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**TRADE ISSUES AND POLICY COHERENCE IN FISHERIES:
A DEVELOPING COUNTRY PERSPECTIVE**

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**TRADE ISSUES AND POLICY COHERENCE IN FISHERIES:
A DEVELOPING COUNTRY PERSPECTIVE ON SPS AND OTHER NTBS¹**

Summary

The trade in fishery products from developing to developed countries is increasingly becoming an important world commerce. Fish exports from coastal and island countries in the Pacific, Africa and Asia to countries in the OECD are important sources of foreign income, especially in countries rich in fisheries stocks but with either low populations, lacking in sufficient domestic infrastructure or having low buying power. A policy to promote exports to developed countries is therefore becoming the logical marketing option for countries with rich natural fishery stocks. Considering that several of these coastal and island developing states have few other sources of income, fisheries exports provide an important way for the country to meet the Millennium Development Goal One of poverty alleviation.

Export of fisheries products to developed countries is restricted by sanitary and phytosanitary (SPS) standards imposed by these markets. These SPS conditions require changes in legislation and government agencies dealing with hygiene and sanitary standards of fisheries in developing countries. These changes require implementation of policies in developing countries, which in turn affect fisheries trade. Because of the high costs associated with meeting fishery SPS standards, fisheries trade in developing countries is increasingly being globalised, with small and medium scale fishers and fish traders being marginalised because they cannot meet the cost thresholds required. Considering that fisheries, more than many other natural resources, has many socioeconomic impacts on riparian communities, this policy to adopt international SPS conditions has been incoherent with the policy of poverty alleviation. Also, the policy to domesticate international SPS standards in national fisheries legislation actually criminalises artisanal fish processing and trading as currently practised in many developing countries, marginalising them further.

Implementation of fisheries SPS standards in developing countries is almost always considered untimely, mainly because these countries are unable to participate consistently in international standards setting meetings. Developing countries also find it difficult to establish that their standards are equivalent to those demanded by international markets, because they are often unable to undertake the required scientific research. Additional measures being introduced in international markets such as eco-labelling, traceability and social standards are also acting as non tariff barriers to fisheries trade. Considering that standards increase the cost of doing business, and considering the low values of export fish retained in developing countries, their implementation requires higher stock exploitation in developing countries. This is incoherent with the policy of stocks conservation in these countries.

The introduction of sanitary standards, traceability or even eco-labelling in fisheries is based on acceptable objectives. Developing countries do not, on account of lack of capacity to meet standards, seek to supply substandard goods into international markets. What is contentious however is the way these standards are implemented, and the lack of an effective mechanism for adopting equivalent measures that may be existent in developing countries. Fisheries is a major aspect of development in developing countries, and it is important that policies guiding fisheries trade are coherent with poverty alleviation policies. There is an urgent need for groupings such as the ACP and OECD to initiate mechanisms for addressing these incoherencies, more so because the OECD represents the main market destination for fishery products from developing countries.

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Introduction

1. Standards, especially Sanitary and Phytosanitary Standards (SPS), are increasingly becoming a gateway into (particularly) international trade. In the wake of several domestic animal diseases which are limiting trade in animal products, fish is perhaps the remaining safer frontier. Incidentally, the demand for fish is ever increasing across the world, and currently exceeds supply (both from natural capture and aquaculture activities). Concerns for consumer safety (authenticated or non authenticated) are making Governments in major fish consuming nations to continuously come up with SPS measures which are increasingly hindering international fish trade.
2. The international legal basis for countries to impose SPS measures is the WTO SPS Agreement signed on 1st January 2005. This agreement (described later in the text), outlines the principles to be followed, but does not define the 'how's' of implementation. It grants the right to importing countries to protect their citizenry from unsafe products, but also obliges them not to use these measures as Non Tariff Barriers (NTB) to trade. This Agreement also does not define the obligations for cooperation or consultation among WTO member countries.
3. Standards used in SPS measures are mainly covered under three main international standard setting bodies i.e. FAO – WHO, (*Codex Alimentarius* Commission on Food Safety), OIE (International Office of Epizootics for Animal Health), and FAO-IPPC secretariat (International Plant Protection Convention for plant health). In Fisheries, major fish consuming nations often set their own standards, usually higher than those set by the international organizations. In the EU, the Food and Veterinary Office in Dublin, working under DG SANCO (Brussels) drafts Directives that are then issued by the EU Commission as legal basis for trade in fish and fishery products. In the USA, the FDA rules on food and feeds are applied to imports of fish and fishery products. In Japan, the Japanese Agricultural Standards (JAS) are applied as basis for international fish imports. Both the EU and USA use Hazard Analysis Critical Control Point (HAACCP) system as a mandatory basis for international fish trade. Japan does not specifically demand proof of HACCP, but of course requires evidence of Good Manufacturing Practises (GMP) in fish processing and handling.
4. The emergence of SPS measures has led to significant changes in fisheries policies in both developed and developing countries, which has significantly affected fisheries trade. In many of the major fish consuming nations, these policies have become the main impediments to imports of fish from developing countries. It is clear that countries have a right to protecting the health of their citizens. Developing countries cannot, on account of lack of capacity to meet SPS conditions, be justified in requesting to supply substandard goods into worlds markets. The contention is therefore not 'that standards should not be met', but rather 'how to define the absolute necessary standard, how these standards will be met, and how this will be verified'.
5. Developing countries wishing to participate in international fish trade have also had to significantly change their fisheries policies. These policies have necessitated changes in fisheries governance structures, legislations, and operations in the private sector. Developing countries that have pursued the policy of adopting international standards have greatly modernised their fisheries, to the extent that they are now capable of trading with even the most demanding international markets. These policies have however been incoherent with national development policies, in that adoption of these standards are increasingly isolating the poor from fisheries trade.
6. Several other developments in fisheries which are acting as Non Tariff Barriers include: introduction of traceability conditions, environmental standards and eco-labelling, and social responsibility standards such as Corporate Social Responsibility. Just like SPS, these standards *per-se* are not bad, but it is the mode of application that introduces costs and procedures that in themselves act as barriers to trade.

