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COMMITTEE ON FISHERIES

SUB-COMMITTEE ON FISH TRADE

Tenth Session

Santiago de Compostela, Spain, 30 May – 02 June 2006

TECHNICAL GUIDELINES FOR RESPONSIBLE TRADE

EXECUTIVE SUMMARY

This document contains draft Technical Guidelines on Responsible Fish Trade. The purpose of these Technical Guidelines is to provide practical guidance and advice for policy makers, the fish industry and fisheries managers on how to implement the Code of Conduct for Responsible Fisheries article 11.2 *Responsible International Trade* and article 11.3 *Laws and Regulations Relating to Fish Trade*. The Sub-Committee is invited to provide comments on the Technical Guidelines on Responsible Fish Trade. The Sub-Committee is also invited to advise the FAO's Fisheries Department on the suitability of publishing the Technical Guidelines on Responsible Fish Trade.

CODE OF CONDUCT FOR RESPONSIBLE FISHERIES

1. The Code of Conduct for responsible Fisheries (CCRF) was adopted by the Twenty-eighth Session of the FAO Conference in Resolution 4/95 on 31 October 1995. The same Resolution requested FAO *inter alia* to elaborate as appropriate technical guidelines in support of the implementation of the Code in collaboration with members and interested relevant organizations.
2. The Code's scope is broad and comprehensive. The Code addresses capture, processing and trade in fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management. The Code is a voluntary instrument.

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3. Article 2 defines the Code's objectives. In relation to international trade, the objectives are to promote trade in fish and fishery products in conformity with relevant international rules and avoid the use of measures that constitute hidden barriers to such trade.

PURPOSE OF AND BACKGROUND TO THE TECHNICAL GUIDELINES ON RESPONSIBLE FISH TRADE

4. The purpose of the Technical Guidelines on Responsible Fish Trade in Annex 1 is to provide practical guidance and advice for policy makers, the fish industry and fisheries managers on how to implement the CCRF article 11.2 *Responsible International Trade* and article 11.3 *Laws and Regulations Relating to Fish Trade*. These Technical Guidelines have no formal legal status and are intended to provide general advice in support of the implementation of the CCRF. The Technical Guidelines are prepared and distributed under the responsibility of the FAO Fisheries Department¹.

5. The first draft of the Technical Guidelines on Responsible Fish Trade was considered at the Seventh Session of the COFI Sub-Committee on Fish Trade in March 2000. A revised draft, taking into account the comments made at the Seventh Session of the COFI Sub-Committee on Fish Trade, was discussed during the 24th Session of COFI in February/March 2001.

6. COFI noted that the second draft of the Technical Guidelines on Responsible Fish Trade constituted a considerable improvement over the first version, and the Secretariat was encouraged to work further on them with due cooperation from its Members, taking into account the work carried out by other international organizations with relevant experience, such as the Codex Alimentarius Commission (CAC) and the World Trade Organization (WTO).

7. The current version of the Technical Guidelines takes into account the comments that were made during the 24th Session of COFI. They also benefit from the discussions that occurred during the Expert Consultation on Fish Trade and Food Security in Casablanca, Morocco in January 2003 and the Expert Consultation on International Fish trade in Rio de Janeiro, Brazil on 3-5 December 2003. Annex 2 lists the Technical Guidelines to the Code of Conduct for Responsible Fisheries that have been prepared to date.

SUGGESTED ACTION

8. The Sub-Committee is invited to provide comments on the Technical Guidelines on Responsible Fish Trade. The Sub-Committee is also invited to advise the FAO's Fisheries Department on the suitability of publishing the Technical Guidelines on Responsible Fish Trade.

¹ To date the FAO Fisheries Department has completed twelve Technical Guidelines (see Annex 2)

ANNEX 1

TECHNICAL GUIDELINES FOR RESPONSIBLE FISH TRADE**PREPARATION OF THIS DOCUMENT**

The Technical Guidelines for Responsible Fish Trade were first considered by the Seventh Session of the COFI Sub-Committee on Fish Trade in March 2000. A revised version was made available at the 24th Session COFI in February/March 2001. This version of the Technical Guidelines takes into account the comments that were made during these two sessions.

The Technical Guidelines for Responsible Fish Trade benefited from contributions from a number of people including Phedon Nicolaides, Erhard Ruckes, Camillo Catarci, George Kent, Alastair Macfarlane, Helga Josupeit, William Emerson and Lahsen Ababouch.

The Twenty-eighth Session of the FAO Conference in Resolution 4/95 adopted the Code of Conduct for Responsible Fisheries on 31 October 1995. The same Resolution requested FAO, together with others, to elaborate as appropriate technical guidelines in support of the implementation of the Code in collaboration with members and interested relevant organizations. These guidelines have no formal legal status and are intended to provide general advice in support of implementation of Article 11.2 Responsible International Trade and 11.3 Laws and Regulations Relating to Fish Trade of the Code of Conduct for Responsible Fisheries. These guidelines are designed to assist in further dissemination, understanding and implementation of the Code world-wide.

