implementation of ISO 14000-17025. Ecuadorian legislation was modified and updated between 2007 and 2010, taking into account the recommendations of the previous FVO mission report. Ministerial Agreement No 138 concerning the registration of establishments providing veterinary medicines to aquaculture farms was produced following the recommendations of the mission in 2007. After the 2010 FVO mission a new Ministerial Agreement 241 was published laying down minimal requirements for fish and aquaculture establishments. A

¹⁶⁴ Registro Oficial No. 26 del 22 de febrero de 2007

¹⁶⁵ Resolución Nº 304 - NTE INEN 456 sobre requisitos para camarones o langostinos congelados

¹⁶⁶ Resolución Nº 306 - NTE INEN 183 sobre requisitos para pescado fresco refrigerado o congelado

National Control Plan (NCP) and a manual of procedures in line with EU legislation, describe the official control system applied in Ecuador to FAP intended for export to the EU. The FVO's mission in 2010, the last to evaluate the control systems in place governing the production of fishery products intended for export found that Ecuadorian legislation for export to the EU can, in general, be considered as in line with EU requirements.

The Canadian Food Inspection Agency (CFIA) recognizes that Ecuador places additional controls on its exporters and these controls are recognized by the CFIA through a Mutual Recognition Arrangement, the CFIA will then also reduce the inspection effort on imports from this country (FAO, 2005).

4. The outcomes of the FVO reports/missions

In 2005 the FVO determined that the controls and the institutional set-up were inadequate (DG SANCO 2005). Though the INP had a laboratory, it was a research institute unqualified to conduct the obligations of a CA under the Hygiene package. It was agreed to give the country a year's grace and following advice (Blaha, 2005) the INP was restructured so that it could assume the functions of a CA, and the laboratories were given autonomy to give independent analyses.

The report on the control systems in place governing the production of fishery products of June 2010 concludes that *"the current organization of the Ecuadorian Competent Authority and the control system implemented offers sufficient guarantees concerning the sanitary conditions of the production of fishery products for export to the European Union. However, deficiencies were found in the official control carried out in establishments and freezer vessels."* (DG SANCO, 2010). Issues since the last mission in 2007 were adequately addressed.

Following the FVO mission in 2010, the CA submitted an action plan, which included expanding certain requirements to freezer vessels supplying goods to EU establishments, the inclusion of monitoring for temperature while at sea, training and improvements in controls on unloading and improvements in contaminant and histamine testing. Comments from the CA included reference to changing rooms, where measures in place were explained, and the availability of hot running water in establishments, where a lack of hot running water does not act as a disincentive to hygiene in a tropical environment. Where sanitary measures and verifications were also in place, the final objective of preventing contamination was fulfilled.

The last FVO mission took place in September 2012 (DG SANCO, 2012c), to evaluate the implementation of national measures, aimed at the control of residues and contaminants in aquaculture. It concludes that the residue monitoring plan of Ecuador *"generally satisfies the requirements of Directive 96/23/EC"*. Improvements have been made to the plan and to written procedures relative to the 2008 FVO residues audit. The effectiveness of the residue monitoring is underpinned by a high level of sampling coverage, distribution of samples over the year, instructions and sample integrity, as well as good performance of the laboratories. However, there are several serious shortcomings in the implementation which undermine the chances of detecting illegal use or Maximum Residue Limits (MRL) violations, and thus the effectiveness of residue monitoring: publishing the residue monitoring plan in detail; providing food and feed business operators the opportunity to evade detection of illegal use by not paying for analysis and through negotiating the substances which are tested for in a sample; inadequate targeting; and taking less samples than the minimum calculated. This has been

aggravated by providing food business operators the opportunity to delete evidence prior to on-site investigations in case of noncompliant test results. A large number of own checks carried out by industry provide additional assurances on the residue status of aquaculture products exported to the EU, although occasional residue findings have not been reported. Labelling of veterinary medicinal products and the keeping of treatment records on farms is weak, whilst official controls in this area are ineffective, increasing the risk of residue violations. However, overall the situation with regard to the (un)availability of substances or veterinary medicinal products which are not permitted in the EU has clearly improved relative to the 2008 FVO audit, and this can partly mitigate for shortcomings mentioned above.

The last audit carried out concluded that *"The National Control Plan provides guarantees that shrimp and tilapia produced for export to the EU are subject to residue controls. Inspections carried out by INP are adequate to ensure that only shrimp and tilapia from approved food business operators are exported to the EU."* (DG SANCO, 2012).

The report makes a number of recommendations to the Competent Authorities of Ecuador, aimed at rectifying the shortcomings identified and enhancing the implementing and control measures in place. These include maintaining an element of surprise with respect to the INP's inspections of establishments under the RMP, improving the sampling regime with respect to tilapia and adjusting the limit on emamectin in shrimp. The CA responded to the mission with various comments, and with an action plan that was later accepted by DG SANCO, as all issues were adequately covered, either by the action plan or by the RMP for 2013.

5. Evaluation of the compliance with the EU requirements

In 2013 there has been (to end April) one RASFF notification for mercury in chilled vacuum packed tuna loins, classified as information for attention; the products were released on to the market. In 2012 there were 12 notifications regarding FAP, and seven in 2011, amounting to 19 over the two years. Of these, 12 resulted in border rejections (five in 2011 and seven in 2012). These were for poor temperature control (4), undeclared citric acid (3), unauthorized sodium aluminium phosphate (2), damaged packaging (2) and fraudulent health certificates (1).

The border rejections of product from Ecuador are indicated in Table 28 below. The high figure for crustaceans in 2010 is due to a series of six fraudulent health certificates. This was also the case for three of the rejections for fish products.

Table 28: Number of border rejections in the EU from FAP originating from Ecuador (2009-2012)

Year	2009	2010	2011	2012
Fish and fish products	8	6	1	2
Cephalopods and products thereof	0	0	0	0
Crustaceans and products thereof	1	11	4	5
Bivalve molluscs and products thereof	0	0	0	0
Total	9	17	5	7

Source: RASFF Portal

The SRP issues certificates of origin under the General System of Preferences (GSP). Other countries in the region are included in the GSP, but Panama is not. This could cause problems if there were weaknesses in controls, as 21 out of 44 of the foreign vessels operating in Ecuadorian waters are Panamanian. Ninety per cent of the 2,416 certificates issued in 2008 were for the tuna fisheries.

6. Conclusions and implications for the compliance of exports with EU legislation

Given the importance of fisheries exports to the country, and increased requirements worldwide, the Ecuadorian government will have to continue to be vigilant with respect to the performance of its services and of its diverse sector.

A web-based tool could form the basis for Ecuador to go fully electronic on certification, as is presently done with Certificates of Origin. By tackling the development of this in association with INP, all certificates could be issued at once. Ideally the web-based tool would link the issuing of all three certificates at once (Catch Certificate, Certificate of Origin and Health Certificate) by enhanced collaboration between the INP and the SRP. This would go some way to tackling the high incidence of fraud experienced in 2010.

CASE STUDY - INDIA

1. Production and trade information

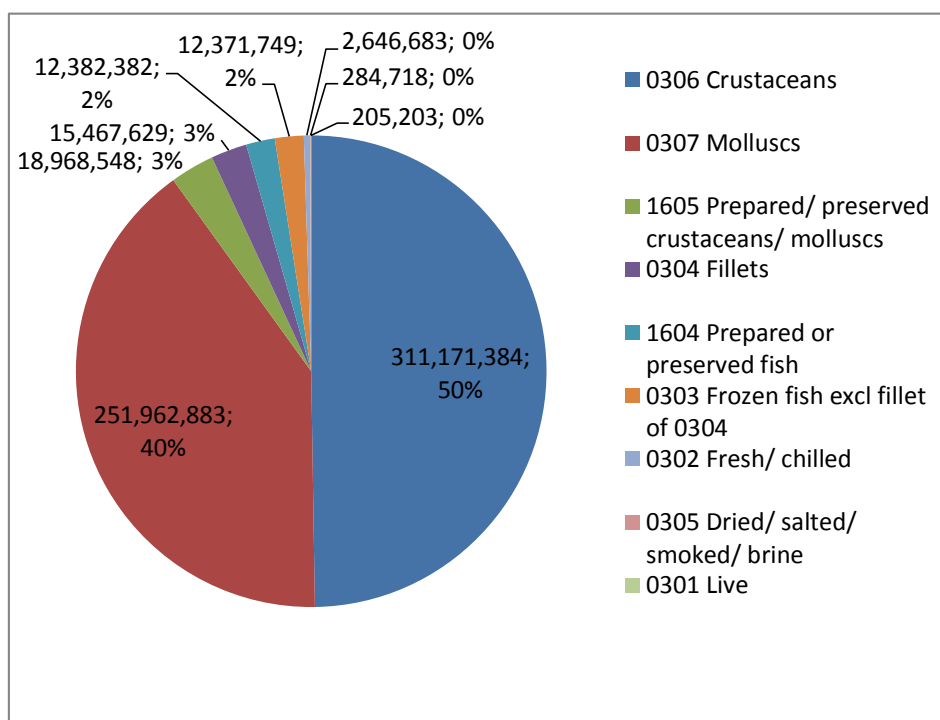
India has an extensive coastline of 8,118 km and an EEZ of 2.02 million sq. km. India has played an important role in global fisheries as the third largest producer of fish in the world and the second largest producer from aquaculture. In 2008 marine fisheries produced around 2.9 million mt and 4.2 million mt was produced by the inland subsector. The contribution of the fisheries sector, with an annual growth rate of 4.5%, is estimated at 1.07% of GDP (GoI 2008)¹⁶⁷. In 2003 it was estimated that the total population of fishermen was 14.5 million (FAO Country Profile). According to the Marine Fisheries Census of 2005, a total of 243,939 fishing crafts were recorded of which 107,448 were traditional crafts, 76,748 motorised traditional crafts and 59,743 mechanised boats (Hand book on fisheries statistic 2008). There are 3,827 fishing villages and 1,914 traditional fish landing centers (FAO 2006-2013).

Indian aquaculture has grown significantly over the last two decades, with freshwater aquaculture contributing over 95% of the total aquaculture production. The production of carp in fresh water and shrimps in brackish water forms the major areas of activity (FAO 2006-2013). The marine fish landings consist of about 65 commercially important species or groups including pelagic and midwater species (Indian oil sardine (*Sardinella longiceps*), Indian mackerel (*Rastrelliger kanagurta*), anchovies, tunnies and cephalopods). Sciaenids, Carangids, Perches, Elasmobranchs and Marine shrimp forms main bulk of demersal resources harvested. Although contributing only to around 10% of the total marine landings, commercially shrimp is still the most important species due to its export potential (FAO 2006-2013).

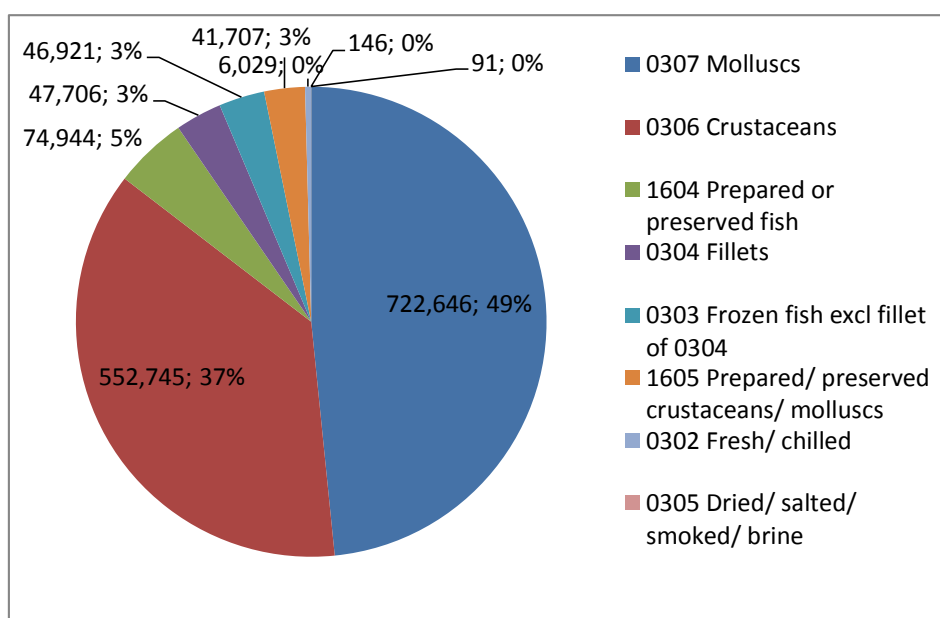
In 2007-2008, India exported 541,701mt for a value of INR¹⁶⁸ 140,684.99 per mt (EUR 1,989.20). The main exported commodities are frozen shrimps (136,223mt) followed by fresh and frozen fish products. Frozen shrimps represented 25.0% in volume but 51.7% in value of the total exported fishing products. Frozen and fresh fish represented 40.7% in volume but only 17.1% in value. Frozen cuttlefish represented 9.8% of the total value of exports and frozen squids accounted for 5.4% of the total value of exports. In 2007-2008 South-East Asia (including China) was the biggest importer of fishing products from India in volume and represented 37.6% of the total quantities exported from India. The EU was second in volume accounting for 27.6% but 35.0% in value of fishing products exported from India. In 2012, EU imported fishery products valued at EUR 625.5 million for a volume of 149,293mt of fishing products from India. The main imported products were frozen shrimps representing 50% in value of the imports. This is presented graphically in Figures 19 and 20 below.

¹⁶⁷ Prepared by the Government of India Ministry of Agriculture Department of Animal Husbandry, Dairying and Fisheries

¹⁶⁸ Indian Rupees

Figure 19: Imports of Fishery and Aquaculture products into the EU27 from India in 2012 (EUR)

Source: Eurostat

Figure 20: Imports of Fishery and Aquaculture products into the EU27 from India in 2012 ('00kg)

Source: Eurostat

India is presently listed in Annex II of Decision No 2006/766/EC establishing the list of third countries and territories from which imports of fishery products for human consumption are permitted, other than those covered by Annex I. India is also in the

Annex to Commission Decision No 2004/432/EC and can therefore export aquaculture fishery products to the EU.

On the EU authorized list, India has 37 cold stores and 262 authorised processing establishments of which 197 processes aquaculture products (except bivalves) on the list of fishery and aquaculture products (last publication 21/02/2013).