7. There is therefore a need to examine critically the coherence of policies towards standards on one hand, and development-oriented policies (such as those towards poverty reduction in developing countries) on the other hand, with a view to addressing inherent incoherencies. This paper discusses mainly the SPS standards from a developing (exporting) country perspective. It details how these policies have been domesticated in developing countries, and some of their impacts on fisheries trade and national development. This paper looks at regional rather than specific national policies. It seeks to illustrate effects of policy incoherencies, and suggests how these could be addressed.

WTO SPS Agreement: the Basis of International Policies on Standards

8. The WTO SPS Agreement (WTO, 1995) defines what an 'SPS measure' is, and details aspects for the protection of human, animal or plant health. These measures are aimed at addressing risks arising from pests, additives, contaminants, toxins diseases, or disease carrying and disease causing organisms in foodstuffs and beverages. It however leaves the norms of implementation to international standards organizations or member nations of the WTO.

9. In art 2.2 of the Agreement, the principle of scientific justification requires a scientific basis for any level of health protection. In the absence of this, an importing country is allowed to provisionally adopt some 'precautionary' measure for some time. In art 2.3, the principle of non-discrimination requires that a measure shall not discriminate against or between trading partners more than is necessary to reach its goal of sanitary and phytosanitary protection.

10. The instruments of the SPS agreement are as follows:

- *Risk Assessment:*

This requires a scientific justification for the relationship between the measure and the level of protection required (art 5.1-5.3). This is a tough condition to meet, even by developed countries.

- *Rules on setting protection levels:*

This section describes in details the implementation of the anti discrimination principle. In addition to the risk assessment, a measure must be the least restrictive to trade among the available alternatives and it shall be no more restrictive to trade than necessary to achieve the desired level of protection. Measures that comply with the standards, guidelines and recommendations developed by the three international organizations - *Codex Alimentarius* Commission, International Office of Epizooties and International Plant Protection Convention (IPPC) are deemed to be compatible with the SPS Agreement. In addition, a measure must be notified to the WTO SPS Committee before they come into force and other members have an opportunity to challenge the scientific basis for action.

- *Equivalence:*

According to article 4, two SPS measures are said to be equivalent to one another when they are not identical but yield the same level of sanitary and phytosanitary protection. There have been concerns by many developing countries that importing (developed) countries are looking for 'sameness' rather than 'equivalence', as stipulated in art 4.1. Given the differences between developing and developed countries, this inflexibility of importing countries is mainly as a result of lack of trust among trading nations, and inadequate scientific capacity in developing countries to validate equivalence measures.

- *Participation in Standards Setting:*

According to art 3.4, WTO member states are required to participate in international standards setting meetings to ensure that the standards set are agreeable to all. In reality however, many developing countries lack the human and financial resources necessary to actively participate in these meetings. As a result, the standards set hardly consider the peculiarities of developing countries, and are hence difficult to attain.

- *Exceptions in Case of Insufficient Evidence:*

The exception to the risk assessment requirement in article 5.7 is that when scientific evidence is insufficient, a member country is entitled to use measures based on "available pertinent information". There are two conditions attached to this exception. First, such measures must be temporary and, second, the member must seek additional evidence and must review the measure after "a reasonable period of time".

- *Harmonization:*

Under article 3, member states are encouraged to harmonise their national standards with each other (therefore creating internationally agreed standards. A member state is automatically exempted from WTO sanctions if she applies an internationally agreed measure. If a country chooses a higher level of protection than implied by the international standard, it must produce its own risk assessment and the measure must be non-discriminatory.

- *Regionalization:*

Article 6 of the Agreement encourages members to adapt their SPS measures to the regional characteristics of their trading partners. This article seeks to discourage blanket bans of entire countries exports due to a problem localised in one part of the production area. This in fisheries could be a contamination of a water body, or presence of some health risk in one fishery species.

- *Transparency:*

The SPS Agreement seeks to increase transparency in implementation of SPS measures by setting guidelines on notifications to the WTO SPS committee and also national notification points. The member issuing a notification is required to allow for sufficient time for members to comment on the measure, before such a notification takes effect, unless in situations of emergency.

- *Dispute Settlement:*

The SPS Committee serves both as an instrument that increases the transparency of members' SPS regimes and as a first informal step in the dispute settlement process. Those cases that need a formal settlement are processed through the Dispute Settlement Body. This is an expensive and lengthy process, which requires significant scientific evidence on both sides, hence developing countries may not find it an appropriate option.

- *Special and Differential Treatment of Developing Countries:*

The Agreement provides for special and differential treatment of developing countries in aspects such as: choice of measure (requirement for technical and economic feasibility of intended measures), technical assistance from the importer if the measure severely restricts trade, and in delaying (by up to 6 months) the commencement of an SPS measure.

Fisheries Trade In developing countries

11. Fisheries trade in developing countries is characterised by areas of glut (excessive production) especially around lakes and coasts of oceans, and areas of high demand especially in inner urban areas. Even though in most developing countries domestic fish trade is vibrant, it is limited geographically to a few kilometre radius by poor infrastructure and lack of ice. A significant proportion (about 20-30% of landings) of fresh fish therefore spoils before reaching major consumption areas, a factor that has contributed greatly to the association of fishery products in markets in many developing countries with foul smell. This limits demand to ardent fish consumers (often urban poor), who in turn have a lower buying power, hence resulting in value loss.