Distribution:

All FAO Members and Associate Members

Interested Nations and International Organizations

FAO Fisheries Department

FAO Fisheries Officers in FAO Regional Offices and Sub-Regional Offices

Interested Non-governmental Organizations

Abbreviations

CAC	FAO/WHO Codex Alimentarius Commission
CBD	Convention on Biological Diversity
DSU	Dispute Settlement Understanding
CCRF	Code of Conduct for Responsible Fisheries
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COFI	FAO Committee on Fisheries
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
IMO	International Maritime Organization
MFN	Most-Favoured Nation
OIE	Office International des Epizooties
RFMO	Regional Fisheries Management Organization
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
TBT	Agreement on Technical Barriers to Trade
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea (1982)
UNFSA	Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks United Nations Fish Stocks Agreement
WHO	World Health Organization
WTO	World Trade Organization

BACKGROUND

1. From ancient times, fishing has been a major source of food for humanity and a provider of employment and economic benefits to those engaged in this activity. However, with the dynamic development of fisheries, it was realized that living aquatic resources, although renewable, are not infinite and need to be properly managed, if their production was to be sustained.
2. The adoption in 1982 of the United Nations Convention on the Law of the Sea (UNCLOS) provided a new framework for the better management of marine resources. The new legal regime of the oceans gave coastal States rights and responsibilities for the management and use of fishery resources within the areas of their national jurisdiction, which embrace some 90 percent of the world's marine fisheries.
3. In recent years, world fisheries have grown rapidly, and many States have invested in modern fishing fleets and processing factories in response to growing international demand for fish and fishery products. It soon became clear, however, that many fisheries resources could not sustain uncontrolled increase of exploitation.
4. Clear signs of over-exploitation of important fish stocks, modifications of ecosystems, significant economic losses, and international conflicts over management and fish trade threatened the long-term sustainability of fisheries and the contribution of fisheries to food supply. In response, the Nineteenth Session of the FAO Committee on Fisheries (COFI), held in March 1991, recommended that new approaches to fisheries management embracing conservation and environmental, as well as social and economic, considerations were urgently needed. FAO was asked to develop the concept of responsible fisheries and elaborate a Code of Conduct to foster its application. Subsequently, the Government of Mexico, in collaboration with FAO, organized an International Conference on Responsible Fishing in Cancún in May 1992. The Declaration of Cancún endorsed at that conference was brought to the attention of the United Nations Conference on Environment and Development Summit in Rio de Janeiro, Brazil, in June 1992, which supported the preparation of a Code of Conduct for Responsible Fisheries. The FAO Technical Consultation on High Seas Fishing, held in September 1992, also recommended the elaboration of a Code to address the issues regarding high seas fisheries.
5. The One Hundred and Second Session of the FAO Council, held in November 1992, discussed the elaboration of the Code. It recommended that priority should be given to high seas issues and requested that proposals for the Code be presented to the 1993 session of the Committee on Fisheries.
6. The Twentieth Session of COFI, held in March 1993, examined the proposed framework and content for such a Code, including the elaboration of guidelines, and endorsed a time frame for the further elaboration of the Code. It also requested FAO to prepare, on a "fast track" basis, as part of the Code, proposals to prevent reflagging of fishing vessels that affect conservation and management measures on the high seas. This resulted in the FAO Conference, at its Twenty-seventh Session in November 1993, adopting the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, which, according to FAO Conference Resolution 15/93, forms an integral part of the Code.
7. The Code was formulated so as to be interpreted and applied in conformity with the relevant rules on international law, as reflected in the United Nations Convention on the Law of the Sea, 1982, as well as with the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995, and in the light of the 1992 Declaration of Cancún and the 1992 Rio Declaration on Environment and Development, in particular Chapter 17 of Agenda 21.

8. The development of the Code was carried out by FAO together with relevant United Nations Agencies and other international organizations, including non-governmental organizations.
9. The Code of Conduct consists of five introductory articles: Nature and Scope; Objectives; Relationship with Other International Instruments; Implementation, Monitoring and Updating and Special Requirements of Developing Countries. These are followed by an article on General Principles, and then the six thematic articles, on Fisheries Management, Fishing Operations, Aquaculture Development, Integration of Fisheries into Coastal Area Management, Post-Harvest Practices and Trade, and Fisheries Research. As already mentioned, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas forms an integral part of the Code.
10. The Code is voluntary. However, certain parts of it are based on relevant rules of international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982. The Code also contains provisions that may be or have already been given binding effect by means of other obligatory legal instruments amongst the Parties, such as the Agreement to Promote Compliance with Conservation and Management Measures by Fishing Vessels on the High Seas, 1993.
11. The Twenty-eighth Session of the FAO Conference in Resolution 4/95 adopted the Code of Conduct for Responsible Fisheries on 31 October 1995. The same Resolution requested FAO, together with others, to elaborate as appropriate technical guidelines in support of the implementation of the Code in collaboration with members and interested relevant organizations.

INTRODUCTION

12. The Twenty-eighth Session of the FAO Conference in Resolution 4/95 adopted the Code of Conduct for Responsible Fisheries on 31 October 1995. The same Resolution requested FAO, together with others, to elaborate as appropriate technical guidelines in support of the implementation of the Code in collaboration with members and interested relevant organizations.