2. The institutional framework

In India the CA is the Export Inspection Council (EIC)¹⁶⁹ which was set up by the Export Quality Control & Inspection Act, 1963 (22 of 1963), in order to ensure sound development of export trade of India through Quality Control and Inspection and for related matters.

Under the Export Quality Control & Inspection Act, 1963, the Council, which is constituted by the Central Government, is the apex body, and has powers to constitute specialist committees. Accordingly, the Council has constituted an Administrative Committee to advise it on administrative matters and a Technical Committee to advise it on technical matters. It has also created some Standing Committees in specific technical areas.

The EIC, either directly or through the Export Inspection Agencies, its field organizations, or directly, renders services in the areas of:

- Certification of quality of export commodities through installation of quality assurance systems (In-process Quality Control and Self-Certification) in the exporting units as well as consignment-wise inspection;
- Certification of quality of food items for export through installation of Food Safety Management Systems in the food processing units as per international standards;
- Issue of different types of Certificates such as Health, and Authenticity. to exporters under various product schemes for export;
- Issue of Certificates of Origin to exporters under various preferential tariff schemes for export products;
- Laboratory testing services;
- Training and technical assistance to the industry in installation of Quality and Safety Management Systems based on principles of HACCP, ISO-9001: 2000, ISO: 17025 and other related international standards, laboratory testing; and
- Recognition of Inspection Agencies as per ISO 17020 and Laboratories as per ISO 17025 and accrediting them for export inspection and testing.

The Export Inspection Council of India offers an e-Health Certification service, for their approved seafood processing establishments.

The EIC has five regional offices, the Export Inspection Agencies (EIA) having head offices at Delhi, Mumbai, Kochi, Chennai and Kolkata. Within the regions there are 29 sub-offices including laboratories.

The CA has delegated specific tasks related to official controls to:

¹⁶⁹ <http://www.eicindia.gov.in/eic/about-main.htm>

- The Marine Products Export Development Authority (MPEDA), which has the responsibility to oversee the implementation of the National Residue Control Plan, in accordance with provisions laid down in GOI Notification N° SO 1034 (E), dated 09/09/2003; The MPEDA also registers vessels and issues catch certificates prior to export to the EU.
- The Coastal Aquaculture Authority of India (CAAI), for the registration and monitoring of hatcheries and aquaculture farms, through the Aquaculture Act, 2005; the State Fisheries Departments can also register aquaculture farms; and
- The State Fisheries Departments for the registration and monitoring of fishing vessels according to requirements laid down in GOI Notification N° SO 612, dated 15.02.2007. However, the monitoring of fishing vessels is under the supervision of EIC/EIA.
- The Food Safety and Standards Authority of India is responsible for import controls and controls of the domestic market.

During its last mission in 2011 in India, the FVO considered that the organisation of the CA was appropriate for the assigned tasks and responsibilities in relation to processing establishments. In 2008 the FVO mission had also no comment on the structure of the CA and considered that the knowledge of Community requirements by the officials in charge of the controls was, in general, adequate. The FVO mission noted that regular training programmes for the officials have been organized to ensure uniform implementation of the procedures by the regional and local offices, with special emphasis on Community legislation covering food hygiene, HACCP plans, official controls, residues and export certification.

3. The legislative framework

The main legislative instruments covering fishery products are the Government of India's Order and Notifications No 729 (E) and No 730 (E) from 21 August 1995. Notification No 730 provides the rules on Quality Control and Inspection and Monitoring for Export of Fresh, Frozen and Processed Fish and Fishery Products. This Notification includes several annexes on conditions applicable to factory vessels, on requirements during and after landings, on general conditions relating to premises, buildings and equipment, on fishery products on shore, on health control and monitoring of production conditions, on packaging and labeling, on storage and transport, and on certification.

In 2011, an amendment to the Export of Fresh, Frozen and Processed Fish and Fishery Products (Quality Control and Inspection and Monitoring) Rules, 1995 was made through Notification SO 497 (E) of 10/3/2011. The purpose of this amendment was to empower the CA to have access to all parts of the production chain.

Notification SO No 612, of 15/2/2007 lays down the minimum standards for fishing, freezer, factory and transport vessels.

Order 722 of 10/7/2002 defines maximum limits for heavy metals in fishery products that are higher than the EU thresholds. However, EU limits are applied when EU consignments are tested.

During its mission in 2011, the FVO concluded that specific legislation in line with EU requirements covering the production of fishery products is in place and is applicable to fishery products for exports to the EU.

In August 2005 the Export Inspection Council of India adopted very detailed procedures for fish and fisheries products for export. This comprehensive document contains procedures for: approval of establishments, of technologists, of additional facilities and activities; permission to process and pack fishery products for merchant exporter; export certification; export of fresh and chilled products; laboratory testing; and on many other issues. However, in practice it seems that controls on fishing vessels, landing sites and auctions are not sufficient to guarantee that the FAP imported into the EU from India are meeting the requirements laid down in the EU sanitary package and are not harmful for the European consumer.

4. Outcomes of the FVO reports/missions

The FVO inspections have observed improvements in India concerning the implementation of EU sanitary regulation mission after mission. However, some issues still remain after ten years of FVO inspections in the country (e.g. lack of controls at landing and on fishing vessels).

The mission of 2005 noticed that poor hygiene conditions was found in some establishments and that CA official controls started at establishment levels official controls do not cover fishing vessels supplying establishments, landing sites or auction markets and control of the raw material at the time of landing. This problem still persists today (see below last FVO mission 2011). Despite these shortcomings, the FVO underlined that the CA controlled each consignment of FPA (mainly shrimps and cephalopods) with regards to the main relevant chemical hazards. Laboratory analyses might be weak so risks are not insignificant. The next mission took place in 2006 and was the follow-up of a previous FVO mission to India. The mission aimed at re-assessing the organisation of the Competent Authorities (CAs) and the implementation of national provisions and at verifying the extent to which the guarantees and the corrective actions submitted to the Commission services had been implemented. During this mission, the FVO inspectors acknowledged that improvements were made by the Indian CA in legislative and executive procedures regarding four issues noticed during the mission in 2004: analyses of drinking water, approved cold stores, improvement of supervision, and control of EU listed establishments and EIA laboratories in the process of accreditation. But the FVO still observed several shortcomings, especially on official controls over primary production and concluded that the CA could not yet certify that FP exported to the EU are caught and handled on board of vessels and landed according to the EU sanitary norms. However, the FVO report concluded, that because some good sanitary measures were in place, biological and chemical risks to consumer health from Indian FP exported to the EU were limited.

In November 2008, the FVO mission observed that since the last FVO mission of 2006, improvements had been made, in particular concerning laboratories and official control of processing establishments. However, the FVO inspectors concluded that some weaknesses regarding the conditions and the implementation of official controls at aquaculture farms, fishing vessels and landing sites and at auction halls remained.

The last FVO mission in India took place on 14 to 25 November 2011. The general conclusion of the FVO inspectors was that the CA has implemented an official control system for exports covering aquaculture and wild caught fish but that the system for wild caught fish only effectively covers establishments and not the entire production chain. The recommendations made from the previous mission in 2008 had not yet been fully addressed as primary production is still not properly monitored by the Competent Authority.

Therefore the FVO considered that the Competent Authority was not in a position to give guarantees that fishery products have been caught and handled on board vessels, landed and, where appropriate, prepared in compliance with EU norms.

Following this mission, the FVO inspectors formulated seven recommendations concerning official monitoring of all aquaculture farms, of landing sites and auctions markets, and of fishing vessels (to be undertaken in conformity with Regulation (EC) No 852/2004 and Regulation (EC) No 854/2004), labeling (requirements equivalent to those in Directive 2000/13/EC), laboratory methods (at least equivalent to Regulation (EC) No 2073/2005) and methods for testing heavy metals (at least equivalent to the requirements in Regulation (EC) No 333/2007).

In its action plan, the CA answered to these recommendations that instructions have already been issued to Export Inspection Agencies for compliance concerning the last four recommendations. For the first three recommendations the CA answered that the legal base were already in place. The issues had also been addressed in the Executive Instructions. The answer from the CA does not seem to be very precise and detailed considering that several points have to be addressed. The actions proposed are not specific to each recommendation and lack descriptions of precise action to be taken.

The FVO had noticed important shortcomings, such as no official control on primary production, which has been observed by FVO inspectors since almost ten years. They had also observed insufficient label requirements and that not all mandatory parameters in EU legislation were tested for and generally that the CA did not address the recommendations made during the last mission. Despite these important shortcomings, the exports from India were not suspended as is possible according to the EU sanitary regulations (No 854/2004 and No 333/2007). This may be because the EC does not consider that these shortcomings significantly increase biological and chemical risks to consumer health from Indian FP exported to the EU. However, The EC adopted emergency measures applicable to crustaceans of aquaculture (Commission Decision No 2009/727/EC of 30 September 2009). Under Article 2 of the Decision, consignments of crustaceans of aquaculture origin from India will be allowed to enter the Community only if they are accompanied by the results of an analytical test carried out at origin to ensure that they do not present a danger to human health. The tests must be carried out with a view to detecting the presence of nitrofurans or their metabolites in conformity with Commission Decision No 2002/657/EC.

5. Evaluation of the compliance with the EU requirements

Historically, India has faced a number of challenges meeting hygiene requirements for fish and fishery products, especially to export to the USA and the EU (Spencer H., Mohammed S. and Dr Rajasenan, 2005). But since the mid-1990s, India's major concern has been complying with the EU's requirements for hygiene throughout the fish supply chain starting from catches. Compared to many developing countries, the Indian government made efforts relatively early to comply with these requirements (*ibid.*). However, following a FVO inspection in 1997 the EC banned Indian exports of fresh crustaceans and cephalopods and imposed border testing for salmonella and *Vibrio spp.* for frozen products (Decision No 97/334/EC). The ban took effect in August 1997 but only lasted few months. Following this decision the Indian government made great efforts to reform its food safety in order to comply with EU requirements. Then after a positive FVO mission, the ban was lifted in December 1997.

At the same time an interesting phenomenon was noticed over the years: between 1998 and 2003 the number of EU border rejections of FAP consignments coming from India greatly improved (Spencer H., Mohammed S. and Dr Rajasenan, 2005). Even though India's List I status entitles it to lower rates of border inspection., in 2002 and 2003 India was subject to high rates of EU border rejections because of antibiotics and bacterial inhibitors, with 27 and 22 consignments rejected, respectively (*Ibid.*). The Indian government responded to these rejections at EU borders by prohibiting the use of antibiotics and other pharmacologically active substances in aquaculture. Since these dates the number of rejections of consignments of FAP originating from India has been quite stable (see table 29 below).

In recent years, 104 border rejections are recorded in the RASFF database (21 for fish and fish products, 24 for cephalopods and 69 for crustaceans), the last rejections of crustaceans being recorded the 27/06/2008. This means an average of 26 rejections every year. Most of the rejections took place in Spain concerning fish products and cephalopods but Belgium and United Kingdom rejected most of the crustaceans. The reasons for rejection were various: foreign bodies, poor temperature controls, histamine, bad hygienic state, improper health certificate, unauthorised use of colour E 160b and E 129 (for shrimps), cadmium and altered organoleptic characteristics (especially for cephalopods), microbiological contamination (*Salmonella spp*, *Vibrio cholerae*, *fluvialis*, *Vibrio parahaemolyticus* and *Vibrio vulnificus*) and use of prohibited substance like nitrofurantoin (metabolite) nitrofurazone or furazolidone.

The table 28 below presents the details of rejections by category of products between 2009 and 2012.

Table 29: Number of border rejection for FAP originating from India between 2009 and 2012

Year	2009	2010	2011	2012
Bivalve molluscs and product thereof ¹⁷⁰	0	1	0	0
Crustaceans and products thereof	19	8	11	10
Fish and fish products	3	5	3	10
Cephalopods and products thereof	8	8	5	3
Total	30	22	19	23

6. Conclusions and implications for the compliance of exports with EU legislation

A sanitary expert working for FAO indicated in a report following a mission in India and Maldives that "*the hygienic practices on vessels and harbours leave a lot to be desired, and it may be part of the lack of understanding on the relationship in hygiene and fish*

¹⁷⁰ The RASFF notification indicates the following reason for rejection: bad temperature control - rupture of the cold chain - of frozen squid from India. Therefore the rejection was not recorded under the right category. Moreover India is not on Annex I of Commission Decision No 2006/766 and therefore is not allowed to export bivalve molluscs to the EU.

quality. Training only will hardly change this, unless is related to higher incomes for fishers in function of higher fish quality" (Francisco Blaha). Spencer *et al.* (2005) indicated in their paper that *"The one area in which the Indian government has failed to take decisive action to enhance hygiene controls is at landing centers"*. These comments reflect the observations made by the FVO in India over the past ten years. Official controls on the primary production remains a challenge for India. The FVO considers that the risks represented by FAP imports into the EU from India for EU consumer health are limited. However, if these issues persist the EU might take measures such as a temporary ban on certain products coming from India.

CASE STUDY- MOROCCO

1. Production and trade information

Morocco has a coastline of 1,835km in total and an EEZ of 272,059km². The Western Sahara raises issues concerning the calculation of the EEZ. If we add the Western Sahara, the Moroccan EEZ increases by 300,653 km² and the coastline by 1,100km. The EEZ has still not been determined in the Mediterranean.

Fisheries play an important role in Morocco from a social and economic point of view. Over the last ten years, the fisheries sector has contributed around 2.3% of GDP (DPMA, 2012). The sector generates around 170,000 jobs in direct employment and 500,000 in indirect employment.

Marine fisheries can be divided into three sub sectors: offshore fisheries (*pêche hauturière*), coastal fisheries and artisanal fisheries. To these three classical sub divisions can be added the *pêche à pied* (from the shore) and the *madragues* (used to catch tuna). Additionally, Morocco has aquaculture establishments cultivating mussels, clams, oysters, sea bass and eels, among other species.

In 2012, 211 offshore licences, 1,706 coastal licences and 13,098 artisanal licences were issued¹⁷¹. The offshore vessels are mainly based in Agadir, especially the ones fishing cephalopods. Main stocks exploited include small pelagics (sardines, mackerel, anchovies) representing 80% of the catches, large pelagics (Bluefin tuna, melva, swordfish, sharks) and demersal species, including crustaceans (shrimps, crabs and lobsters) and cephalopods (octopus, squids and cuttlefish) and white fish (seabream, seabass, rays, hake, etc.)¹⁷². The algae and coral are also exploited and are subject to specific management measures.