12. Regional fish trade in most developing countries mainly consists of dried and smoked forms, because they are in stable condition necessary to endure the long distances and times it takes to traverse regional roads. Further, most developing countries charge huge (in excess of 20%) tariffs on imports, arguing that this is one of the main ways that the governments earn revenue. This in turn encourages illegal trade (smuggling) of fish across borders, which is facilitated by the many straddling tribes across most country borders. Since the trade in these cross border commodities mainly operate outside legal environment in countries that have adopted international SPS standards as national quality legislation on fisheries, there are no official inspection services, and this encourages low quality of products traded, which again limits demand.

13. Regional fish trade is further limited by the inability of most regional importers to buy huge volumes in one bulk, and this makes it difficult for a foreign exporter who may not be able to establish retail market in a foreign land. Also, many currencies of developing countries are not easily inter-convertible to those of neighbouring nations, or into internationally accepted currencies. Trading between most developing countries is therefore restricted to those who have access to inter-convertible foreign currencies such as the US dollar, and this hampers regional trade. Domestic and regional trade, though significant in volume, is mainly carried out by small and medium scale traders, and usually involves long value-chains providing conveyance rather than value addition activities.

14. Large scale fishery trade in developing countries is therefore almost limited to exporting into developed countries, mainly because the buyers there are able to buy large volumes at once, trade in internationally accepted currencies, and often infrastructural (sea or air) connectivity is efficient. This trade is limited to countries with large volumes of an homogeneous fishery product of either natural capture or aquaculture. The proportions of fishery products exported to developed countries when compared with those which are traded locally vary between countries, and depends mainly on the size of domestic

populations and local fish eating habits. Pacific Island countries, and Namibia export most of their fisheries products, while countries in Eastern and western Africa export only about 20-30% of their total landings, because of strong domestic and regional demand for fish.

15. Developed countries are increasingly demanding that exporters comply with stringent SPS measures, and this greatly increases the cost of doing business. Compliance with these standards is not just a private sector issue, it involves changes in the way fisheries is administered (governance), and setting up of public sector infrastructure (inspection services, documentation and testing (lab) facilities). This in turn involves change in national fisheries policy to facilitate these activities.

Policy Issues related to Fisheries in Developing Countries

16. In line with the adoption of Millennium Development Goal number one, the overall objective of national policies of most developing countries is poverty alleviation. Fisheries in many developing countries plays an important socioeconomic role, and governments therefore are increasingly introducing policies that seek to promote fisheries trade as a way of poverty alleviation. This is made more critical by the fact that many fisher communities have few other options for alternative livelihood, and fishing, artisanal/small scale fish processing and fish trade is much more than an occupation; it is a way of life.

17. The policy to encourage fish trade unfortunately encourages more people into fishery, considering that many developing countries have an open access policy to their fishery resources. Luckily (for the stocks) most of these fishers are artisanal, and use crafts which have limited propulsion hence exploitation, though usually excessive on the shores, is limited in deeper waters.

18. Policies to increase fisheries trade are also incoherent with policies by regional governments to maintain high tariffs on cross border fish trade. Given the increasing demand for fish in regional markets, there is a need for a cost-benefit analysis by Regional Economic Communities (RECs) such as COMESA, SADC, MERCOSUR, PIC, CARICOM and ECOWAS to determine if the social good from cross border tariffs could not be easily matched by direct benefits to a huge number of citizens participating in cross border trade.

Policies to encourage international fish trade with developed nations

19. Many developing countries are increasingly implementing policies aimed at modernising their fisheries and bringing them at par with those in developed countries. This necessitates domestication of international SPS standards in national fisheries to facilitate export of fish and fishery products. The export of fish and fishery products from many developing countries to developed countries is facilitated by tariff reductions. Exports of fish and fishery products from Africa, Caribbean and Pacific (ACP) countries into the European Union is quota and duty free, and so is the exports of many developing countries into USA and Japan. The favourable export conditions from ACP to the EU are as a result of the Cotonou Agreement between the two regions, which expires in December 2007. This is expected to be replaced by an Economic Partnership Agreement (EPA) whose negotiation process is underway, but which is expected to maintain the zero tariff status (referred to as the '*Lomé Acquis*').

What Adherence to International SPS standards Entails

20. A description of what it entails to comply with international SPS standards may best be exemplified by the process of meeting EU fishery standards, which are considered to be some of the most stringent in the world. Until January 2006, the Council Directive EU/91/493 described the conditions of placing fish and fishery products in the EU market. In principle, it was a requirement in both the EU member states, and third states exporting to the EU. In summary, this legislation required that:

- *National Competent Authorities (CA) be established in all exporting countries, with the responsibility of enforcing hygiene and sanitary legislation, certification and inspection services being centralised in one government department.* This was a welcome move even in developing countries, as often exporters were forced to deal with several government departments to transact their business. It however required a fundamental change in governance of fisheries, and governments wishing to export to the EU must adhere to it.
- *Quality assurance tests be carried out in accredited laboratory facilities either in the countries of origin, or overseas.* This is understandable, as it lessens the need for repeat checks at EU ports of entry (verification). Laboratory accreditation is a private sector activity, which is carried out by several organizations such as United Kingdom Accreditation Services (UKAS) and SANAS South African National Accreditation Services (SANAS). It is a process that usually takes about two years to accomplish and involves high costs in both direct fees, purchase of equipments and training of staff. Accreditation is given for a defined period (usually no more than three years), after which the laboratory re-applies for re-evaluation and subscription. Many developing countries wishing to export to the EU are yet to acquire accredited laboratories.
- *National legislation on sanitary quality and handling of fish and fishery products be harmonised with that of the EU.* In principle what this entails (and wrongly, because harmonization refers to two parties adjusting to each other), is that exporting countries substitute their national legislation on fish hygiene, handling and sanitation in processing establishments with the ones applicable in the EU. Changing national legislation may be a sovereignty issue, but it's the price to pay to meet these standards.
- *Establishments involved in handling and processing of fish and fishery products must apply the HACCP system.* This directive (and associated documents) are quite descriptive, even to the materials allowed. An exporter is therefore not at liberty to choose which material to use in factory construction (depending on cost), even if they may be approved by national legislation for use in food processing establishments. Furthermore, there is a specific inspection of (most of) the establishments directly by the EU (FVO- DG SANCO), and qualifying companies are given an EU export number by their Competent Authorities which they have to quote on all packaging materials for export goods.