13. These guidelines have no formal legal status and are intended to provide general advice in support of implementation of Article 11.2 Responsible International Trade and article 11.3 Laws and Regulations Relating to Fish Trade of the Code of Conduct for Responsible Fisheries. These guidelines are designed to assist in further dissemination, understanding and implementation of the Code world-wide.

14. Fish and fishery products are among the most traded agricultural and food commodities with more than one third of production entering international trade. A specific feature of fish trade is the wide range in product types and markets, and limited concentration of the industry. Small and medium enterprises are the norm in fish trade. The total value of world exports was US\$ 63.3 billion in 2003 and is expected to grow even further. It should be noted, that while trade expanded strongly in 1970s and 1980s, total fish trade is growing relatively less in recent years.

15. Shrimp is the most important commodity with about 18% of international trade in value terms. It is interesting to note that this share was stagnant over the past 20 years, despite the substantial increase in supply of shrimp products on the world market. Demersal species are another important product group with 11% of trade. The relative importance of salmon as an export item has increased over the past years, to reach 8.4% in 2003, up from 7% in the mid 1990s, as a result of the booming salmon farming industry in Norway and Chile. Tuna is the fourth most important commodity with 8.2%.

16. Significantly, one half of international fish trade originates from developing countries for which fish is an important earner of foreign exchange. Net earnings (export – import) of developing countries reached US\$18.3 billion in 2003, which exceeds the foreign exchange revenues earned from any other traded food commodity such as rice, cocoa, coffee or tea.

17. Developed countries accounted for about 82% of the total value of imports of fish products. Despite the 20% decrease in imports from the year 2000, Japan was once again the largest importer of fish and fish products, accounting for some 18% of the world import value in 2003. Japanese fishery imports (US\$12.4 billion) accounted for 3.2% of its total merchandise trade. The United States, besides being the world's fourth largest exporting country, was the second largest importer, with imports valued at US\$11.7 billion. In 2003, the EC further increased its dependency on imports for its fish supply. Spain, with US\$4.9 billion, was the world's third largest importer of fish and fish products, followed by France (US\$3.8 billion), Italy (US\$3.6 billion), Germany (US\$2.6 billion) and the United Kingdom (US\$2.5 billion).

18. On a global level, the WTO and other organizations of the UN system, in particular the FAO, are the main actors shaping the global trade regime for fishery products. UN organizations address issues related to sustainable development, environmental conservation, food safety and quality and food security. The rules governing international trade, embodied in the WTO agreements, are negotiated in the WTO. Together, the WTO, FAO and other Organizations provide a frame of reference for states to cooperate in the formulation of appropriate rules and standards for international trade, including the trade in fish and fishery products.

19. Article 6.14 in the General Principles section of the Code of Conduct for Responsible Fisheries in particular recognises the need to consider environmental and social impacts when developing trade policy:

6.14 International trade in fish and fishery products should be conducted in accordance with the principles, rights and obligations established in the World Trade Organization (WTO) Agreement and other relevant international agreements. States should ensure that their policies, programmes and practices related to trade in fish and fishery products do not result in obstacles to this trade, environmental degradation or negative social, including nutritional, impacts.

20. The FAO Sub-Committee on Fish Trade of the Committee on Fisheries provides a neutral forum for States to consult on technical and economic aspects of international trade in fish and fishery products, including production and consumption aspects. As noted above, fish and fishery products are widely traded. The benefits from international trade include better incomes, employment and foreign exchange. Currently the main barriers to trade are tariffs and non-tariff barriers, including technical issues related to safety and quality, and traceability. In addition, producers and traders in developing countries are often in a disadvantaged position because of difficulties in obtaining market information. The FAO Sub-Committee on Fish Trade is an important forum where States can share their views on these issues, consider new developments, and recommend areas for further work.

21. The WTO system is based on a series of agreements whose aim is the liberalisation of international markets in goods, services and traded inventions. The General Agreement on Tariffs and Trade (GATT) provides for the liberalisation of trade in goods through gradual reduction of tariffs, conversion of non-tariff import restrictions into tariffs (tariffication) and elimination of trade-distorting domestic support. Developing countries are given special consideration under GATT. They are given more time to reduce their tariffs and other obstacles to trade, and there are other special provisions designed to help them adapt to the liberalization of trade.

22. The Codex Alimentarius Commission was created in 1963 by FAO and WHO to develop food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme. The main purposes of this Programme are protecting health of the consumers, ensuring fair practices in the food trade, and promoting coordination of all food standards work undertaken by international governmental and non-governmental organizations

23. The Convention on Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in species that are threatened with extinction at the species level or that may be threatened as a result of international trade in specimens of the species. Several fish and shellfish species are listed under CITES Appendices.

24. The formulation of the provisions of Articles 11.2 and 11.3 of the CCRF reflect the concerns of the FAO membership at the time of the adoption of the CCRF. While some of these concerns may be less relevant at present (e.g. 11.2.7 and 11.2.8), other aspects have gained importance, e.g. those related to the WTO and CITES. Such shifts in emphasis may occur in the future.