In 2011 total production was estimated at around 956,999 mt for a total value of MAD 7.6 billion¹⁷³ (EUR 700m) representing an increase compare to the production of 2006 (888,628mt)¹⁷⁴. The biggest landings take place in Laâyoune follow by Tan Tan and Dakhla. More than 71% of the landings are realised by the costal and artisanal fisheries¹⁷⁵.

Morocco has currently 25 fishing ports of which 24 are designated under ICCAT for Bluefin tuna landings¹⁷⁶. Additionally one hundred thirty three fishing sites have been identified along the coast and a programme of development of these sites is currently taking place offering better conditions for the fishermen to land their products.

In 2008 Morocco exported in total 473,133mt of fisheries products. The total revenue represented by the exports was MAD 12.97 billion (EUR 1.2 billion) in 2010 and MAD 11.73 billion (EUR 1.05 billion) in 2011 (DPMA, 2012). The EU is the main importer of fisheries products coming from Morocco with around 70% of exported products (DPMA, 2012). In 2012, the EU imported around 174,945.7mt of fisheries products for a total of

¹⁷¹ Data provided to the author by the DPMA in 2012.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ http://www.mpm.gov.ma/ressources/statistiques/pecheMaritime_06.pdf

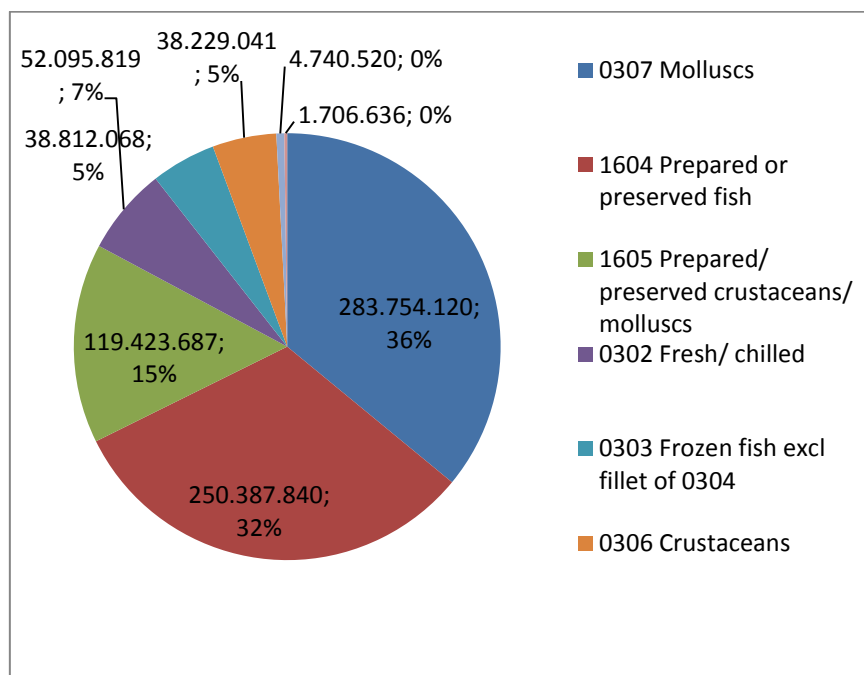
¹⁷⁵ Data provided to the author by the DPMA in 2012

¹⁷⁶ Agadir, Al Hoceima, Asilah, Boujdour, Casablanca, Dkhla, Eljadida, Essaouira, Jebha, Jorf Lasfar, Kenitra, Ksar Sghir, Laâyoune, Larache, Mdiq, Mohammedia, Nador, Safi, Sidi Ifni, Tan-Tan, Tanger, Tanger-Med et Tarfaya.

EUR 789 million (Eurostat). In value Morocco ranks 8th in terms of value and 9th in terms of volume of the top ten sources of fisheries products imported into the EU. The main products imported from Morocco are molluscs (i.e. frozen cephalopods) and prepared and preserved fish (i.e. canned sardines).

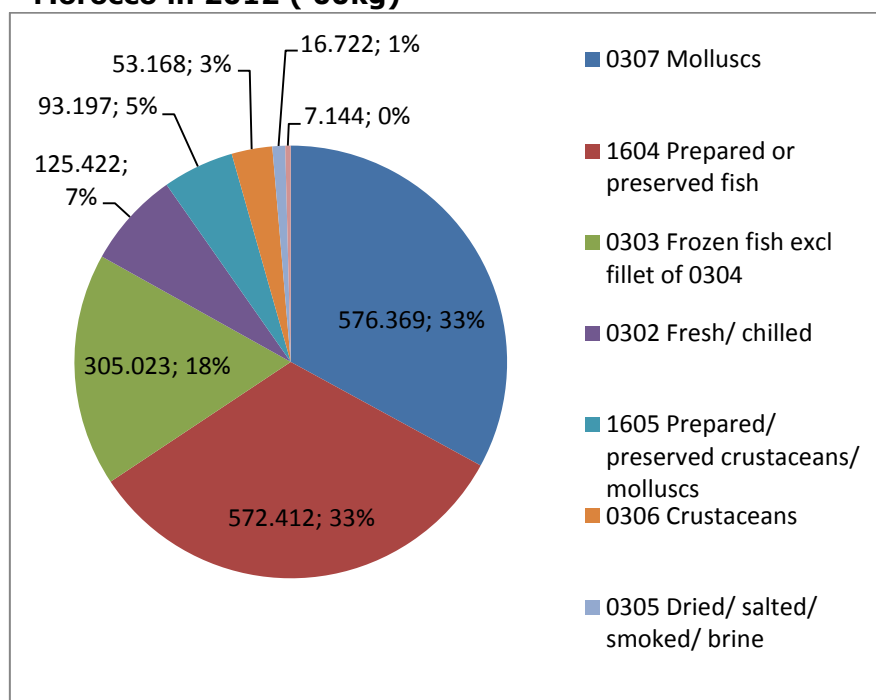
Figures 21 and 22 below demonstrate the imports into the EU from Morocco in 2012.

Figure 21: Imports of Fishery and Aquaculture products into the EU27 from Morocco in 2012 (EUR)



Source: Eurostat

Figure 22: Imports of Fishery and Aquaculture products into the EU27 from Morocco in 2012 ('00kg)



Source: Eurostat

Finally around 13,548mt of fisheries products (around 80% of shrimps *Crangon crangon* from Netherlands) was imported in 2011 to be used as raw material and re-exported to the EU (FVO report, 2012).

Two main species of molluscs are exported to the EU, the live *bigorneau* (*Littorina littorea*) and the frozen *couteau* (*Solen marginatus*), both exploited in the natural environment. In 2011, 124.5 and 345 tons were exported mainly to France and to Spain (FVO report, 2012).

Currently Morocco has 17 processing plants, 26 processing areas (17 in Zone A¹⁷⁷, 7 in Zone B¹⁷⁸ and 2 in Zone C¹⁷⁹), and one dispatch centre on the live bivalve molluscs list of authorised establishments to export to the EU (in April 2013 last publication 18/06/2012). Regarding the list of fishery products, there are 323 freezing vessels, 351 processing establishments of which 13 produce farmed product (except bivalve molluscs) and nine cold stores (in April 2013 last publication 21/03/2013) authorised to export to the EU.

2. The institutional framework

The Competent authorities

In September 1994, the sanitary control system of Morocco of fishery products was recognized by the EC and the Veterinary Services of the Division of Livestock were designated as Competent Authority.

The importation of fishery products and live bivalve molluscs coming from Morocco was authorised by the Commission Decision No 2006/766/CE of 6 November 2006.

In Morocco, the responsibility for ensuring the compliance of fishery products and bivalve molluscs with the EU requirements belongs to the Ministry of Agriculture and Marine Fisheries (MAPM). However there are several authorities under the responsibility of the MAPM which are involved in sanitary verifications and certification in relation to EU exports. Since 2009, date of creation of the National Authority for Food Safety (*Office National de Sécurité Sanitaire des Aliments* - ONSSA), three CAs are involved:

- Division of Fisheries Industries (*Direction des Industries de la Pêche Maritime*-DIPM)) and
- ONSSA
- National Institute for Fisheries Research (Institut National de Recherche Halieutique - INRH))

The INRH is responsible for sanitary studies for the classification of production areas of bivalve molluscs. It monitors production areas through its network of seven laboratories Sanitary Network for Monitoring Hygiene of the Coast (*Réseau Sanitaire de Surveillance de la Salubrité du Littoral* - RSSL).

The DIPM belongs to the Department for Marine Fisheries (DPM) of the MAPM and is in charge of monitoring the approval of fishing vessels and processing establishments of

¹⁷⁷ Production zones in compliance with provision laid down in Annex II, Heading II A3, of the Regulation (EC) 2004/854

¹⁷⁸ Production zones in compliance with provision laid down in Annex II, Heading II A4, of the Regulation (EC) 2004/854

¹⁷⁹ Production zones in compliance with provision laid down in Annex II, Heading II A5, of the Regulation (EC) 2004/854

fishery products and bivalve molluscs. The DIP is also present at local level through the Regional Delegation of Marine Fisheries (*Délégations Régionales des Pêches Maritimes*). The DIPM is represented in 18 Regional Delegations. The FVO during its mission in 2005 considered that the situation within the DIPM in terms of number of officers, level of training, knowledge of EU legislation and motivation was globally satisfactory. The DIP is responsible for the:

- Identification, classification and monitoring of mollusc production areas carried out by the INRH, and
- Approval of fishing vessels and processing establishment issued only on recommendation of the ONSSA.

Regarding the mollusc bivalves, the DIPM is responsible for the publication and update of the list of production areas and for checking the documents accompanying the bivalve molluscs from the production site. It is also responsible for implementing the decisions based on the results of the monitoring of productions areas and on the approval of the establishments based on ONSSA opinion.

The ONSSA, created by the law n° 25.08 of 18 February 2009, is a public establishment under the responsibility of the MAPM¹⁸⁰. The ONSSA has ten regional divisions (*Directions Régionales*). The ONSSA has one General Division and one Division for Veterinary Services and one Division for the Control and Protection of Plants. The Veterinary Services are responsible for the controls on fishery products and bivalve molluscs. In 2009, the Veterinary Services employed 330 veterinary doctors, 120 technical officers and 1,000 technicians; 180 veterinaries were implied directly in the controls done on the fisheries sector (FVO 2009).

Regarding the bivalve molluscs, the ONSSA is responsible for sanitary checks of the processing establishments and sanitary certification at export. Regarding fishing products, the ONSSA cooperates together with the DIPM and provide technical recommendation concerning the approval of processing establishments and fishing vessels. It undertakes official verification of fishing products at landing but also at export. The FVO during its last mission in 2012 considered that good cooperation existed between the two Competent Authorities.

An inter-ministerial Commission in charge of following the status of the marine ecosystem and shells made up of the three CAs (DIP, ONSSA and INRH) decides for the classification of the production areas and for reopening the sites after a sanitary alert.

Laboratories

The ONSSA has three national laboratories and 17 regional laboratories. Seven laboratories of ONSSA carry out official analyses on fisheries products and water used in the establishments. These analyses include microbiological and chemical analysis, histamine research and heavy metals (FVO, 2012).

¹⁸⁰ According to the Law of 2009, l'ONSSA is responsible among others for:

- Implementing the policy of the government concerning sanitary safety of plants, animals and food products
- Ensuring the sanitary protection of plants and animal heritage and controlling the plants and animal products or with plant and animal origin, including fisheries products at export and on the domestic market and at import
- Implementing the legislation and regulation in force concerning sanitary and phytosanitary police
- Issuing sanitary authorisations and approvals of processing establishments producing food products and products for animal feedings except for fish auctions, fishing vessels and other establishments involved in processing fishing products (under DIP responsibility).

INRH laboratories are in charge of official analysis of bivalve molluscs in the production areas.

3. The legislative framework

There are various laws and regulations on food safety. The specific ones concerning the fisheries sector are the following:

- Law n°25-08 creating ONSSA ;
- Law n°28-07 on food safety promulgated by *dahir* n°1-10-08 of 11 February 2010;
- Decree n°2-10-473 of 06 September 2011 to implement certain provisions of Law n°28-07 on food safety (especially article 24); and
- Decree n°2-97-1003 du 29 of 2 December 2005 on sanitary inspection of marine and freshwater products.

Marine fisheries are regulated by the Law No 1-73-255 of 2 March 1973. In 2012 several orders were in preparation to complete the legislation and finish the reform of the veterinary and phytosanitary legislation started in 2009.

The Law n°28-07 was adopted following the FVO mission in 2009. It repeats the main provisions of the Regulation (EC) No 178/2004. The implementation rules are provided in the Decree n°2-10-473 published 6 September 2011.

Concerning bivalve molluscs, the MAPM joint circular No 1509/6 of 15 September 2006 regulates the sanitary conditions of production and trade of live bivalve molluscs. The last FVO mission (2012) concluded that the legislation in force on the classification of production areas of bivalve molluscs could not be considered equivalent to the provisions of chapter II A point 6 of annex II of Regulation (EC) n° 854/2004. To correct this shortcoming, the CA modified Circular n° 1509/06 to ensure conformity with the Regulation (EC) n° 854/2004. The modalities of classification of production areas are not equivalent to the Regulation. The frequency of the sampling to monitor the mollusc production areas was also reinforced to fulfill the obligations contained in Regulation (EC) n° 854/2004.

Concerning fishing products, a manual of procedure from the veterinary services of ONSSA details the nature of official verifications. The provisions contained in the manual are in full conformity with the EU regulation.

4. Outcomes of the FVO reports/missions

Since 1991, the FVO has undertaken eight inspection missions in Morocco. The last mission took place in June 2012. The main aim of the audits is to assess the control systems in place for fishery products and live bivalve molluscs for export to the European Union.

The FVO has noted significant progress in Morocco between missions. Since the FVO mission in 2001 where the inspectors noticed that there was no official control on fishing vessels and at landing, great improvements have been made and Morocco can be considered one of the best performing developing countries in terms of compliance with the EU sanitary regulation and electronic traceability.

The last FVO report concludes that there is a system in place for checking the production of fishery products and live bivalve molluscs for export to the European Union, which defines the arrangements for cooperation between the Competent Authorities, and their different responsibilities.