21. The Directive EU/91/493 has been replaced (since January 2006) by the following set of regulations:

- REGULATION (EC)No 178/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.
- 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.
- 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.

22. From a fisheries point of view, their regulations do not represent a fundamental policy shift when compared with earlier directives, but rather aim to bring other foodstuffs (such as meat, vegetables and fruits) into the same export conditions (such as institutionalisation of the Competent Authority, and the principle of equivalence). What is new in these policies is that the details on HACCP implementation has been replaced by strengthening of the role of Competent Authorities in providing proof that their systems are 'equivalent to EU conditions'. Also, the regulations require full traceability for fishery products from fishing areas to the table.

Contentious Issues in the EU Fish SPS Regulations

23. Even though several developing countries have endeavoured to meet EU SPS conditions on fish and fishery products, there are several aspects they consider unfair. These include:

- *Arbitrary use of the precautionary principle:*

This is best illustrated by the examples of EU bans on fish exports from lake Victoria from 1996 to 2000. Some of the bans were mainly based on reported outbreak of cholera and salmonella in some settlements in some part of lake Victoria coast. There was no scientific evidence to show contamination of fish with these pathogens, and certainly given the lake's vastness (over 68,000km²) it was difficult to justify how a very localised disease outbreak on land could be assumed to have spread over the whole of the lake's fish population. The last ban was based on press reports that a section of the lake was using pesticides for fishing. This was never authenticated, but judging from the lakes water volume, and hence the volume of pesticides required to cause even a 1ppb level of contamination (the lake's riparian population is mainly involved in peasant farming, which rarely uses pesticides in their farming methods), it was difficult to justify how this could be a basis of a lake-wide fish exports ban.

Export of fish (nile perch from lake Victoria accounts for about USD 300 million to the economies of the three riparian states (Kenya, Tanzania, Uganda). Fishing is entirely restricted to artisanal and small-scale fishers, who in turn sell their catch to export oriented factories. This policy helps spread the fisheries wealth to riparian populations (the first dollar of the fish goes to an artisanal/small scale fisherman). Any knee-jerk application of the precautionary principle, especially in situations where the risk appears significantly small, causes a huge economic loss to millions of persons who entirely depend on this resource for a livelihood.

- *Lack of established methodology for determining the 'principle of equivalence' in application of HACCP and other sanitary regulations.*

To a great extent, developing countries consider that the EU and other developed countries require 'sameness' as opposed to 'equivalence' contained in the WTO SPS Agreement. The documents of the EU indicate 'equivalence', but in reality developing countries have been unable to prove that their measures, which cost less and are more practical in their tropical and depressed economic conditions, work just as well. EU inspectors therefore inspect facilities in developing countries to check if they mirror those found in the EU, almost to an item. A case in point is the view (sometimes expressed by developed countries' quality control inspectors) that wooden boats (as used by artisanal fishers), may

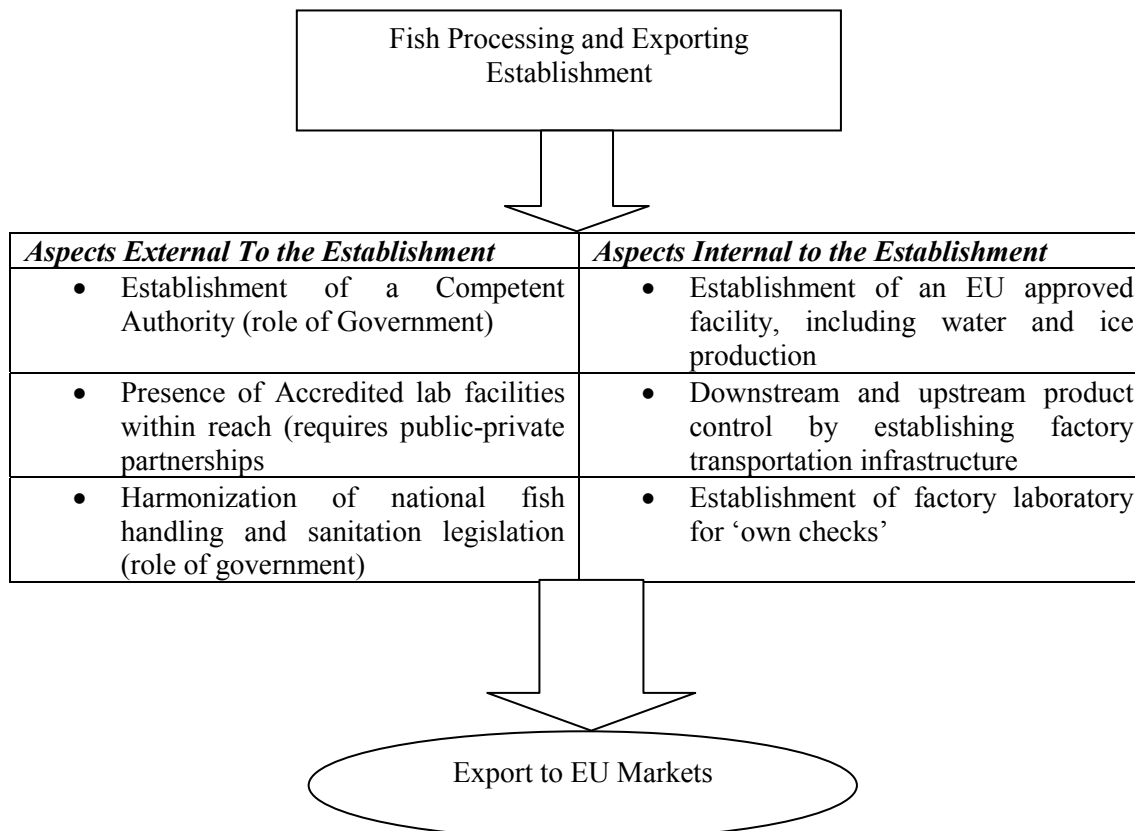
not be able to maintain standards, even when fish is placed on ice. It is impossible to get the millions of artisanal fishers in developing countries replacing their wooden boats with metal or fibreglass ones in a short notice, as the costs and logistics would be enormous. There is also no sufficient scientific information to justify that fish decked in ice, in a wooden boat, can not be hygienically conveyed within the short time it takes to reach a landing site and onwards to a processing factory.