11 - POST-HARVEST PRACTICES AND TRADE

ARTICLE 11.2 RESPONSIBLE INTERNATIONAL TRADE

11.2.1 The provisions of this Code should be interpreted and applied in accordance with the principles, rights and obligations established in the World Trade Organization (WTO) Agreement.¹

1. International trade in fish and fish products is covered under the international trading rules of the World Trade Organization (WTO) applicable to trade in non-agriculture goods. The WTO's Agriculture Agreement explicitly excludes fish and fishery products but the WTO's Sanitary and Phytosanitary (SPS) Agreement and the Agreement on Technical Barriers to Trade (TBT) include fish and fishery products.

2. The WTO agreements² are based on two fundamental principles: most favored nation (MFN) treatment and national treatment. MFN treatment means that countries accord the same treatment at the border to all similar products sourced from other WTO member countries. National treatment requires that once a product enters the customs territory of another WTO member, that member will treat the product no less favorably than similar products produced by that importing member state.

3. WTO agreements cover such issues as tariffs and non-tariff measures, technical standards, including food safety and quality, rules of origin, anti-dumping measures, subsidies and safeguards, trade in services, intellectual property and dispute settlement. Many of the agreements are detailed and technical, but there are some dominant principles. For example, trade should be carried out without discrimination and there should be steady movement towards freer trade based on negotiations between and among members. Decision making within the WTO is based on consensus among members. There is considerable latitude for interpretation and the WTO has established a Dispute Settlement Understanding (DSU) that enables members to sort out disagreements and solve trade disputes.

11.2.2 International trade in fish and fishery products should not compromise the sustainable development of fisheries and responsible utilization of living aquatic resources.

4. Sustainable development of fisheries and responsible utilization of living aquatic resources is achieved through the adoption of measures for the long term conservation and sustainable use of aquatic resources. Conservation and management measures should be based on the best scientific evidence available and be designed to ensure the long term sustainability of fisheries resources at levels which promote the objectives of their optimum utilization.

5. States have a right to utilize the living aquatic resources within their territories and the responsibility to manage those resources within their EEZs, in accordance with their obligations under Part V of the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS Part VII Section 2 requires states to cooperate in the conservation and management of the living resources of the high seas. The FAO Technical Guidelines for Responsible Fisheries - Fisheries Management provide guidance on the implementation of fisheries management measures.

¹ Throughout this portion of the document, the text in **bold** corresponds to articles 11.2 and 11.3 of the Code of Conduct for Responsible Fisheries.

² The WTO agreements can be accessed on the WTO website: <http://www.wto.org/>

6. Article XX of the General Agreement on Tariffs and Trade (GATT 1994 read in conjunction with GATT 1947) recognizes the need for exceptions to be made in particular circumstances to the general requirement for open trade between WTO members. Article XX states that, "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption."

7. The increasing demand for fish to supply international markets can result in excessive fishing pressure leading to the over-exploitation and wasteful use of some fish stocks. This can have substantial impacts on food security, especially where there is a high level of dependence on fish in the diet. A recent study exploring the relationship between fish trade and food security concluded that responsible fisheries management measures are a necessary condition for sustainable trade³.

8. The need for voluntary and market driven eco-labeling schemes to certify products from well managed fisheries has been increasing. FAO has developed guidelines for the eco-labeling of fish and fishery products from marine capture fisheries⁴. These guidelines are applicable to eco-labeling schemes that are designed to certify and promote labels for products from well-managed marine capture fisheries and focus on issues related to the sustainable use of fisheries resources.

9. Bearing in mind that ecolabelling schemes relate to fisheries management, and rights and duties of States⁵, it is recognized that the involvement of States in ecolabelling schemes is desirable and should be encouraged. It is also recognized that States and, as appropriate, Regional Fisheries Management Organizations (RFMOs) may develop ecolabelling schemes in a manner consistent with these guidelines. Ecolabelling schemes should give full consideration to the recommendations and advice by States, and, as appropriate, RFMOs.

10. Recognizing that all countries should have the same opportunities, and in view of the special conditions applying to developing countries and countries in transition and their important contribution to international fish trade, it is acknowledged that in order to benefit from applying eco-labeling schemes, States, relevant intergovernmental and non-governmental organizations and financial institutions should provide developing countries and countries in transition with financial and technical assistance to develop and maintain appropriate management arrangements that will allow them to participate in such schemes. Such assistance should also consider direct support towards the often high costs of accreditation and certification. Development agencies and donor institutions are encouraged to support FAO in facilitating financial and technical assistance to developing countries and countries in transition.

11.2.3 States should ensure that measures affecting international trade in fish and fishery products are transparent, based, when applicable, on scientific evidence, and are in accordance with internationally agreed rules.

11. GATT Article XX (d) permits states to take measures "necessary to ensure compliance with laws or regulations which are not inconsistent with (the) Agreement including the ... prevention of deceptive practices." The TBT recognizes the right of each WTO member to take measures, at the levels it considers appropriate, to ensure the quality of their exports, to protect the

³ Kurien J (Editor), 2005. Responsible fish trade and food security. FAO Fisheries Technical Paper 456.