The official checks concerning fishery products are carried out pursuant to a manual of procedures, they are documented and afford a guarantee that the fishery products exported to the EU correspond to the statements made on their export health certificates.

Procedures for the classification and the monitoring of production areas and the placing of bivalve molluscs on the market are available. However, the system has shortcomings, which were raised at the time of the Office's previous audit in 2009 and which, having gone uncorrected, betray a lack of reliability that is liable to compromise the entire control system. In 2009 the FVO concluded that despite the great improvements made, more progress were needed on quality control of official analyses carried out on bivalve molluscs in order to ensure greater reliability of results. A procedure for accrediting laboratories responsible for official analyses was launched to this effect, under the twinning project between Morocco and the European Union.

Therefore the FVO formulated three recommendations in its last report (two recommendations fewer than in 2009):

1. The Competent Authority must ensure that bivalve mollusc production areas are classified in line with the provisions of Chapter II A point 6 of Annex II to Regulation (EC) No 854/2004.
2. The Competent Authority must ensure that the sampling frequency for toxin analysis (ASP) is in line with the provisions of Chapter II B point 5 of Annex II to Regulation (EC) No 854/2004.
3. The Competent Authority must ensure that the laboratories conducting official analyses of bivalve molluscs for export to the EU apply the principles of internationally-recognised quality assurance techniques and are evaluated and/or accredited under officially-recognised quality management and assurance programmes in line with international standards, such as ISO 17025, in order to ensure the reliability of analytical results.

The CA answered to these recommendations and proposed a series of actions to remedy with the problems identified by the last FVO mission and to address these recommendations. As explained previously (section 3), the CA modified the circular n° 1509/06 to address recommendations 1 and 2 to ensure full conformity with the Regulation (EC) No 854/2004. To address the recommendation n°2 the CA will ensure that weekly samples on bivalve molluscs are realised to search for biotoxin in all the areas exploited. This measure started in July 2012. Finally, concerning the laboratories realizing analysis on the bivalves, measures are planned to ensure quality and accreditation are in line with international standards. Morocco drafted a plan for accreditation for 2013-2014 of several laboratories considered a priority.

5. Evaluation of the compliance with the EU requirements

Sanitary inspection of fishery products involves controls upstream (hygienic conformity of coastal fishing boats and approval for offshore fishing boats, approval for the fish auctions, controls of landing conditions and inspection of the products on the auction),

controls downstream (control of processing units and sale points) and also controls at export and import. The controls are planned, coordinated and executed by the veterinary services from the different structures of the MAPM (i.e. ONSSA). The system of auctions that is managed by the *Office National des Pêches* (ONP) works the same way as fish auctions in the EU (e.g. France). The traceability is fully ensured from landing to export and all information is recorded electronically at each stage of the production chain.

On its last mission the FVO did not find any evidence of non-compliance of Morocco concerning the regulation and procedure of establishments authorized to export to the EU bivalves and fishery products, the controls realised on the production and sale of the fishing products and bivalves (all fishing vessels, landing sites, auctions and processing establishments), the controls realised on fishing products and bivalves (analysis and sampling, control of production sites) and the certification at export. The veterinary services issue a sanitary certificate at origin (at landing or for the bivalves at the production centre). The sanitary certification procedure is considered in full conformity with the requirements of Directive No 96/93/CE.

In 2012, there were 34 notifications on the RASFF system for FAP originating from Morocco, of which 33 were border rejections (26 for fish and fish products, six for cephalopods and one for crustaceans), seven points of information for attention and two for follow-up. The great majority of border rejections concerns fish and fish products. This is interesting considering the fact that the main imported products from Morocco into the EU are frozen cephalopods. The 26 border rejections mainly took place in France and Spain and were due to poor temperature control (rupture of the cold chain of frozen products), poor hygienic state of frozen cephalopods (four cases), high rate of histamines in sardine products (eight cases) and parasitic infestation (five cases). It is interesting to note that two border rejections indicated on the RASFF system were for attempting to illegally import chilled swordfish from Morocco, meaning that there was no CC or that the CC was not valid. But this is not detailed. On one rejection it is indicated that there was also no health certificate. It would be actually very interesting to have online access to the rejection of consignment when the products are considered illegal (IUU) and not in compliance with the EU IUU Regulation. For bivalve molluscs there was just one border rejection for absence of health certificate(s) for frozen cuttlefish (*Sepia officinalis*).

Over the past years, the number of border rejections has varied substantially. Table 30 below presents the evolution of the border rejection for FAP originating from Morocco.

Table 30: Number of border rejections in the EU from FAP originating from Morocco (2009-2012)

Year	2009	2010	2011	2012
Fish and fish products	31	20	39	26
Cephalopods and products thereof	3	4	2	6
Crustaceans and products thereof	0	0	0	1
Bivalve molluscs and products thereof	0	0	0	1 ¹⁸¹
Total	34	24	41	34

Source: RASFF portal

¹⁸¹ This should be counted as cephalopods as the product concerned is frozen cuttlefish. This is a mistake of classification in the system

6. Conclusions and implications for the compliance of exports with EU legislation

Overall Morocco complies well with the EU sanitary requirements and legislation despite some minor things which will be improved in the coming years. Since 2012 ONSSA has taken the following action to improve food safety in Morocco:

- Raising awareness of professionals (meetings and seminars);
- Training of inspectors (60 sessions);
- Development of inspection guides and procedures;
- Establishment of partnership agreements; and
- Accreditation of five ONSSA laboratories to the requirements of ISO 17025.

However some challenges remain for ONSSA so Morocco fully meets international requirements for hygiene and food safety (ONSSA, 2013):

- Professionals not involved in quality management and not encouraged to put in place a self-monitoring system in their businesses, which may cause the placing on the market of unsafe products;
- Random rather than risk-based final products testing; and
- Difficulty of defining the responsibilities for the safety of food products put on the market (producers/sellers).

The number of border rejections for fish and fish products is higher than other countries that do not ensure the same level of hygiene in their fishing vessels, auctions and processing establishments.

CASE STUDY- THAILAND

1. Production and trade information

Thailand produced about 3.68 million tons per annum (2001-2010) of fish and aquaculture products (FAP). In 2010 (DOF, 2012, latest data), the total fisheries production in Thailand amounted to 3.11 million tons with a value of Euro 3.38 billion. Its capture fisheries production (marine and inland) was 1.81 million tons while aquaculture (coastal and freshwater) production amounted to 1.25 million tons (DOF, 2012; SEAFDEC 2012a, b).

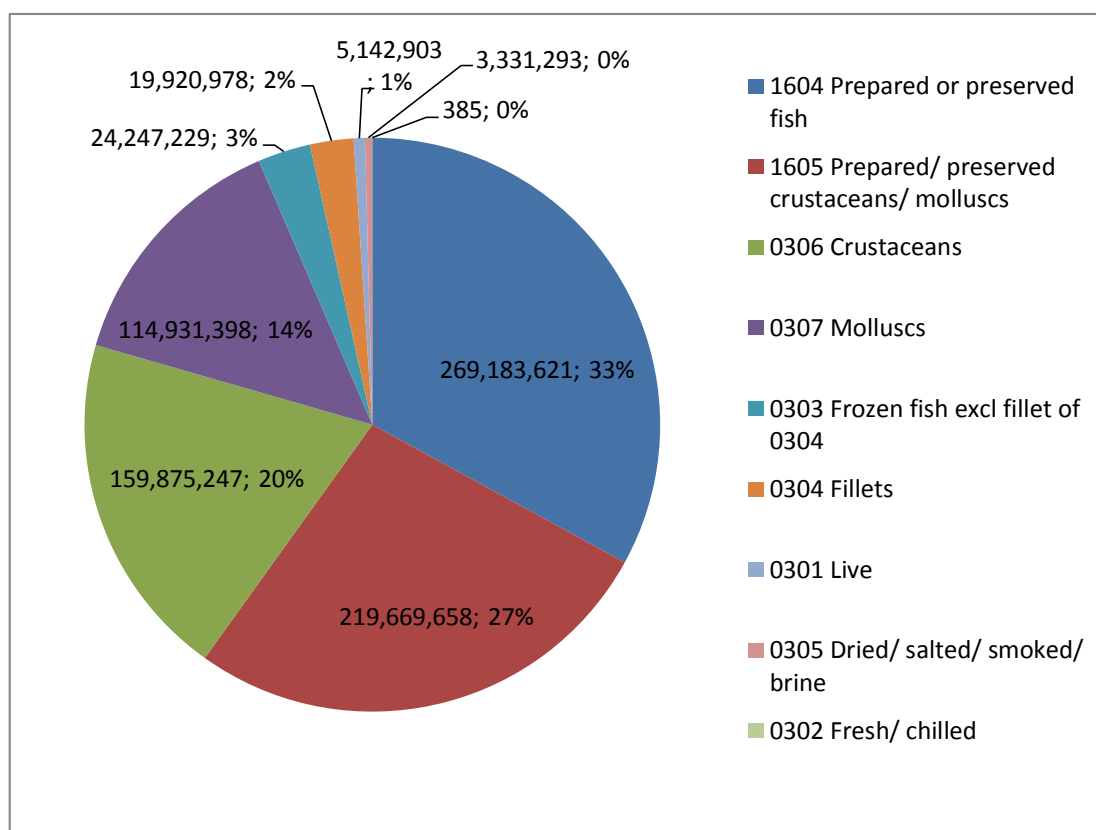
In 2010 (DOF, 2012, latest data), the main source of fisheries production in Thailand is capture fisheries. A total of 58,119 fishing boats (during peak season) were actively engaged in fishing. Majority of the fishing boats have outboard engines (42,217) while a small number of fishing boats (2639) are not mechanized. In 2010, the largest number of fishing boats was located in Nakhon Si Thammarat, 5,115, and in Songkhla, 5,739 (DOF, 2012).

As regards aquaculture, there were 23,333 shrimp farm units (pond, cage, paddy field and ditch) in 2010, mainly located in the Provinces of Nakhon Si Thammarat (2,064) and Chachoengsao (3,990). The cultured shrimp species consisted of banana shrimp, jumbo tiger prawn, white leg shrimp, school prawn and mixed shrimp species. In 2010, around 11,276 marine culture farms (ponds and cages) operated in the country. The main species raised were groupers and sea bass. Oysters, green mussels and blood cockles were grown in the 5,783 shellfish farms located in several provinces of the country. In 2010, the largest number of shellfish farms were situated in Chanthaburi (4,046) and Samut Songkhram (1,050) provinces (DOF, 2012).

In 2011, Thailand exported 1.7 million tons of fishery products valued at Euro 6.36 billion, a 12% increase from 2010. The exported fish and aquaculture products consisted, among others, of shrimp, tuna (frozen, canned), and cephalopods. Growth was driven by increasing demand in the USA and Japan (www.boi.go.th). Thailand was EU's 5th biggest seafood trade partner in 2011 with the trade value reaching Euro 890.5 million (Eurostat, March 2012). The fishery products imported in to the EU consisted of tuna (canned), cephalopods, shrimp (mixed species) and other processed fishery products (DOF, 2012).

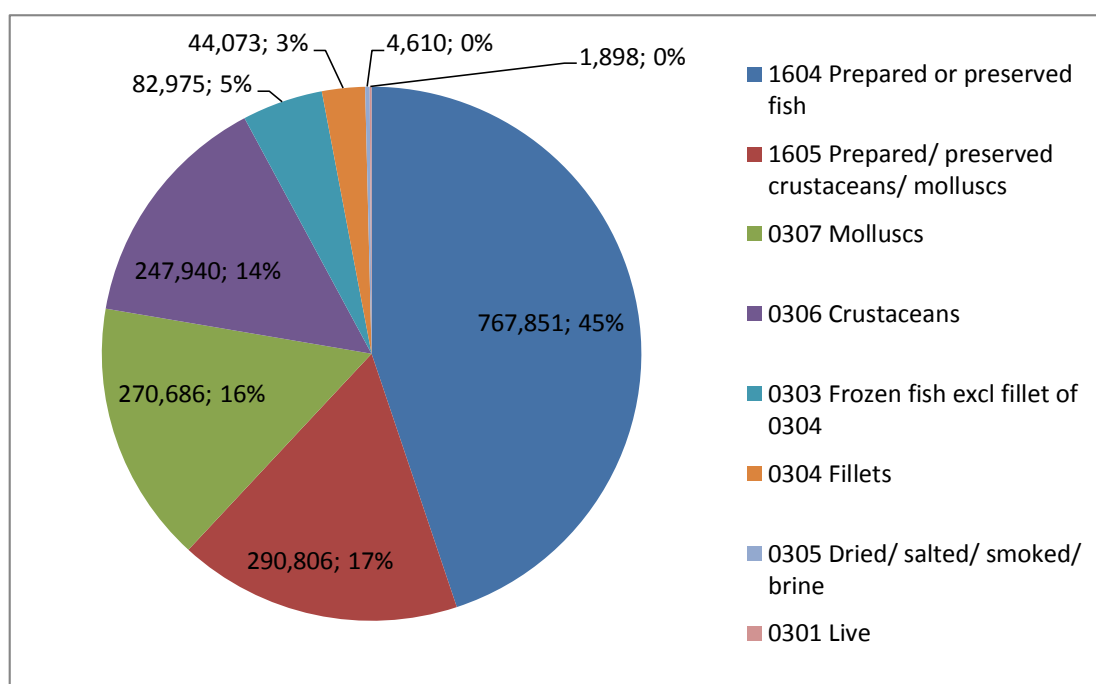
The composition of imports into the EU in 2012 is shown in Figures 23 and 24.

Figure 23: Imports of Fishery and Aquaculture products into the EU27 from Thailand in 2012 (EUR)



Source: Eurostat

Figure 24: Imports of Fishery and Aquaculture products into the EU27 from Thailand in 2012 ('00kg)



Source: Eurostat

The main product group imported from Thailand by the EU is crustaceans, mainly crabs and shrimp. Aquaculture – by value – represents over 50% of the Thai fisheries economy. Wild caught shrimp only contribute 20% to overall shrimp exports.