- *Verification of Compliance:*

To a great extent, it is the importing countries that verify whether a consignment or facility is compliant with sanitary requirements. The exporter is rarely offered a chance to verify any non compliance claims. A case in point is the testing procedures at EU ports of entry. Several developing countries have had their samples tested and found to be not meeting specified conditions (this also happens for all other countries). When an exporter asks for a sample of the consignment to send to even EU referral laboratories, in many instances the port declines, and may even proceed to destroy the consignment. In a few cases whereby the exporters have gained access to their consignment at an EU port and sent samples to other (EU) labs, the results have severally been negative, and the consignments were therefore accepted. This illustrates the lack of mutually agreed procedures on verification of compliance, a principle which is enshrined in the WTO SPS Agreement.

24. An export company in a developing country therefore has to address the following conditions to export fish into developed countries as outlined in Figure 1:

Figure 1: Conditions Necessary for an Establishment to export to Developed Countries



25. In general, it costs a minimum of about USD 3 million to establish a fish processing factory able to meet conditions for export to the EU. This involves meeting costs for approved construction materials and processing equipment, investment in water (usually borehole) supply and ice production facilities, purchase of insulated trucks for collection of fish from remote landing sites, and refrigerated trucks for transportation of finished products to ports of dispatch (export). Due to this high cost, most factories need to process about 10 MT of medium value fishery products (such as fin-fish) in order to achieve the economies of scale necessary to have a return on investment.

26. The main steps undergone by a processing establishment in exporting fishery products to the EU (and other developed country destinations) are illustrated by Figure 2 below. Policy Incoherencies in SPS and other (possible) NTB measures

27. Increasingly, developing countries are becoming ‘policy takers’ and not ‘co-policy makers’ on the international platform, especially when it comes to standards. Developing countries are not against standards, but are concerned that these policies may be applied in such a way such that they are expensive to meet, and hence restrictive to trade. In fisheries, many developing countries have had to implement policies geared to meet international SPS standards, which has in some way contributed to modernising their fisheries. However, this approach has been incoherent with national and fisheries development in the following aspects:

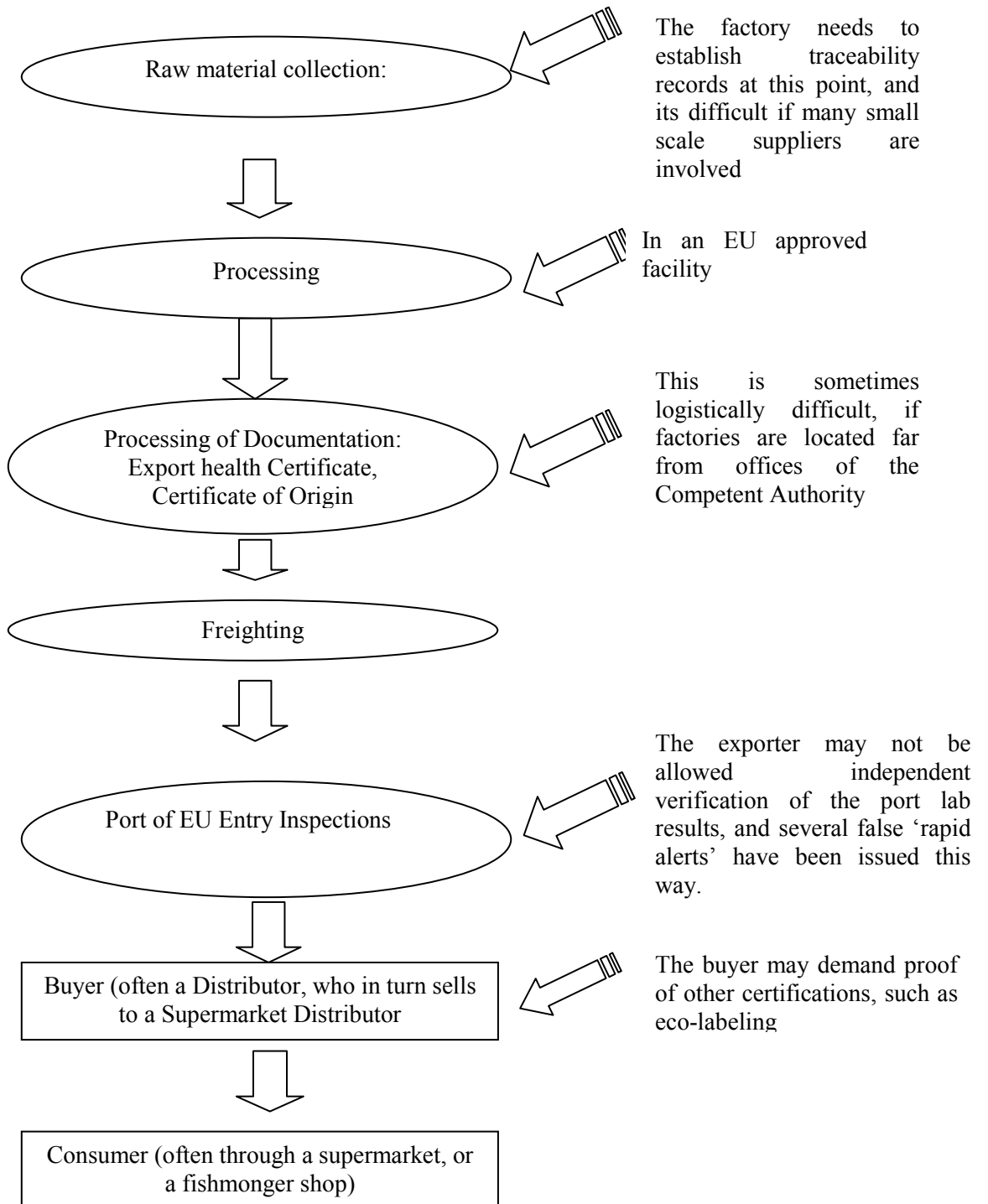
Policy on poverty reduction and equitable wealth distribution in fisheries:

28. As earlier illustrated, a fish processing factory (compliant with EU and international SPS standards) costs about USD 3 million to establish. Until these SPS policies in developing countries, fish processing was largely undertaken by small and medium scale establishments, often owned by persons from the riparian communities. This new threshold of costs has pushed small scale processors out of business, and only large scale ones who can be able to meet huge bank collaterals can process or industrially catch fish for export. The net result has been globalization of fishing and processing.

29. Considering that fisheries, much more than many other natural resources, has a large socio economic dimension which affects the livelihoods of riparian communities, the policy to adopt international standards as national legislation on how fish should be handled and processed, may be limiting the distribution of fisheries wealth in developing countries. This is not about blaming the large scale fishing and fish processing establishments, because they do operate in tough economic conditions, and should be congratulated for being able to meet first world standards with third world infrastructure. Such large scale establishments have also been at the forefront of modernising fisheries in developing countries, and creating the capacity to meet any SPS conditions.

30. Some governments (such as those around Lake Victoria) have mitigated this negative effect (of marginalising small scale fishers and fish traders) by restricting fishing to small scale fishers only, and letting them sell to large scale processors for export. This has worked well, because small scale operators are the gateway to large-scale exporters in this region. Unfortunately, this arrangement brings in a daunting challenge of meeting SPS standards at catching and landing sites, considering the large numbers of small scale fish traders and fishers involved (e.g. there are about 250 000 fishers around Lake Victoria selling to about 33 fish processing establishments). This is being addressed by organising several private – public – partnerships (PPPs) in maintaining the standards at landing sites. It is still difficult to ensure that each of the thousands of small scale suppliers (fishers and traders) maintain SPS standards, and have their operations promptly regulated and recorded in line with traceability conditions now demanded in international markets. These problems could be solved easily by letting processing firms operate just a few trawlers for their fishing needs, but from a socioeconomic point of view, this is unjustifiable.

Figure 2. Steps in Processing and Exporting Fishery Products from Developing Countries into the EU



Exclusion of small-scale fishery trade from the formal fishery sector

31. In principle, since meeting international SPS standards means changing national legislation on handling and processing of fish, any trader operating outside these regulations is illegal. Many developing countries have not yet figured out how to have two set of regulations, one for exports, and another for the domestic market. This is because in such an event, products initially legislated for local market conditions may end up with operators dealing with exports, hence creating an enforcement nightmare. Currently therefore, countries exporting to the EU have clear legislation for exporters, right from catching to export dispatch, but turn a blind eye (in terms of legislation) on local trade. This is because if they were to enforce the law as it is, they would close all small scale fish traders in urban and rural centres. Since the consumption of fish from these small scale traders is rarely been associated with outbreaks of disease of health concerns among populations, there must be a way of developing a ‘minimum set of conditions for placing fish on the market’, any market, including those in developing countries (because these consumers also deserve to be protected by their governments). This calls for scientific research, something developing countries will need to embrace as a norm. The need to mainstream small and medium fish trade in formal (legal) fisheries is made more urgent by the fact that fish exports in most developing countries account for much less volumes of fish when compared with domestic (and regional) trade.

32. Because small scale fish processors and traders in countries which have adopted international SPS standards operate outside the law in as far as processing and handling is concerned, they do not benefit much from public services such as quality control, and hence the quality of their products is generally low. Fish offered for sale in many developing countries is therefore easily identified in urban markets as the ‘smelly product’, and this has contributed to decreased demand for fishery products, especially by urban elite. This is contributing to scenarios whereby several major fishing developing countries are heavy importers of fish from developed countries for their tourism industry and high income residents. Even though increased fish trade from developed to developing countries enhances international fish trade, it serves to depress domestic fishing industry where effective standards have not been developed.

33. A further incoherence in this regard is that because small scale traders operate outside the law, it becomes difficult to regulate regional trade. Regional trade especially in Africa in dried and smoked fish contributes millions of US dollars, especially in major fish consuming countries such as DR Congo, Nigeria, and Mozambique. There is therefore a need to rethink the SPS policy in developing countries, with a view to making it coherent with policies aimed at enhancing regional trade. . Policies need to be developed to upgrade cost-effective preservation and other quality control techniques, and scientific research to ascertain their equivalence with other international standards.

Implications on Stocks Conservation

34. SPS and other standards increase the cost of doing business, which in turn necessitates increased catches, hence encouraging disregard for stock conservation measures. The increased costs of meeting standards are usually offset in two ways:

Cutting prices of raw material.

35. This option is necessitated by the fact that in international fish trade, it is difficult for even a country to affect the market price of a fish species, as most are traded as commodities. Since it is difficult to increase the price the exporter is paid, the logical place to cut costs is at the fish landing level (raw material). Because fishers have threshold amounts of money they need to make for a living (to meet food, housing, education or medical costs), they will respond to this price cut by catching more fish in order to take advantage of economies of scale. The net effect is that the fishing in that locality may exceed its

Maximum Sustainable Levels (MSY), and the fishers may even be more tempted to use illegal gears. This has a negative impact on stocks, which may even collapse, causing a much bigger economic problem.