⁴ FAO Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries. 2005.

⁵ In these Guidelines, the reference to States includes the European Community in matters within its competence.

environment and to prevent deceptive practices. These measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade. The TBT Agreement requires that all technical standards and regulations must have a legitimate purpose and that the impact or cost of implementing the standard must be proportional to the purpose of the standard. If there are two or more ways of achieving the same objective, the least trade restrictive alternative should be followed.

12. The SPS agreement reaffirms the right of WTO members to apply measures necessary to protect human, animal and plant life and health. Measures established by governments to protect human, animal and plant life and health, in the agricultural sector, including fisheries, must be consistent with obligations prohibiting arbitrary or unjustifiable discrimination on trade between countries where the same conditions prevail and must not be disguised restrictions on international trade. SPS measures must be based on scientific evidence assessing the risks to humans, animal and plant life using internationally accepted risk assessment techniques.

13. To promote transparency in international fish trade, States must notify partners of SPS measures, technical regulations, standards and conformity assessment procedures. They must establish an inquiry point, notify promptly of new measures, regulations, standards or conformity assessment procedure, and provide sufficient lead time for comments from interested parties.

11.2.4 Fish trade measures adopted by States to protect human or animal life or health, the interests of consumers or the environment, should not be discriminatory and should be in accordance with internationally agreed trade rules, in particular the principles, rights and obligations established in the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade of the WTO.

14. GATT Article XX, general exceptions, includes in Article XX (b) measures “necessary to protect human, animal or plant life or health.” The SPS Agreement elaborates rules for the application of such measures, requiring that they are based on scientific evidence, assessment of risks and wherever possible referenced to internationally agreed standards or norms. The SPS Agreement identifies the FAO/WHO Codex Alimentarius Commission (CAC) as the international standard setting body for food safety and quality and the International Office for Epizootics (OIE) for animal health. Consequently, States must adopt CAC standards for fish safety and quality and OIE standards for trade of live fish.

15. Risk to human, animal or plant life or health must be objectively assessed, including its economic impact. Where measures are taken they must be appropriate to the level of risk and minimize their impacts on trade. States must participate actively in the work of the Codex Alimentarius committees relevant to international fish trade, such as the Codex Committee on Fish and Fishery Products and other committees working on food additives, veterinary drugs, labelling, food hygiene, contaminants, sampling and analysis.

16. The chapeau to GATT Article XX establishes the requirement that trade measures may not be applied “*in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade*”.

17. Both the SPS and TBT Agreements establish that measures are not discriminatory when technical requirements concerning domestically produced and imported fish and fishery products are applied equally. This conforms to the WTO principle of national treatment. The Agreements recognize that differential treatment may be justified on objective criteria and reasons.

18. Harmonization is the establishment, recognition and application of Common SPS Measures by different States. The SPS Agreement encourages States to harmonize measures wherever possible and to recognize and accept different measures applied between states where

measures applied in one state produce an outcome that can be objectively assessed to be equivalent to the outcome produced by differing measures in the other state. Members are also encouraged to consult to achieve bilateral or multilateral agreements of mutual recognition.

11.2.5 States should further liberalize trade in fish and fishery products and eliminate barriers and distortions to trade such as duties, quotas and non-tariff barriers in accordance with the principles, rights and obligations of the WTO Agreement.

19. Barriers to trade, including tariffs and non-tariff measures, reduce the opportunities for states to maximize their comparative advantage and are likely to increase the cost of fish and fishery products for consumers.

20. The decision to reduce barriers to trade, either unilaterally or as a result of negotiation, is a matter of choice for a state. States are not obligated to open their frontiers to imports, although the use of some measures, such as fixed quotas, is discouraged in favour of converting them into their tariff equivalents that can be transparently assessed for their economic impact.

11.2.6 States should not directly or indirectly create unnecessary or hidden barriers to trade which limit the consumer's freedom of choice of supplier or that restrict market access.

21. The SPS and TBT Agreements states that sanitary and technical measures should not be more trade restrictive than necessary to fulfil legitimate objectives. Legitimate objectives are, *inter alia*; protection of human health and safety, animal or plant life or health, the environment or the consumer from deceptive practices.

22. In order to ensure consumers' freedom of choice, the WTO requires non-discrimination and national treatment. Non-tariff impacts on trade can arise from many sources including technical measures such as requirements for product standards and conformance, packaging and labelling.

23. Other market access conditions can include requirements for traceability, documentation, banking and finance. Concerns about security and the potential for goods in transit to provide a conduit for terrorism need to be conscious of the costs and impacts on trade that may also arise. Care needs to be taken to ensure that measures do not undermine fundamental commitments to non-discrimination and national treatment.

11.2.7 States should not condition access to markets to access to resources. This principle does not preclude the possibility of fishing agreements between States which include provisions referring to access to resources, trade and access to markets, transfer of technology, scientific research, training and other relevant elements.