As well as those products sourced from aquaculture, mainly comprising shrimp, products destined from wild caught fisheries originate from various sources:

- National commercial (large-scale) fishing vessel and domestic landings, especially fish, shrimp, and mollusc landings, but also limited amounts of tuna.
- National artisanal (small-scale) fishing vessels and domestic landings, small pelagics, and more important amounts of other fish, crustaceans (such as crabs) and molluscs.
- Importation of raw fish products from third country FVs for domestic processing. This includes very large amounts of tuna (up to 850,000mt per year – of which about a third is destined to the EU market), as well as small pelagics, semi-pelagics, molluscs and crustaceans. Importation for tuna is >98% by reefer vessel, while for all other products, imports are almost exclusively received via containers.
- Importation of raw fish products landed by Thai vessels abroad and shipped back to Thailand for processing – tuna, small pelagics, semi-pelagics, demersals, molluscs and crustaceans.

Although the number of licensed fish processing establishments (FPEs) in Thailand reached 1,500 in 2010 (DOF, 2012), majority of these do not export their products to the EU. As of 9 April, 2013, there are 326 establishments which are permitted to export FAP to international markets, 271 of these (including one freezer vessel) are authorised to export to the EU¹⁸².

The processing establishments of Thailand are engaged in the manufacture of frozen, canned, steamed, smoked, salted/dried and snack products (e.g. shrimp crackers). A large number of frozen products establishments operate in the provinces of Samut Sakhon and Samut Songkhram.

With regard to bivalve molluscs, ten production areas have been approved by the Competent Authority (CA) for EU export in 2011 (FVO, 2012a). However, in the SANCO website which has not been updated since 2008, there are 12 production areas listed as approved for EU export¹⁸³.

2. The institutional framework

The Ministry of Public Health has, through its Notification No 300 of 2006 (B.E.2549) designated the Department of Fisheries (DOF) of the Ministry of Agriculture and Cooperatives (MOAC) as the Competent Authority (CA) for the official control of fishery and aquaculture products and their production chain. Several bureaus and divisions within DOF have power over the various aspects of the production chain. The Fish Inspection and Quality Control Division (FIQD) is the DOF division with the key role in the

¹⁸² See www.fisheries.go.th/quality:http://ec.europa.eu/food/food/biosafety/establishments/third_country/index_en.htm

¹⁸³ See www.fisheries.go.th/quality:http://ec.europa.eu/food/food/biosafety/establishments/third_country/index_en.htm

official controls of live bivalve molluscs, fishery products and their production chain. The FIQD was established in October 1992 and is responsible for:

- a) Live bivalve molluscs – the classification of production areas, the control of the movement of live bivalve molluscs from the production area to establishments (EU listed and not EU listed but supplying raw material to EU listed establishments) and also for carrying out the biotoxin and microbiological analyses of live bivalve molluscs; it also participates in the Committee that is in charge of the closure and re-opening of production areas.
- b) Fishery products (including bivalve molluscs) – the official controls of products to be exported to the EU, their official sampling, issuing export health certificates and controlling export certification, and also for the official control of establishments (which includes EU listed establishments, wholesale markets, landing sites and other not EU listed establishments involved in the production chain of fishery products).

There are other DOF Bureaus responsible for official controls:

- Marine Fisheries Research and Development Bureau (MFRDB): control of fishing vessels and live bivalve molluscs monitoring, sampling and analyses of phytoplankton. It also participates in the Committee that is in charge of the closure and re-opening of production areas.
- Coastal Fisheries Research and Development Bureau (CFRDB): control of marine species fish farms and live bivalve molluscs monitoring sampling. It also participates in the Committee that is in charge of the closure and re-opening of production areas.
- Inland Fisheries Research and Development Bureau (IFRDB): control of freshwater species fish farms.
- Fisheries Administration and Management Bureau (FAMB): participation in the monitoring of classified production areas and also in the Committee that is in charge of the closure and re-opening of production areas.

The powers of the CA to execute the official controls are defined in the Food Act of 1979 (B.E. 2522), in DOF notification No.1 of 1999 (B.E.2542) and Nos. 5 and 6 of 2006 (B.E.2549), and in the Import and Export Control Act of 1979 (B.E. 2522). These powers include access to premises and all documentation related to the production of fishery products, the suspension of export certification, the removal from the list of establishments approved to export to the EU and the possibility of seizing products. The Fisheries Act B.E.2490 (1947, as amended) provides authority for the CA to lay down conditions for registration of establishments which are involved in trading fish and fishery products. The Act also puts the responsibility on the CA to oversee the fish industry in general. Furthermore, the Fisheries Act B.E.2490 and the Animal Epidemics Act B.E. 2499 (1956) provide authority to the DOF to control aquatic animal diseases concerning both within the country imported and exported aquatic animals. The Act also covers quarantine requirements and destruction of aquatic animals infected with diseases listed under the national official measures.

The CA staff have, or have access to, the necessary facilities (official offices and laboratories), supplies (protective gears for the inspection/audit visits, legislation folders and CA written procedures, forms and sampling materials) and equipment (telecommunications equipment, thermometers and chlorine test kits) in order to carry out their tasks.

As of April 2013, FIQD has 272 staff assigned in the Bangkok Central Office and three regional centres located in Samut Sakhon, Songkhla and Surat Thani. The 272 staff consists of 44 inspectors, 17 official sampling staff, 150 laboratory services staff, 27 health certification and testing reports staff and 34 administrative staff. The CA has been ISO/IEC 17020 accredited since 2009 by the Inspection Body Accreditation Unit of the National Accreditation Council (NAC). The CA undergoes an external accreditation body audit every three years. The central office of FIQD carries out annual audits of the three regional centres.

Generally, the CA personnel have adequate training and sufficient knowledge of the relevant EU requirements and Thai legislation/standards. For several years, the CA personnel, particularly the technical staff, have benefited greatly from the regional and international supports on food safety and quality training, laboratory testing and study tours provided by numerous donor organizations and agencies.

The CA has four official laboratories, one in the Central office and one for every regional centre. The laboratories carry out the official control analyses of fishery products (including bivalve molluscs), water, ice and the monitoring of the bivalve molluscs production areas (microbiology and marine biotoxins). All laboratories are ISO 17025 accredited by the Bureau of Livestock Standards and Certification (BLSC), Ministry of Public Health of Thailand. In addition to the four laboratories, the CA also has a well-equipped laboratory (which is not ISO 17025 accredited) within MFRDB. The laboratory performs water analyses in the classified production areas and carries out monitoring of phytoplankton.

Notwithstanding the existing total number of licensed fish processing establishments (1,500) in Thailand, the number of inspectors (44) is not sufficient to efficiently carry out the activities entrusted to the CA. The frequency of inspection of FAP establishments particularly those exporting to the EU will certainly be constrained, potentially compromising the safety and quality of exported products.

3. The legislative framework

The Food Act 1979 (B.E 2522) of the Ministry of Public Health (MOPH) is the primary legislation that lays down the principles of food safety control in Thailand. The MOPH and other government ministries create regulations and announcements (termed as 'Notifications') to establish food standards. The main Thai legislation applicable to fishery and aquaculture products and their production chain is the Fisheries Act of 1947 (B.E. 2490). The Fisheries Act has been revised twice since 1947 (B.E. 2490). The first revision was in 1953 (B.E.2496) and the second revision was done in 1985 (B.E. 2528).

Several official standards can be considered to be equivalent to EU legislation. These are: TAS (Thai Agricultural Standard) 7420-2009 on Good Hygienic Practices for pre-processing of fishery products; Notification of the Ministry of Public Health (No. 194) B.E. 2543 (2000) on Food Labeling; Notification of the Ministry of Public Health (No. 299) B.E. 2549 (2006) on standards for some chemical contaminations in foods (2nd Edition); Notification of the Ministry of Public Health (No. 303) B.E. 2550 (2007) on veterinary drugs residues in foods, and Notification of Ministry of Industry (No. 5) B.E. 2549 (2006) on the list of hazardous substances.

It is noted that few regulations have been issued relating to FAP export to EU. A review of the legal documents showed that most of the regulations in place are not directed specifically to FAP but to agricultural commodities or food in general. However, in spite of

the limitation, Thai legislation still conforms to EU requirements for export and it can therefore provide guarantees as to compliance with EU legislation.

4. Outcomes of the FVO Reports/Missions

The last Thailand audits on fishery products (including live bivalve molluscs) and monitoring of residues and contaminants in live animals and animal products including controls on veterinary medicinal products were carried out by FVO in 2011 and 2012 (FVO 2012a, b). In the 2011 FVO mission, the main problems identified include: a) insufficient assurance that fishery products for EU export are obtained, handled and processed in establishments authorised by the CA and b) that imported raw materials for further processing and intended for EU export meet the relevant EU sanitary requirements.

Upon inquiry, the Thai CA confirmed that the issues have already been addressed (pers. comm. Keerativiriyaporn, S. and K. Sukhumparnich, April 2013). The following measures were adopted by the CA: the deficiencies identified in the sanitation programmes, processing practices and HACCP plans of all the establishments complying with EU requirements. DOF has also strengthened its inspection programme by providing intensive training to the inspectors to ensure proper understanding of the EU regulations. In addition, DOF has harmonized the Good Manufacturing Practices (GMP) inspection techniques in all the CA branches. Moreover, the frequency of observation by senior inspectors from the headquarters during establishments' inspections has been altered from every three years to annually. Concerning raw material imports, the CA has already informed the Thai Frozen Food Association and Thai Food Processors' Association that only raw materials obtained from EU approved sources, caught by freezer vessels included in the EU approved list and in compliance with relevant EU legislation should be exported to EU. Furthermore, suppliers have been required to provide a CA certification attesting that the raw material is sourced according to EU regulation on IUU fishing and that the FAPs are processed in accordance with the EU hygiene regulations. To underpin this measure, DOF has requested for cooperation from the FAP suppliers' embassies concerning the new requirements.

As regards the FVO audit on the Residue Monitoring Plan (RMP) for aquaculture, some non-conformity with the requirements of Council Directive 96/23/EC was noted. The main shortcomings were: lack of validation of analytical methods used for the veterinary drug testing B2a (Anthelmintics) and the deficiency in the current sampling policy in aquaculture products. To date, according to the Thai CA, all the necessary measures to meet the EU requirement have already been implemented.

5. Evaluation of the compliance with EU Requirements

In the desire to augment its FAP exports, Thailand has been sourcing raw materials from several countries. Some raw materials particularly aquaculture products could originate from countries that are not authorised to export to EU. Traceability (supply chain, IUU) and labeling (country of origin or place of provenance, species) in FAP imported into EU could present food safety and quality problems. In particular, labeling information concerning the identity of species could become more complicated when minced, comminuted¹⁸⁴ and in fillet forms; then further processed into surimi products (e.g. crab sticks, fish balls), snacks (shrimp crackers) and convenience or ready to eat (RTE)

¹⁸⁴ Chopped or minced flesh with or without added ingredients

products. Furthermore, species mislabeling could become a significant problem for individuals who have allergies with fish species implicated in histamine poisoning and food intolerances e.g. Escolar or oily fish with purgative properties. It could also allow for more fraudulent practices in the food sector where high commercial value fish are substituted by low commercial value ones.

A total of 45 Rapid Alert System for Food and Feed (RASFF) notifications have been issued on imported Thai FAP since 2008. The notifications reported nine cases with high levels of heavy metals present both in fish and in cephalopods (one case with mercury and eight cases for cadmium) and 15 cases with high histamine level in fishery products, mainly canned products. Between 2007 and 2010, the notifications implicated aquaculture products due to presence of substances such as nitrofurans, malachite green, enrofloxacin and oxytetracycline. The substances were present in 12 cases; the last occurrence was in 2010 (FVO, 2012b). The table 31 below presents the number of border rejections recorded in the RASFF database for FAP originating from Thailand. The border rejections are quite low in comparison with other countries. However in 2012 rejections of fish and fish products increased substantially.

Table 31: Number of border rejections in the EU from FAP originating from Thailand (2009-2012)

Year	2009	2010	2011	2012
Fish and fish products	9	3	8	22
Cephalopods and products thereof	2	3	2	1
Crustaceans and products thereof	0	0	0	0
Bivalve molluscs and products thereof ¹⁸⁵	0	0	3	0
Total	11	6	13	22

Source: RASFF Portal

According to the latest FVO reports (FVO, 2012a, b) the Thai CA responded to the notifications by putting in place measures that prevented the re-occurrence of these non-conformities. The measures included the strengthening of the control on fishery products, own-checks and official controls, the performance of more non-scheduled official control visits to the establishments concerned and, when necessary, the suspension of export certification or de-listing of the implicated establishments.

Box 12: Shrimp exports from Thailand and Vietnam

Shrimp exports from Thailand and Vietnam

Shrimp continues to be the largest single commodity in value terms, accounting for about 15% of the total value of internationally traded fishery products in 2010. In spite of a reduction in world production of farmed shrimp, the market performed well. The major exporting countries are Thailand, China and Vietnam. The USA and Japan continue to be the main shrimp importers (FAO, 2012).

In 2011, shrimp export from Thailand amounted to 392,616 tons with a value of Euro 2.84 billion (www.boi.go.th). EU imports of shrimp in 2011, including coldwater, reached 551,643 tons. Thai output accounted for just under 10%, making it the fifth biggest supplier in terms of volume (although second in value), behind Ecuador, Argentina,

¹⁸⁵ Only frozen or processed bivalve molluscs, echinoderms, tunicates and marine gastropods.

Greenland and India. The severe flooding in coastal regions in 2010 resulted in volumes declining from 60,922 tons to 54,560 tons (www.thefishsite.com). Vietnam's shrimp exports in 2012 were valued at EUR1.69 billion, down almost 7% compared to 2011. Among the three largest markets, EU (ranked 3rd with export value of EUR236 million) posted the most significant decline in shrimp imports from Vietnam, followed by the USA. The most recent problem affecting the shrimp trade is the outbreak of epidemic and EMS/AHPNS (early mortality syndrome/acute hepatopancreatic necrosis syndrome) in farmed shrimp. Due to this new crisis, the shrimp export decreased by 6.6% in 2012 (www.vasep.com.vn).

In 2002 and 2003, the highest numbers of notifications (18 and 32 notifications respectively) due to antibiotics use was reported for Vietnamese shrimp. The notifications figures have declined significantly to less than five per year since 2007. The most recent incidents have been associated exclusively with post-harvest concerns (labeling, and unauthorised product treatments, particularly irradiation). Despite significant problems with antibiotic residues in the first half of the decade, farmed shrimp demonstrated a similar trend in level of improvement, with approximately one notification per 18,000 tons of product compared to one per 25,000 tons for pangasius by 2010 (Eurostat).