36. International policies aimed at stocks conservation have not sufficiently focussed on this marketing dimension of the problem. Since marketing drives fishing effort in most small scale fisheries, stocks conservation measures.

37. Another contribution to over fishing is that processing establishments will also be forced to increase production to utilise economies of scale to meet incremental costs occasioned by standards compliance. It has been observed that for most fin-fish processors such as tilapia, sea bream or Nile perch, a factory dealing entirely with these commodities may have to process 10 MT of raw material daily to operate profitably. The factories therefore exert pressure on their suppliers to supply sufficient amounts, which again translates to fishers catching more fish from a limited stock.

38. Efforts to capture more value of fish at developing countries levels, i.e. through more value addition such as value portioning, value packaging e.g. modified atmosphere packaging (MAP) and value processing are often inhibited by the increasing middlemen industry in developed countries, which encourages fish to be exported as low bulk raw material (such as loins (cooked tuna fillets) and fillets for eventual processing and distribution in developed countries. The price of fresh filets of tilapia, tuna or Nile perch is about USD 15 per kg on most supermarkets in the USA, EU, and Japan yet the price paid to the developing country exporter is just about USD 4-5. The USD 10 differential goes to middlemen, including supermarket chains. If even USD 2-3 extra value would be captured at developing countries level, significant reduction in catch levels would be economically justifiable, and this would enhance greatly the sustainability of stocks. The policy of encouraging exports to developing countries demanding stringent SPS condition should therefore be examined against the lack of policies to encourage a fairer trade, and hence the impacts this has on stock conservation policies.

Other Standards that (potentially) act as Non Tarriff Barriers to Trade (NTBs)

39. Developing countries should not be against standards per-se, and certainly should not seek exemption from meeting standards just because they are too expensive to attain. What developing countries should, and are contenting is that aspects included in several of these standards are not justifiable, and alternatives existent in the third world are often not considered as equivalent. The procedures adopted for compliance often necessitate setting up of expensive infrastructure, which in turn acts as a barrier to trade. This is true for SPS, as discussed above, and also for the following standards:

Traceability standards

40. Traceability is usually considered to be a tool in both SPS standards and in tracing origin of goods and raw materials under Rules of Origin trade restrictions. Traceability requires detailed information of distribution chains, handling and all materials (including packaging) incorporated or used to add value.

41. Developing countries fisheries can be described as mainly small scale in nature, and therefore involve large numbers of players. Establishing exact traceability of contents in a 23 MT reefer container of frozen fish exported as one consignment is therefore a daunting task. This is because the raw material will have been obtained from a large number of fishers and from several landing sites. These fishers may also be illiterate, and as such incapable of keeping records. Centralised entry of artisanal fishers records into a computerised system is also a challenge, because of the large numbers of information to be entered daily. Just like SPS standards, traceability seems to favour few large-scale operators over many small scale ones. Again this is in conflict with the policy of poverty reduction, and is socially unacceptable.

42. Considering the merits of traceability especially as a quality control tool, there is need in developing countries to develop traceability infrastructure in small scale fisheries. Such system will involve capacity building of fishers groups to compile information, and setting up of localised data entry points. The advent of information technology revolution especially in mobile phone telephony, internet and computers can greatly assist in this effort.

Environmental Standards

43. From a policy point of view, eco- labelling is consistent with the policy in many countries of stocks conservation. What needs to be developed is an implementation mechanism that does not result in increased costs for fishers and fish traders, hence distorting trade. Perhaps the best illustration of environmental standards in fisheries is eco-labelling of fishing areas, depending on the extend of sustainable stock management measures implemented. A certification of a water body as being sustainably managed enables companies trading in fishery products from it to use the developed eco-label during marketing. Consumers in export markets may therefore be encouraged to discriminate, in terms of price or even acceptance, between fish with a particular eco-label and that without. Other labels include dolphin-safe fishing and trawlers using turtle excluder devices (TEDs) and by-catch reduction devices (BRDs).

44. In principle, these are useful initiatives which seek to conserve either fishery stocks, or protect endangered species. Fishers and fish traders should therefore take a holistic approach to fisheries and support scientifically proven conservation measures, instead of a short term opportunistic approach of indiscriminate exploitation. The problem again is in the implementation of these environmental standards. What about fisheries which have no turtles, but exploit similar species as those with the eco-label? Will they get the label for free or they still have to pay a cost? What about fisheries which are even underexploited (and there are several in developing countries, such as Lake Turkana in Kenya), but national governments may not afford accreditation costs for an eco-label, how will they market their fish? These are questions which need adequate responses to avoid commercialization of eco labelling, and hence introducing another cost threshold to small scale fishers.

45. The main criticism of eco-labelling as currently practised is that it lacks an international legal mechanism. If one draws parallels from the SPS standards issue, the WTO protocol gives governments the legitimacy to impose standards, and others the basis to comply with or oppose them. Eco-labelling is often said to be 'voluntary', hence not needing international legal regulation. In 2004/2005, the catch quotas for all the twelve MSC (Marine Stewardship Council) certified fisheries together accounted for over 1.8 MT of fish, which was sold through an MSC Chain of Custody traders at a retail value of USD 133 million (MSC, 2005). In effect, considering the increasing share of market some of these products are acquiring especially in the UK, and the aggressive promotion of eco-labels and campaigns by NGOs (Greenpeace recently climbed over a roof of a UK Supermarket and hoisted a banner for 'worst fish retailer', in a name and shame campaign against buyers from perceived unsustainable fisheries), eco-labels are no longer optional to fish traders.

46. The hard questions for current eco-labelling schemes are: how universal and legitimate are the sustainability standards set by these private organizations? Isn't there a fear that fisheries and traders will be intimidated to join such schemes for fear of loss of business? If some trader not participating in these eco-labelling schemes feels unfairly disadvantaged by competitors with the label (considering that consumers can be misled to believe that all fish without an eco-label has been fished unsustainably), how can they seek legal redress internationally? It is understandable that consumer groups and private sector had to create an environment necessary for the creation of an international protocol on eco-labelling, but unless urgent action is taken to create an international legal framework, we are witnessing the emergence of an uncontrolled NTB.