24. It is contrary to the Code of Conduct for a distant-water fishing state seeking access to a coastal state's EEZ resources to withhold market access if it is unsuccessful in gaining access to the fishery. Equally it is contrary to the Code of Conduct for a Coastal State to make access to a distant-water fishing state's market a condition for allowing that state access to the fishery. Access to markets and access to fisheries should be negotiated on their separate merits.

25. Articles 61 and 62 of UNCLOS places primary responsibility on Coastal States for determining how the living resources in EEZs are to be utilized. This includes determining the Coastal State's own catching capacity and whether to permit other States to access any surplus of the allowable catch. In the EEZ, the Coastal State has sovereign rights for the purpose of exploring, exploiting, conserving and managing the natural resources, whether living or non-living (Article 56,1(a)).

26. Article 62, 4(g) clarifies that Coastal States can require the payment of fees and other forms of remuneration as part of licensing fishers, fishing vessels and equipment. In the case of Coastal States that are developing countries, the same part of the Article identifies that other forms of remuneration can include financing, equipment and technology relating to the fishing industry. This should not be read as a definitive list and scientific research, training and other relevant elements are implicitly included.

11.2.8 States should not link access to markets to the purchase of specific technology or sale of other products.

27. Tying access to markets to the purchase of specific technology or sale of other products is contrary to the commitment of WTO members to MFN and national treatment principles.

11.2.9 States should cooperate in complying with relevant international agreements regulating trade in endangered species.

28. The Convention on Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in species that are threatened with extinction at the species level or that may be so threatened as a result of international trade in specimens of the species. Several fish and shellfish species are listed under CITES Appendices.

29. CITES lists nominated species under one of three appendices. Appendix I lists species that members have agreed are most at risk of extinction. Trade in specimens from the wild of these species is usually prohibited. Appendix II lists species that members have agreed may be threatened unless international trade in wild specimens is controlled. Trade in Appendix II listed species is therefore generally permitted under specified conditions including documentation and possibly agreed limits of total numbers of specimens permitted to enter international trade. CITES members can also list species unilaterally under Appendix III. This requires all CITES members to document trade in such species and report trade to the CITES Secretariat, but no limits on trade are imposed at a global level⁶.

11.2.10 States should develop international agreements for trade in live specimens where there is a risk of environmental damage in importing or exporting States.

30. Trade in live specimens of some fishery products is expanding. While generally destined for human consumption there is also an active trade in live specimens for aquarium use and as breeding stock for aquaculture. These trades may pose an environmental risk either through accidental introduction of the species concerned into the environment, or from the introduction of other organisms or diseases that the species may carry.

31. The SPS and TBT Agreements provide for states to determine the environmental risks that trade in live specimens may pose. The WTO Agreements clarify that states have the right to take appropriate risk-based measures to protect human, plant and animal life and health. When appropriate, States must use the standards, guidelines and recommendations of the OIE for fish health in live fish trade.

11.2.11 States should cooperate to promote adherence to, and effective implementation of relevant international standards for trade in fish and fishery products and living aquatic resource conservation.

⁶ At its 13th conference of the parties in 2004, CITES adopted revised criteria for listing commercially exploited aquatic species on its Appendices. The revised criteria were developed in consultation with the FAO and explicitly address the listing of fish species.

32. The CAC and its relevant Committees are the primary standard setting bodies regarding fishery products⁷ and the OIE sets standards for fish health. The WTO's SPS Agreement recommends that member states make use of standards, guidelines and recommendations of relevant international organizations including Codex. Article 5 paragraph 4, recommends that member states participate actively in the work of these international organizations.

11.2.12 States should not undermine conservation measures for living aquatic resources in order to gain trade or investment benefits.

33. Responsible conservation and management measures are essential to ensure long-term food security and to protect the sustainability of living aquatic resources. It is the State's responsibility to adopt appropriate conservation and management measures, based on international law.

34. UNCLOS, UNFSA and the FAO Compliance Agreement set clear obligations for states to cooperate in the conservation and management of living aquatic resources. UNCLOS is clear that states have responsibility to conserve and manage living aquatic resources. Implicitly these international obligations preclude states from undermining conservation measures, including gaining trade or investment benefits.

35. Opportunities for further cooperation exist with the IMO and the Convention for Biological Diversity (CBD).

11.2.13 States should cooperate to develop internationally acceptable rules or standards for trade in fish and fishery products in accordance with the principles, rights, and obligations established in the WTO Agreement.

36. States should participate and cooperate in the formulation of appropriate rules and standards for fish trade under the WTO framework, and also under other relevant normative frameworks such as agreements regarding environmental protection.

37. National measures should take into account international standards, guidelines and recommendations which are often based on relevant scientific evidence. Of particular interest to fish trade are the standards, guidelines and recommendations of the Codex Alimentarius Commission for consumer protection and those of the OIE for fish health.

11.2.14 States should cooperate with each other and actively participate in relevant regional and multilateral fora, such as the WTO, in order to ensure equitable, non-discriminatory trade in fish and fishery products as well as wide adherence to multilaterally agreed fishery conservation measures.

38. States should participate in multilateral organization such as the WTO and FAO to ensure equitable and non-discriminatory trade in fish products.