In order to mitigate the negative impacts of intensive system of shrimp production on food safety and quality and on the environment, Good Aquaculture Practices (GAP) and Better Management Practices (BMP) have been implemented by farmers in Vietnam and in Thailand. Both Thailand and Vietnam adopted the GAP-COC (FAO-Code of Conduct) certification scheme (Corsin *et al.*, 2007; www.fisheries.go.th).

6. Conclusion and implications for the compliance of Thai exports with EU legislation

Thailand has a well-functioning sanitary food control system in place concerning FAP exports to the EU. The Thai sanitary system of control has adopted the farm to table concept thus assuring food safety and quality throughout the food supply chain of FAPs intended to be marketed in the EU. In general, the Thai legislative and institutional framework has complied with the EU legislation. It is apparent that there are lapses in the sanitary control system in place (e.g. hygiene and structural deficiencies in landing sites, ice factories, processing establishments and cold stores) but these are being addressed by the concerned agencies. For a big exporter of FAP in the international markets, it appears that Thailand is a reactive player rather than a pro-active one. Noteworthy is the growing demand for Thai fishery and aquaculture products in the international markets which is an indication that more consumers are confident that the FAP from Thailand are safe to consume.

CASE STUDY-VIETNAM

1. Production and trade information

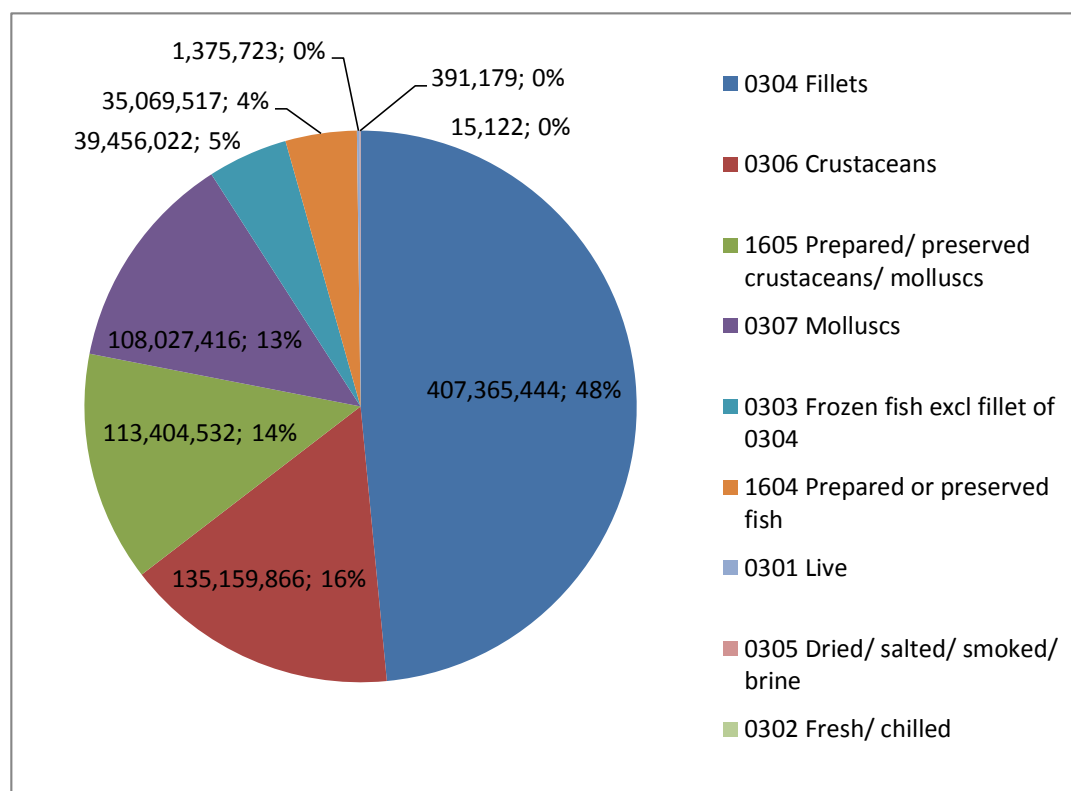
Vietnam has attempted to promote a drastic and comprehensive transformation of its economy since the start of the *Doi Moi* (Renovation) policy in 1986. This process has resulted in a number of socio-economic achievements. More inflow of foreign investment took place when Vietnam's accession to WTO was concluded in 2007 thus transforming the country's regulatory and economic environment even more rapidly (UNIDO, 2012).

In 2012 Vietnam's total fisheries production amounted to 5.8 million tons, up 8.5% over 2011, in which capture production was 2.6 million tons, an increase of 10.6%; aquaculture production was 3.2 million tons, up 3.0% from 2011 (www.vasep.com.vn).

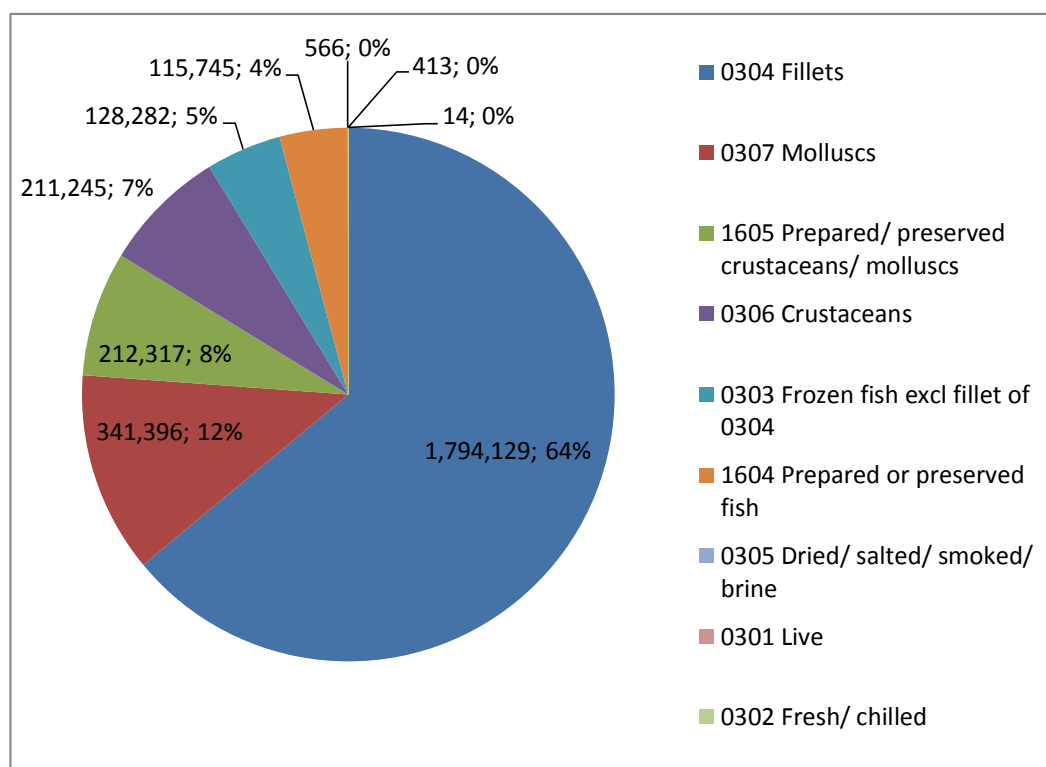
Vietnam was the 4th largest FAP trade partner of the EU in 2011. The total seafood export to EU reached 294,855 tons with a trade value of Euro 918.3 million (Eurostat-EU DG Trade-21 March 12). The main fish and aquaculture products (FAP) exported to the EU consisted of frozen fish and fish fillets, frozen shrimp and frozen squid/octopus. In 2012, Vietnam's FAP were exported to 156 markets with a total value of Euro 4.962 billion, representing an increase of 0.3% from 2011 (www.vasep.com.vn).

The composition of imports into the EU in 2012 is shown in Figures 25 and 26.

Figure 25: Imports of Fishery and Aquaculture products into the EU27 from Vietnam in 2012 (EUR)



Source: Eurostat

Figure 26: Imports of Fishery and Aquaculture products into the EU27 from Vietnam in 2012 ('00kg)

Source: Eurostat

Vietnam was the sixth most important source of imported shrimps (*Penaeus*) into the EU, representing 8% of total imports of this genus¹⁸⁶. However, only 8% of shrimp products originate from capture fisheries, the bulk originating from aquaculture.

The primary source of FAP in Vietnam is aquaculture. In 2011, a total of 4,440 registered fish farms operated in the various provinces of the country. The fish farms were mainly situated in the Mekong River Delta, southern part of Vietnam and Red River Delta, northern part of the country (www.gso.gov.vn/default).

As well as those products sourced from aquaculture, mainly comprising shrimp, products from wild caught fisheries originate from various sources:

- Industrial fishing vessel, domestic flag, landing locally for processing and export (mixed demersal species, cephalopods, crab, tunas, swordfish in fresh form)
- Artisanal fishing vessel, domestic flag, landing locally for processing and export (primarily crab, clams and demersal fish, cephalopods and shrimp in fresh form)
- Containerized, foreign flag product, imported locally for processing and export (tuna, cephalopods and billfish, primarily in frozen form) i.e. indirect exportation
- Containerized, EU Member State, imported for processing and re-exported to the EU.

Vietnam is presently permitted to export fishery and aquaculture products to the EU (Commission Decision 2006/766/EC; Commission Decision 2011/163/EU). As of August

¹⁸⁶ 06Jan11 <http://ec.europa.eu/trade/creating-opportunities/economic-sectors/fisheries>

2012, the National Agro-Forestry-Fisheries Quality Assurance Department (NAFIQAD) has 542 approved fish processing establishments (FPEs) in the country but only 415 FPEs as of October 2012 are authorized to export to the EU (www.nafiqad.gov.vn). Of these, 391 mainly use aquaculture products for processing while 24 FPEs only utilize capture species¹⁸⁷.

Most of the FPEs operate in provinces where the great number of fish farms is located, in the Mekong River Delta and Red River Delta (www.gso.gov.vn/default).

2. The institutional framework

Several Vietnamese authorities carry out the official control of FAP exported to the EU and its production chain. Since 1 July 2011, and in compliance with the Vietnamese Food Law, the Ministry of Agriculture and Rural Development (MARD) has been responsible for official control of FAP at all stages of production. On the other hand, the Ministry of Health is responsible for food safety in general, potable water, food additives and functional¹⁸⁸ foods.

MARD has three departments involved in the FAP production chain:

- Directorate of Fisheries (D-Fish) for capture and aquaculture including registration and inspection of farms.
- Department of Animal Health (DAH) for import control of products of animal origin and management of aquatic animal health as well as for authorisation of medicines and their distribution.
- NAFIQAD, as the CA. The CA is composed of the Hanoi headquarters, the two regional arms - Central Regional Agency (CRA) in Nha Trang and South Regional Agency (SRA), in Ho Chi Minh City and six regional branches. NAFIQAD has been designated as CA for FAP export in 2007. It replaced the National Fisheries Quality Assurance Veterinary Directorate (NAFIQAVED) of the Ministry of Fisheries.

Circular No 55/2011/TT-BNNPTNT specifies the responsibilities for the CA at all levels. The CA undertakes routine inspections of export establishments, takes samples for official controls and inspects export consignments prior to health certification. The two regional arms, CRA and SRA, implement monitoring programmes, inspect and approve export establishments and audit local CA offices twice per year concerning the residue monitoring programme.

As of 25 June 2010, 1173 staff were involved in food safety control in Vietnam. The staff consisted of 418 inspectors, 199 laboratory analysts, 170 management staff and 386 administration staff. The CA personnel (local CAs, inspectors, and analysts) have adequate training and sufficient knowledge of the relevant EU requirements and Vietnamese legislation and standards. The Vietnamese CA personnel have gained updated knowledge and skills by taking part regularly in various regional and international training courses on food safety issues, laboratory testing, study tours etc. provided by some donor organizations and agencies (e.g. FAO, UNIDO, DANIDA, and JICA).

The six regional branch offices have laboratories which are accredited by the Vietnamese Laboratory Accreditation Scheme (VILAS) under the Bureau of Accreditation. The laboratories are well-equipped with state-of-the-art equipment such as GC, HPLC with

¹⁸⁷ http://ec.europa.eu/food/food/biosafety/establishments/third_country/index_en.htm

¹⁸⁸ Foods that have a potentially positive effect on health beyond basic nutrition (www.mayoclinic.com)

various detectors, UPLC, LC-MS/MS, GC-ECD, GC-MS, GC MS/MS and ICP-MS for chemical testing. The microbiology laboratories are well equipped as well. Highly trained staff is available and there is sufficient staff to carry out all the necessary activities.

3. The legislative framework

The Food Law, No 55/2010/QH12 is the basic framework law on food safety in Vietnam and Decree No 38/2012/ND-CP gives detailed provisions for its implementation. The legal framework system in Vietnam concerning food safety, quality, and its production chain (from aquaculture to processing and trading) and animal health protection has been periodically or when necessary, reviewed and amended to bring it in line with the changing import market requirements from the EU, USA, Japan and other countries; and in conformity with Vietnamese national laws. The numerous circulars, decisions and standards concerning FAP are to a large extent in compliance with the EU legislation. Some relevant Vietnamese legislation applied to FAP and its production chain includes the following:

- No 55/2011/TT-BNNPTNT, a circular on food safety inspection and certification of fish and fishery products and obligations and powers of the CA at different levels. Included are the requirements on the labeling of products, sampling methods and methods for analyses of contaminants.
- No 47/2009/TT-BNNPTNT promulgates the National Technical Regulations on food safety and hygiene conditions in fishery production, such as QCVN 02-01:2009/BNNPTNT with general hygiene requirements for fishery production and trade establishments and QCVN 02-02:2009 with requirements for HACCP based quality and food safety assurance programmes. There are in total 18 technical regulations defining specific requirements for different parts of the production chain and different types of processing.
- Decision No. 2864/QĐ-BNN-QLCL of 24/11/ 2011 and Decision No 1471/QĐ-BNN-QLCL of 20 June 2012 regulates the quality, food safety and chemical criteria to be tested for in export fishery consignments.
- Decision No.117/2008/QĐ-BNN of 11/12/2008 gives regulations for the inspection and approval of production, processing and trading of fish and fishery products that meet conditions for food safety.
- Decision No. 118/2008/QĐ-BNN of 11/12/2008 gives regulations on food quality and safety inspection and certification for fishery products.
- Circular letter No. 15/2009/TT-BNN of 17/3/2009 on the list of drugs, chemicals and antibiotics which are banned or have restricted use.
- Decision No. 130/2008/QĐ-BNN of 31/12/2008 provides regulations for the control of harmful substances in aquaculture animals and their products.
- Decision No. 131/2008/QĐ-BNN of 31/12/2008 gives regulations for a food hygiene and safety controlling program during the harvesting of bivalve molluscs.
- Decision No. 190/QĐ-CLTY of 12/9/2006 on the application of certain relevant EU regulations including microbiological criteria, maximum levels for contaminants and methods for sampling and analysis of contaminants.
- Decision No. 03/2002/QĐ-BTS of 22/1/2002 on the regulation of veterinary drugs management use in aquaculture.