47. It is gratifying to note that the COFI meeting of FAO has issued some guidelines on eco-labelling in marine Fisheries (FAO 2005), and also that the EU has initiated consultations on the same. What may be needed is an international agreement, defining agreed standards on fisheries sustainability and ecological responsibility, and commensurate sanctions to violators. It is suggested that such an agreement be enforced through trade (and therefore WTO, as trade has been found to be an effective measure to ensure compliance). Since the WTO is not competent on matters of environment of fisheries, it is suggested that credible international organizations such as UNEP (for environmental and ecological sustainability) and FAO (fisheries) expedite activities aimed at defining conditions to be contained in such an agreement. It is considered that implementation of such an agreement would greatly facilitate activities of eco-labelling organizations such as the MSC, because they would now be developing systems based on international policy, and also building capacities in various fisheries to meet an agreed criterion of sustainability. One of the proposals that can be considered in this regard is the establishment of an inspectorate unit in credible international institutions such as UNEP or FAO (or even the two together), which would then periodically inspect fisheries (often assisted by professionals from organizations such as the MSC) across the world against an agreed set of sustainability criterion, and issue positive lists which could then be used as promotional material by companies trading in the qualifying fisheries. From a policy point of view, the lack of effective policies to ensure stocks sustainability is creating distortions in fisheries trade, and this may be addressed by implementation of an international agreement on stocks sustainability enforcement.

Social Responsibility Standards

48. Fisheries, just like other industries, should exercise Corporate Social Responsibility in their operations, and this is made more pertinent by the fact that fisheries is usually intricately involved with riparian communities. Standards such as labour (minimum age or child labour rules), amenities at work and involvement in community assistance programs are important norms which should be inculcated into any business ethic. It is also important to take into consideration peculiarities in different parts of the world, when developing these social standards. If one takes labour laws as an example, it is important to consider that in parts of developing countries, school-going children often help their parents or guardians with fishing either after school or during holidays, and therefore it may be difficult to justify this as child labour. Other social responsibility aspects should be drafted to provide a minimum set of conveniences according to local conditions (and certainly deter any social malpractices such as processing in dangerous or unhygienic conditions), and not necessarily mirror those conditions in developed world. Again the critical issue here is in establishing simple and inexpensive procedures for being certified, to avoid creating insurmountable cost thresholds.

Options for addressing Policy Incoherencies in Fisheries Standards

49. Developing countries need developed countries for sale of their fishery products, at least until they improve intra-regional trade infrastructure. Developed world also needs third world fish, both to meet their increasing demand for fish, and also as a source of employment for thousands of their populations (in countries depended on fishing access agreements with third world for a significant part of their fish imports – such as Spain, Japan, Hong Kong China or Taiwan PRC).

50. Third world countries desiring to trade internationally in fish and fishery products have two options:

- To seek arbitration at WTO for aspects in implementation of SPS conditions that they consider detrimental to their policy on poverty alleviation, and overall economic development. This is an expensive and time consuming option, which few developing countries have a capacity to meet.

- To seek negotiations with trading partner developed countries. Discussions need to centre on undesirable impacts of SPS and other standards such as marginalization of small scale fishers as fisheries in developing countries gets globalized. Several Regional Economic Blocks such as COMESA and SADC are currently seeking to negotiate SPS protocols with the EU and other developed countries.

Equivalence and not sameness?

51. Negotiations between developed and developing countries on policy incoherencies in fisheries trade standards should centre mainly on establishing ‘true’ partnerships on SPS issues, by considering ‘equivalent measures’ after due consideration of what is practicable and affordable (and effective) in developing countries. It is also important that the two trading parties set realistic sanctions commensurate with seriousness of various non compliances. In addition, the principle of fairness needs to be strengthened. There have been incidences where a developing country fleet (DWFN), fishing side by side in the same waters with a developed country fleet, has had its consignment denied entry into that developed country’s market on account of a non compliance such as presence of high levels of some heavy metals in their fish. Since heavy metal in fish is an indication of pollution of its immediate waters, the fish from vessels of the DWFN fishing in the same locality should also have been sanctioned. This illustrates that there are much more rigorous checks on consignments landed by a developing country in a developed country port than those landed by its own Distant Waters Fishing (DWF) fleet.

52. Developing countries also need to address incoherencies in their domestic policies which hinder small and medium scale trade in fisheries. To achieve this (and hence address the incoherence of export policies in developing countries), it will be important to devise policies that:

- Encourage stratification in investments in fisheries, by positively discriminating small scale fishers in licensing on aspects that can adequately be undertaken by small scale fishers or traders.
- Encourage pooled processing in fisheries (facility sharing by groups of small scale fishers) as this will lower the cost of compliance with international standards through cost sharing
- Encourage value addition in developing countries, and shortening of value chains so that a larger proportion of value of export fisheries products is captured in developing countries.
- Ensure participation in standards setting organizations, to ensure the peculiarities of developing countries are taken into consideration.

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List of Abbreviations

BRD:	By-catch Reduction Devices
CA:	Competent Authority
CARICOM:	Caribbean Community
COFI:	Committee of Fisheries of the FAO
COMESA:	Common Market for Eastern And Southern Africa
DWF:	Distant Waters Fishing fleet
DWFN:	Distant Waters Fishing Nation
ECOWAS:	Economic Community of West African States
MSY:	Maximum Sustainable Yield
NTBs:	Non Tariff Barriers to trade
RECs:	Regional Economic Communities
SPS:	Sanitary and Phytosanitary Standards
TED:	Turtle Excluder Device
UNEP:	United Nations Environmental Program
WTO:	World Trade Organization