39. States should endeavour at all times to act in conformity with and through the international organizations and agreements that they are party to and avoid acting unilaterally. Unilateral action, particularly action that is in conflict with those organizations and agreements is likely to exacerbate the issues that are of concern rather than resolve them.

40. States fishing in contravention of internationally agreed conservation and management measures can gain an unfair advantage in international markets when trading the proceeds of that

⁷ Article 11.1.3 in the FAO Technical Guidelines for Responsible Fisheries – Responsible Fish Utilization, provides additional guidance in relation to standard setting procedures.

fishing effort. This can nullify or impair the trading opportunities of complying states and lead to disputes.

41. States that are members of international organizations, including the WTO and regional fisheries management bodies, or have ratified or accepted binding international conventions have obligations to comply with their rules and requirements; they also have rights to participate in decision making processes relating to their implementation and modification over time. It is important that international organizations and agreements that impact on responsible fisheries and responsible trade in fish and fishery products remain relevant to their objectives and to their members.

42. Regional Fisheries Management Organizations and Arrangements (RFMOs) are, in particular, using internationally agreed market-related measures to prevent fish caught by vessels undermining the conservation and management measures they have adopted⁸.

43. Recognizing that all countries should have the same opportunities, and in view of the special conditions applying to developing countries and countries in transition and their important contribution to international fish trade, it is acknowledged that States, relevant intergovernmental and non-governmental organizations and financial institutions should provide developing countries and countries in transition with financial and technical assistance to develop and maintain appropriate sanitary measures and technical standards. Development agencies and donor institutions are encouraged to support FAO in facilitating financial and technical assistance to developing countries and countries in transition.

11.2.15 States, aid agencies, multilateral development banks and other relevant international organizations should ensure that their policies and practices related to the promotion of international fish trade and export production do not result in environmental degradation or adversely impact the nutritional rights and needs of people for whom fish is critical to their health and well being and for whom other comparable sources of food are not readily available or affordable.

44. Fish and fishery products constitute a major source of animal protein in some countries and regions, particularly for some developing countries. Fish and fishery products can provide an important basis for maintaining the social fabric of coastal areas, particularly where the populations are poor.

45. Attention should be paid to the challenges facing states where market liberalization and globalization put pressures on the exploitation of aquatic resources. Care needs to be taken to balance immediate pressures to maximize economic benefits from utilization against requirements to ensure that resources are conserved to secure their long term sustainability.

46. Aquatic resources can be major contributors to the food security of local communities. If those resources are then competed for through international demand, the communities that rely on them need to be able to maintain and enhance their food security and general well being from sharing in the benefits of the international trade. Trade promotion policies should ensure equitable distribution of the trade benefits among all the stakeholders.

⁸ Refer to the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2001).

ARTICLE 11.3 LAWS AND REGULATIONS RELATING TO FISH TRADE

11.3.1 Laws, regulations and administrative procedures applicable to international trade in fish and fishery products should be transparent, as simple as possible, comprehensible and, when appropriate, based on scientific evidence.

47. For regulators, transparency requires that laws, regulations, administrative and operating procedures are available and decisions taken in consequence are readily understood. For those who are regulated, not only do they need to be able to understand decisions, they need to be able to know and understand the laws, regulations and administrative procedures in advance. Transparency requires predictability.

48. Simplicity means avoiding unnecessary requirements and duplication. Understanding can be improved by providing plain language explanations with the use of illustrative examples.

49. Where laws, regulations and administrative procedures arise for technical reasons relevant for example to the WTO's SPS and TBT Agreements, they should be based on scientific evidence and referenced to internationally agreed norms to the extent possible.

50. FAO provides information on the regulatory framework governing international trade in fish products.

11.3.2 States, in accordance with their national laws, should facilitate appropriate consultation with and participation of industry as well as environmental and consumer groups in the development and implementation of laws and regulations related to trade in fish and fishery products.

51. Understanding, acceptance and compliance with laws and regulations are facilitated where they have been developed and implemented in consultation with those who will be directly affected. The objectives of consultation should be to enable regulators to understand the concerns of those who will be affected and encourage greater knowledge, understanding and acceptance of the need for regulation. Fish workers and consumers, especially those who are poor, are vulnerable to food insecurity. They, together with business enterprises, should have good opportunities to participate in policymaking, to assure that their interests are addressed.

52. Where non-regulated solutions can be found, for example through the use of voluntary codes or understandings with those who would otherwise be regulated, such solutions should be considered as an alternative to regulation.

53. Consultation should also include other persons and groups with a real interest, such as environmental and consumer groups. Such consultation provides an opportunity for regulators to be informed of the concerns of others in society and to develop laws and regulations that will gain wider acceptance and support than would otherwise be the case.

11.3.3 States should simplify their laws, regulations and administrative procedures applicable to trade in fish and fishery products without jeopardizing their effectiveness.

54. When appropriate, regulations should be simplified to make them easier to understand and more capable of being complied with. Complicated regulations can add to costs of compliance. Simplification should aim to reduce the number and complexity of rules, procedures or requirements that apply to fish and fishery products.