4. The outcomes of the FVO audits/missions

From 11 to 20 September 2012, two FVO inspection audits were carried out in Vietnam. The audits were undertaken to evaluate the control systems in place governing the production of fishery products intended for export to the EU and to evaluate the monitoring of residues and contaminants in live animals and animal products, including controls on veterinary medicinal products. The audit on the monitoring of residues covered the system of residues control for aquaculture (FVO, 2012c and 2012d).

The main deficiencies noted by the FVO were on the effectiveness of controls applied to fishing vessels, landing sites, and ice factories and that export takes place from cold stores which were not included in the CA list of establishments authorised to export to the EU. In response to the FVO recommendations, the Vietnamese CA has taken the following actions:

- Since January 2013, NAFIQAD has continued the staff training of the landing sites management boards and local CAs on food safety assurance (HACCP, GMP) and will carry out intensive inspection and audit on the food safety control of FAP. The CA has been ensuring that establishments only purchase raw materials from sites which meet sanitary requirements. Furthermore, only ice manufactured by producers that meet Vietnamese regulations on hygiene conditions has been used for the manufacture of FAP for EU export (www.vasep.com.vn).
- Issuance of health certificates by the NAFIQAD branches has been strictly controlled to ensure that fishery consignments for export to the EU are not caught/harvested/traded, transported and/or stored by fishing vessels and middlemen which do not meet Vietnamese regulations on food safety.

As to the aquaculture Residue Monitoring Plan (RMP) inspection audit, the main problems identified by FVO were: the scope of testing for veterinary medicinal products was not comprehensive as required in Council Directive 96/23/EC and that the sampling schedules of CA in fish farms were published (FVO, 2012d). In order to address the deficiencies, CA has given assurances that the issues will be dealt with appropriately.

5. Evaluation of the compliance with the EU requirements

A significant issue that should be tackled by the local authorities is the sustainability of the Vietnamese laboratories accreditation. Without further donor support, most laboratories are unlikely to maintain expensive international accreditation (UNIDO, 2011). Although at present laboratories do have or are able to obtain funds for repair, maintenance and replacement of equipment, it still remains to be seen if this can be sustained in the future.

Traceability (supply chain, IUU issue) and consumer information (labeling on country of origin or place of provenance) issues could affect the international trade of FAP from Vietnam. Vietnam's imports of raw materials (tuna, shrimps and pangasius) intended for processing then re-exported have increased in recent years. The imports could include species coming from countries unauthorised to export to the EU. Furthermore, issues such as sustainability (environmental, technical and economic) and social accountability need to be addressed appropriately and efficiently by the concerned industry players.

In 2010, four alerts (mercury in marlin and swordfish, histamine in canned tuna, nitrofurans in shrimp) and 23 border rejections were reported. In 2011, two alerts (undeclared sulphite, *Salmonella*) and 24 border rejections were reported. The main cause of the alerts was the presence of residues in a variety of fishery products. From

2009 to August 2012, there were 20 RASFF notifications for residues of veterinary medicinal products in aquaculture products imported from Vietnam. Seven notifications involved the detection of nitrofurans metabolites (six SEM, one AOZ), four notifications on chloramphenicol detection, two for neomycin, one for ivermectin and six involving the presence of dyes (malachite green, leuco-malachite green and victoria pure blue). There were also 12 notifications for trifluralin in *Pangasius spp.* products; three of which also contained chlorpyrifos (FVO, 2013a; Eurostat).

The table below 32 present the number of border rejections recorded in the RASFF database for FAP originating from Vietnam. In 2009 there was an important number of rejections at border of fish and fish products consignments. But in 2012 the total number of border rejections was pretty low (only 16 in total).

Table 32: Number of border rejections in the EU from FAP originating from Vietnam (2009-2012)

Year	2009	2010	2011	2012
Fish and fish products	36	9	19	10
Cephalopods and products thereof	2	3	1	2
Crustaceans and products thereof	4	1	3	1
Bivalve molluscs and products thereof ¹⁸⁹	3	0	6	3
Total	45	13	29	16

Source: RASFF Portal

Box 13: Exports of Pangasius from Vietnam

Exports of Pangasius from Vietnam

In 2010, the seafood trade, originally based on wild fish has resulted to an increase in EU imports of a key farmed species, pangasius (Little *et al.* 2012). As supplier of pangasius into the EU, Vietnam ranked 2nd in the overall whitefish volume (AIPCE-CEP, 2012). In 2012, Vietnam exported pangasius to 142 nations and territories with a value of Euro 1.32 billion, a decrease of 3.4% from the 2011 value. The EU was ranked 1st in the top 10 main markets, the export value amounted to Euro 322 million. The other top ten markets were the USA, ASEAN, China and Hong Kong, Mexico, Brazil, Egypt, Saudi Arabia, Colombia and Australia, making up 77.5% of Vietnam's total seafood export value. In 7 markets, pangasius imports decreased with the biggest drop in the EU followed by Saudi Arabia. In 3 remaining markets, USA, China and Hong Kong, Egypt, imports rose, however, the increase was much lower in comparison with previous years (www.vasep.com.vn).

There were attempts to depict pangasius as contaminated and unsafe for consumption which earlier affected the product trade in the EU (Little *et al.* 2012; Stevenson, 2009). However, the issue was immediately addressed by the concerned authorities in Vietnam

¹⁸⁹ Only frozen or processed bivalve molluscs, echinoderms, tunicates and marine gastropods.

through the strict implementation of better management practices such as GAP (Good Agriculture/Aquaculture Practice). Furthermore, with the support from WWF, a three-year initiative called the Pangasius Aquaculture Dialogue (PAD) has created global standards designed to reduce the negative environmental and social impacts associated with pangasius farming. The PAD standards were finalized in August 2010 and turned over to the independent Aquaculture Stewardship Council (ASC), the global organization that manages global standards for responsible aquaculture (WWF, 2012). To date, there are 13 pangasius companies with ASC certification; 8 companies have already been accredited since the end of 2012. The certified farms are situated in Dong Thap province (5 units), Tien Giang province (4 units), and 2 farms each in An Giang province and Can Tho City (www.vasep.com.vn).

In 2005, 56 RASFF notifications were recorded, 50% of which was associated with microbiological contamination while 38% of the notifications were due to 'other veterinary products', mainly malachite green. The frequency of notifications decreased in 2006-2008, but rose again in 2009 and 2010 at 24 and 28 notifications per year, respectively. These later notifications were predominantly associated with the detection of microbiological contamination (*Listeria* and *Salmonella*). In 2010, prohibited antibiotics (nitrofurantoin metabolites) and pesticides (chlorpyrifos, an insecticide, and trifluralin, an herbicide) were found, each on five occasions. In 2011, RASFF notifications were mainly due to imports from unauthorized establishments and other veterinary medicinal products.

6. Conclusion and implications for the compliance of Vietnamese exports with EU legislation

Vietnam has made great progress in complying with the EU legislation. Although there are a number of deficiencies such as the effectiveness of controls applied to fishing vessels, landing sites, and ice factories, and lapses in the RMP measures, these have been aptly addressed immediately. It appears that Vietnam has always strived to comply with any requirements set by EU in order to retain a significant market. In general, Vietnam has abided by the EU requirements in terms of reformed legal and regulatory framework, improved CA capacity and skills, upgraded laboratories (personnel and facilities) and restructured supply chain to enhance control over the entire production cycle (implementation of measures on monitoring controls on residues and contaminants in aquaculture products). The strengthened food safety control system has resulted in a decline in RASFF notifications in recent years thus giving more assurance that the products being exported by this country do not pose a significant danger to EU consumers. Furthermore, it can be expected that any potential risks in fish and aquaculture products can be easily detected and dealt with appropriately by the concerned Vietnamese authorities.

It should also be noted that the growing demand for fish and aquaculture products (particularly pangasius) originating from Vietnam (imported by more than 150 countries/territories around the world) is a clear evidence that the products are being appreciated more by overseas consumers. Moreover, the competencies and effectiveness of the CA has been approved and recognised by several significant importing countries such as the USA, Japan, Australia, Canada, Russia, Korea and China.

Annex 2: Stakeholders Consulted

BUSINESS & NGO

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Annex 3:

List of health legislation and notes

Basic legislation:

Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption

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

Council Regulations:

Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products

Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy

Council Regulation (EC) No 1093/94 of 6 May 1994 setting the terms under which fishing vessels of a third country may land directly and market their catches at Community ports

Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products

Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs

Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin

Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption

Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (*Official Journal of the European Union L 165 of 30 April 2004*)

Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation).

Commission Regulations:

Commission Regulation (EC) No 136/2004 of 22 January 2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries

Commission Regulation (EC) No 282/2004 of 18 February 2004 introducing a document for declaration of, and veterinary checks on, animals from third countries entering to the Community

Commission Regulation (EU) No 16/2011 of 10 January 2011 laying down implementing measures for the Rapid alert system for food and feed

Commission Regulation (EU) No 142/2011 of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive.

Commission Regulation (EU) No 28/2012 of 11 January 2012 laying down requirements for the certification for imports into and transit through the Union of certain composite products and amending Decision 2007/275/EC and Regulation (EC) No 1162/2009

Council Directive:

Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries

Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 92/425/EEC

Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries

Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC

Commission Decision:

Commission Decision No 93/352/EEC of 1 June 1993 laying down derogations from the conditions of approval for border inspection posts located in ports where fish is landed

Commission Decision No 2006/766/EC of 6 November 2006 No 2006/766 establishing the lists of third countries and territories from which imports of bivalve molluscs, echinoderms, tunicates, marine gastropods and fishery products are permitted

Commission Decision 2009/821/EC of 28 September 2009 drawing up a list of approved border inspection posts, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in Traces.

Commission Decision 2007/275/EC of 17 April 2007 concerning lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78

Commission Implementing Decision:

Commission Implementing Decision 2012/31/EU of 21 December 2011 amending Annex I to Decision 2007/275/EC concerning the lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC

Commission Implementing Regulation (EU) No 809/2011 of 11 August 2011 amending Regulation (EC) No 2074/2005 as regards documentation accompanying imports of frozen fishery products directly from a freezer vessel

Commission Implementing Decision 2011/215/EU of 4 April 2011 implementing Council Directive 97/78/EC as regards transshipment at the border inspection post of introduction of consignments intended for import into the EU or for third countries

Annex 4:

List of IUU legislation and notes

Those on the DG MARE web site are to be found:

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/index_en.htm

Those not on the MARE web site are preceded with a * in the list below.

Basic Legislation:

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

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008R1005:EN:NOT>

Commission Regulations:

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

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R1010:EN:NOT>

Commission Regulation (EU) No 86/2010 of 29 January 2010 amending Annex I to Council Regulation (EC) No 1005/2008 as regards the definition of fishery products and amending Commission Regulation (EC) No 1010/2009 as regards exchange of information on inspections of third country vessels and administrative arrangements on catch certificates

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010R0086:EN:NOT>

Commission Regulation (EU) No 202/2011 of 1 March 2011 amending Annex I to Council Regulation (EC) No 1005/2008 as regards the definition of fishery products and amending Regulation (EC) No 1010/2009 as regards prior notification templates, benchmarks for port inspections and recognised catch documentation schemes adopted by regional fisheries management organisations

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R0202:EN:NOT>

Commission Regulation (EU) No 395/2010 of 7 May 2010 amending Commission Regulation (EC) No 1010/2009 as regards administrative arrangements on catch certificates

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010R0395:EN:NOT>

Commission Regulation (EU) No 468/2010 of 28 May 2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010R0468:EN:NOT>

Commission Regulation (EU) No 202/2011 of 1 March 2011 amending Annex I to Council Regulation (EC) No 1005/2008 as regards the definition of fishery products and amending Regulation (EC) No 1010/2009 as regards prior notification templates, benchmarks for port inspections and recognised catch documentation schemes adopted by regional fisheries management organisations

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R0202:EN:NOT>

Commission Implementing Regulations:

Commission Implementing Regulation (EU) No 724/2011 of 25 July 2011 amending Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R0724:EN:NOT>

Commission Implementing Regulation (EU) No 1222/2011 of 28 November 2011 amending Regulation (EC) No 1010/2009 as regards administrative arrangements with third countries on catch certificates for marine fisheries products

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:314:0002:0011:EN:PDF>

Commission Implementing Regulation (EU) No 1234/2012 of 19 December 2012 amending Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:350:0038:0043:EN:PDF>

Commission Decisions:

*Commission Decision of 18 December 2009 designating the Community Fisheries Control Agency as the body to carry out certain tasks under Council Regulation (EC) No 1005/2008 (notified under document C(2009) 10155) (2009/988/EU)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:338:0104:0104:EN:PDF>

Commission Decision of 15 November 2012 on Notifying the Third countries that the Commission Considers as Possible of being Identified as Non-Cooperating Third Countries Pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (2012/C 354/01)

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/2012_c354_en.pdf

Commission Statements:

Proposal for a Council Regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing – Adoption (LA + S)

http://ec.europa.eu/fisheries/cfp/illegal_fishing/official_documents/statement_en.pdf

General Information:

Handbook on the practical application of Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing Mare A4/PS D(2009) A/12880

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/handbook_original_en.pdf

Handbook (reduced translated version) on the practical application of Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing Mare A4/PS D(2009) A/12880

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/handbook_en.pdf

Addendum to the Handbook on the Practical Application of the IUU Regulation
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/handbook_addendum_en.pdf

EC Regulation 1005/2008 to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing Information Note (undated)
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/information_note01_en.pdf

Notifications:

Information on States and their Competent Authorities Notified under Article 20(1) and (2) (as of 18 March 2013*)
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/flag_state_notifications.pdf

List of Third Countries Requesting a Catch Certificate for the Exportation of all Catches by Fishing Vessels Flying the Flag of an EU Member State (article 15 of the IUU Regulation)
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/list_of_third_countries_en.pdf

List of ports in EU Member States where landings and transshipment operations of fishery products are allowed and port services are accessible for third-country fishing vessels, in accordance with Article 5(2) of Council Regulation (EC) No 1005/2008 (2009/C 320/06)
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/designated_ports_en.pdf

Addendum to and amendment of List of ports in EU Member States where landings and transshipment operations of fishery products are allowed and port services are accessible for third country fishing vessels, in accordance with Article 5(2) of Council Regulation (EC) No 1005/2008 (Updated 2 March 2012)
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/addendum_designated_ports_en.pdf

List of Member States and their Competent Authorities concerning Articles 15(2), 17(8) and 21(3) of Council Regulation (EC) No 1005/2008 (2009/C xxx/xx)
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/ms_authorities_en.pdf

Addendum to and amendment of List of Member States and their Competent Authorities concerning Articles 15(2), 17(8) and 21(3) of Council Regulation (EC) No 1005/2008 (2009/C 320/07) (25 November 2010)
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/addendum_authorities_en.pdf

Notification of Competent Authorities for the implementation of the IUU Regulation Notification process (undated, no reference)
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/index_en.htm

Additional Information:

Approved economic operators established in accordance with article 16(3) of Council Regulation (EC) No 1005/2008 and published in accordance with article 29 (3) of Commission Regulation (EC) No 1010/2009 (29 March 2011)
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/approved_economic_operators_en.pdf

IUU Seminar with NGO's (undated no reference)
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/iuu_seminar_with_ngos_en.pdf

IUU Regulation – Requirement of a validated EU catch certificate for transshipment within a non-EU port (2 February 2011)

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/transshipment_requirement_en.pdf

IUU REGULATION – Requirement of a validated EU catch certificate for processing activities carried out in a third country, different from the flag State (4 November 2010)

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/requirement_for_validated_cc_en.pdf

IUU Regulation - Additional Information on Products Processed in the Flag State to be Exported to the EU (24 May 2011)

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/domestic_processed_products_en.pdf

IUU Regulation – Imports of Pacific Salmon and Other Anadromous Species (undated, no reference)

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/pacific_salmon_en.pdf

IUU Regulation – Procedures in Relation to Intra-EU Trade and Subsequent Exports of EU Products for Processing in a Third Country (undated, no reference)

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/intra_eu_trade_and_exports_en.pdf

IUU Regulation – Weight in the Catch Certificate – Product Code (undated, no reference)

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/weight_in_catch_certificate_en.pdf

IUU Regulation – Weight in the Catch Certificate – Part II (August 2010)

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/weight_in_catch_certificate_part2_en.pdf

Templates of Catch Certificates used by Third Countries (undated, no reference)

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/third_countries_catch_certificates_websites_en.pdf

Assistance from the European Community in the fight against IUU fishing, based upon Article 11 of the Regulation (EC) 1005/2008 and you get this: IUU REGULATION – Requirement of a validated EU catch certificate for processing activities carried out in a third country, different from the flag State (4 November 2010)

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/requirement_for_validated_cc_en.pdf

Requirements for catches stemming from the Caspian Sea (undated, no reference)

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/caspian_sea_en.pdf

Information request to third countries on aquaculture products (undated, no reference)

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/aquaculture_products.pdf

Study on the consequences for developing countries of the IUU Regulation Study published 04/05/2009

http://ec.europa.eu/fisheries/documentation/studies/iuu_regulation/index_en.htm

Annex 5: T2M (Commission Regulation 2454/93 Annex 43)

EUROPEAN COMMUNITY

ORIGINAL	1	1. Applicant (full name or name of company or business and full address)	<div style="font-size: 2em; font-weight: bold; display: inline-block;">T2M</div> <div style="float: right;">No A 000000</div>	
		2. Community fishing vessel Name: Recorded number: Base port: Flag:		
		3. Declaration by the operator I the undersigned, hereby declare that the products and goods to be showed in boxes 4 and 6 have Community status. Date: (Signature)	A. Stamp of the fishing vessel registration authority (a) Authority: Stamp Date:	
	1	4. Products of sea-fishing (Name and type)		5. Gross mass (kg) ⁽¹⁾
		6. Goods obtained from the products referred to above (Kind)	7. CN code	8. Gross mass (kg)
	9. Declaration by the master of the Community fishing vessel I the undersigned, (Full name). master of the vessel shown in box 2, declare that the products referred to in box 4: — were caught by my vessel in waters other than the territorial waters of a country or territory outside Community customs territory, — have undergone on board my vessel processing which has been recorded on page of the logbook and that the goods obtained are described in box 6 ⁽²⁾ Date: Signature:			
	10. Declaration in the event of a first transshipment from a Community fishing vessel The products and/or goods described in this document were transhipped onto the following vessel: (a) Name: (b) Registration number: (c) Flag: (d) Full name of master: The transshipment has been recorded on page of the logbook of the Community fishing vessel. The transshipment has been recorded on page of the logbook of the vessel onto which the products and/or goods were transhipped. Date:			
	(Signature of the master of the Community fishing vessel)		(Signature of the master of the receiving vessel)	
	<div style="border: 1px solid black; padding: 5px;"> B. Office which issued the T2M form Customs office: Address: Member State: Stamp Date: Signature: </div>			

(a) If this authority is the same as the customs office indicated in box B, then the impression of the stamp is sufficient for completion of Box A.

⁽¹⁾ Approximate figure.

⁽²⁾ Delete when no processing takes place on board.

11. Declaration when processing takes place on board the vessel onto which that catch has been transhipped ⁽³⁾ <p>The products referred to in box 4 have undergone on board the vessel shown in box 10 processing which has been recorded on page ... of the logbook and the resulting goods are shown in box 6.</p> <p>Date: (Signature of master)</p>	
12. Declaration in the event of a second transhipment without further processing <p>The products and/or goods referred to in this document have been transhipped onto the following vessel:</p> <p>(a) Name: (b) Registration number: (c) Flag: (d) Full name of master:</p> <p>The transhipment has been recorded on page of the logbook of the vessel from which the products and/or goods were transhipped. The transhipment has been recorded on page..... of the logbook of the vessel onto which the products and/or goods were transhipped.</p> <p>Date: (Signature of the master of the transhipping vessel) (Signature of the master of the receiving vessel)</p>	
13. Certification by the customs authority of the country or territory not forming part of Community customs territory <p>The undersigned customs authority, hereby certifies that the products and/or goods referred to in boxes 4 and/or 6 were under customs supervision throughout their stay and have undergone no handling other than the necessary for their preservation.</p> <p>Date of arrival of the products/goods: Date of departure of the products/goods: Means of transport used for reconsignments to Community customs territory: Full address of the customs office:</p> <p style="text-align: right;">Stamp</p> <p>Country or territory: Date: (Signature)</p>	
C. Stamp of the customs office where the products and/or goods were brought into the Community customs territory <p>Customs office: Member State: Stamp Date:</p>	<p>A copy of this form must be sent to the customs office indicated in box B</p>
<p style="text-align: center;">REMARKS</p>	

⁽³⁾ Community fishing vessel or Community factory ship.

EUROPEAN COMMUNITY

COPY	1	1. Applicant (full name or name of company or business and full address)	<div style="border: 2px solid black; padding: 5px; font-size: 24px; font-weight: bold; text-align: center;">T2M</div> <div style="text-align: right; font-weight: bold;">No A 000000</div>	
		3. Declaration by the operator I the undersigned, hereby declare that the products and goods to be showed in boxes 4 and 6 have Community status. Date: <div style="text-align: right;">(Signature)</div>	2. Community fishing vessel Name: Recorded number: Base port: Flag: A. Stamp of the fishing vessel registration authority (a) Authority: Stamp Date:	
		4. Products of sea-fishing (Name and type)	5. gross mass (kg) ⁽¹⁾	
	1	6. Goods obtained from the products referred to above (Kind)	7. CN Code	8. Gross mass (kg)
9. Declaration by the master of the Community fishing vessel I the undersigned, (full name), master of the vessel shown in box 2, declare that the products referred to in box 4: — were caught by my vessel in waters other than the territorial waters of a country or territory outside Community customs territory, — have undergone on board my vessel processing which has been recorded on page..... of the logbook and that the goods obtained are described in box 6 ⁽²⁾ Date: Signature:				
10. Declaration in the event of a first transhipment from a Community fishing vessel The products and/or goods described in this document were transhipped onto the following vessel: (a) Name: (b) Registration number: (c) Flag: (d) Full name of master: The transhipment has been recorded on page of the logbook of the Community fishing vessel. The transhipment has been recorded on page..... of the logbook of the vessel onto which the products and/or goods were transhipped. Date:				
<div style="border: 1px solid black; padding: 5px;"> B. Office which issued the T2M form Customs office: Address: Member State: Stamp Date: Signature: </div>				
<div style="display: flex; justify-content: space-between;"> <div>..... (signature of the master of the Community fishing vessel)</div> <div>..... (Signature of the master of the receiving vessel)</div> </div>				

(a) If this authority is the same as the customs office indicated in Box B, then the impression of the stamp is sufficient for completion of Box A.

⁽¹⁾ Approximate figure.

⁽²⁾ Delete when no processing takes place on board.

**Annex 6:
Catch Certificate and Re-export Certificate (Council
Regulation 1005/2008 Annex II)**

EUROPEAN COMMUNITY CATCH CERTIFICATE							
Document number				Validating authority			
1. Name		Address			Tel. Fax		
2. Fishing vessel name		Flag – Home port and registration number			Call sign		IMO/Lloyd's number (if issued)
Fishing licence No – Valid to		Inmarsat No, Fax No, Telephone No, E-mail address (if issued)					
3. Description of product		Type of processing authorised on board			4. References of applicable conservation and management measures		
Species	Product code	Catch area(s) and dates	Estimated live weight (kg)		Estimated weight to be landed (kg)	Verified weight landed (kg) where appropriate	
5. Name of master of fishing vessel – Signature – Seal:							
6. Declaration of transhipment at sea Name of master of fishing vessel			Signature and date		Transhipment date/area/position		Estimated weight (kg)
Master of receiving vessel		Signature	Vessel name		Call sign	IMO/Lloyds number (if issued)	
7. Transhipment authorisation within a port area							
Name	Authority	Signature	Address	Tel.	Port of landing	Date of landing	Seal (stamp)
8. Name and address of exporter		Signature			Date		Seal
9. Flag State authority validation:							
Name/title		Signature			Date	Seal (stamp)	

10. Transport details <i>(see Appendix)</i>				
11. Importer declaration				
Name and address of importer	Signature	Date		Product CN code
Documents under Articles 14(1), (2) of Regulation (EC) No .../2008	References			
12. Import control — authority	Place	Importation authorised (*)	Importation suspended (*)	Verification requested – date
Customs declaration (if issued)	Number		Date	Place
(*) Tick as appropriate.				

EUROPEAN COMMUNITY RE-EXPORT CERTIFICATE			
Certificate number	Date		Member State
1. Description of re-exported product		Weight (kg)	
Species	Product code	Balance from total quantity declared in the catch certificate	
2. Name of re-exporter	Address	Signature	Date
3. Authority			
Name/title	Signature	Date	Seal/stamp
4. Re-export control			
Place	Re-export authorised (*)	Verification requested (*)	Re-export declaration number and date
(*) Tick as appropriate.			

Appendix

Transport details

1. Country of exportation Port/airport/other place of departure	2. Exporter signature			
Vessel name and flag Flight number/airway bill number Truck nationality and registration number Railway bill number Other transport document	Container number(s) list attached	Name	Address	Signature

Annex 7: Processing Statement (Council Regulation 1005/2008 Annex IV)

Statement under Article 14(2) of Council Regulation (EC) No .../2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

I confirm that the processed fishery products: ... (product description and Combined Nomenclature code) have been obtained from catches imported under the following catch certificate(s):

Catch certificate number	Vessel name(s) and flag(s)	Validation date(s)	Catch description	Total landed weight (kg)	Catch processed (kg)	Processed fishery product (kg)

Name and address of the processing plant:

.....

Name and address of the exporter (if different from the processing plant):

.....

Approval number of the processing plant:

.....

Health certificate number and date:

.....

Responsible person of the processing plant:	Signature:	Date:	Place:

Endorsement by the competent authority:

..... ..

Official:	Signature and seal:	Date:	Place:

Annex 8:
Catch Certificate, Simplified form (Commission
Regulation 1010/2009 Annex IV)

EUROPEAN COMMUNITY CATCH CERTIFICATE

Simplified form for fishery products fulfilling the requirements in Article 6 of this Regulation

(I) EUROPEAN COMMUNITY CATCH CERTIFICATE — Simplified form for fishery products fulfilling the requirements in Article 6 of this Regulation					
Document number			Validating authority (name, address, tel., fax)		
1. Description of product		2. References of applicable conservation and management measures			
Species	Product code	Verified weight landed (kg)			
3. List of vessels that have provided catches and the quantities by each vessel (name, registration number, etc. annexed):					
4. Name, address, tel. and fax of exporter		Signature	Date	Seal (stamp)	
5. Flag State authority validation:					
Name/Title		Signature	Date	Seal (stamp)	
6. Transport details (<i>see Appendix</i>)					
7. Importer declaration:					
Name and address of Importer		Signature	Date	Seal (stamp)	Product CN code
8. Import control: Authority	Place	Importation authorised (*)	Importation suspended (*)	Verification requested — date	
Customs declaration (if issued)	Number		Date	Place	

(*) Tick as appropriate.

(II) EUROPEAN COMMUNITY RE-EXPORT CERTIFICATE			
Certificate number	Date		Member State
1. Description of re-exported product		Weight (kg)	
Species	Product code	Balance from total quantity declared in the catch certificate	
2. Name of re-exporter	Address		Signature Date
3. Authority			
Name/Title	Signature		Date Seal/Stamp
4. Re-export control			
Place:	Re-export authorised (*)	Verification requested (*)	Re-export declaration number and date

(*) Tick as appropriate.

Appendix

Transport details

1. Country of exportation Port/airport/other place of departure	2. Exporter signature			
Vessel name and flag Flight number airway bill number Truck nationality and registration number Railway bill number Other transport document	Container number(s) llet attached	Name	Address	Signature

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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