11.3.4 When a State introduces changes to its legal requirements affecting trade in fish and fishery products with other States, sufficient information and time should be given to allow the States and producers affected to introduce, as appropriate, the changes needed in their

processes and procedures. In this connection, consultation with affected States on the time frame for implementation of the changes would be desirable. Due consideration should be given to requests from developing countries for temporary derogations from obligations.

55. The WTO's SPS and TBT Agreements have, for example, established procedures for members to notify changes in a timely fashion to legal requirements that are technical or related to food safety issues. These procedures not only require notification to other member states through the committees of each Agreement, they have also encouraged members to establish contact points at the national level to enable better communication.

56. Where the changes affect trade in fish and fishery products of relevance to developing countries, appropriate consideration should be given to the capacity of those countries to comply and appropriate flexibility be shown. Technical and financial assistance should be given to developing countries.

11.3.5 States should periodically review laws and regulations applicable to international trade in fish and fishery products in order to determine whether the conditions which gave rise to their introduction continue to exist.

57. Laws and regulations and the ways in which they are administered should be reviewed. Not only is there a continuing need to ensure that legal and regulated measures applying to the trade in fish and fishery products are effective and necessary, there is a need to ensure that they are being implemented in efficient and least cost ways. Application of electronic technology can enhance efficiency, effectiveness and compliance.

11.3.6 States should harmonize as far as possible the standards applicable to international trade in fish and fishery products in accordance with relevant internationally recognized provisions.

58. Homogeneous standards facilitate international trade. The Codex Alimentarius Commission presents the opportunity for all countries to harmonize their safety and quality standards for fisheries products and the OIE for fish health.

59. On technical and safety issues, the WTO's TBT and SPS Agreements explicitly encourage states to harmonize standards with other countries and with internationally agreed standards and norms. The same should be encouraged for other standards affecting international trade in fish and fishery products that are not encompassed in these Agreements.

11.3.7 States should collect, disseminate and exchange timely, accurate and pertinent statistical information on international trade in fish and fishery products through relevant national institutions and international organizations.

60. The collection and dissemination of accurate and timely statistical information on international trade is a key element for the promotion of trade and the understanding of markets, internationally and domestically. International organizations such as FAO, regional fisheries management bodies and national or regional institutions play an important role in providing the industry and the public with statistical information. They can contribute significantly to improving cooperation with and form and understanding of the sector.

61. FAO and the FISHINFONetwork⁹ provide extensive information on fish trade. States should assure that information related to fish trade is readily available to interested parties both internally and externally. Information services should meet the needs of stakeholders, including harvesters, processors, retailers and consumers.

⁹ Refer to the Fish Info Network website www.fishinfonet.com or to www.globefish.org for additional information.

11.3.8 States should promptly notify interested States, WTO and other appropriate international organizations on the development of and changes to laws, regulations and administrative procedures applicable to international trade in fish and fishery products.

62. Trade is a dynamic activity and relies heavily on timely and accurate information. Laws, regulations and procedures need to be regularly revised to take into consideration new evidence, technical and scientific developments. Prompt, transparent and widespread notification of developments and changes to laws, regulations, administrative and operating procedures is fundamental if delays and unnecessary costs and inefficiencies are to be avoided in international fish .

63. The purpose of notification and mutual exchange of information by states is to facilitate the functioning of the trade system and to encourage compliance by states and trading enterprises. As noted on several occasions, a number of WTO Agreements contain obligations for states to notify and these obligations aid transparency and compliance. Where no such similar obligations apply, States should nonetheless inform trading partners directly of changes and developments relevant to the international trade in fish and fishery products.

ANNEX 2

FAO Technical Guidelines for Responsible Fisheries – Fishing Operations No.1

FAO Technical Guidelines for Responsible Fisheries – Fishing Operations, Vessel Monitoring System No.1, Supplement 1

FAO Technical Guidelines for Responsible Fisheries - Precautionary Approach to Capture Fisheries and Species Introduction. No. 2

FAO Technical Guidelines for Responsible Fisheries – Integration of Fisheries into Coastal Area management. No. 3

FAO Technical Guidelines for Responsible Fisheries – Fisheries Management. No.4

FAO Technical Guidelines for Responsible Fisheries - Fisheries Management. Conservation and Management of Sharks No. 4 Supp. 1

FAO Technical Guidelines for Responsible Fisheries - Fisheries Management. The Ecosystem Approach to Fisheries No.4 Supp. 2

FAO Technical Guidelines for Responsible Fisheries – Aquaculture Development No.5

FAO Technical Guidelines for Responsible Fisheries - Aquaculture Development, Good Aquaculture Feed Manufacturing Practices No. 5 Supp. 1

FAO Technical Guidelines for Responsible Fisheries – Inland Fisheries No. 6

FAO Technical Guidelines for Responsible Fisheries – Responsible Fish Utilization No. 7

FAO Technical Guidelines for Responsible Fisheries – Indicators for Sustainable Development of Marine Capture Fisheries No. 8

FAO Technical Guidelines for Responsible Fisheries – Implementation of the Plan of Action to Deter, prevent and Eliminate, illegal, Unreported, and Unregulated Fishing. No.9