

Committee on Trade and Environment

TRADE MEASURES FOR ENVIRONMENTAL PURPOSES TAKEN PURSUANT TO
MULTILATERAL ENVIRONMENTAL AGREEMENTS:
RECENT DEVELOPMENTS

Note by the Secretariat

FAO CODE OF CONDUCT FOR RESPONSIBLE FISHERIES

This Note has been prepared in response to a request at the October 1995 meeting of the CTE that the Secretariat provide information on the recently negotiated FAO Code of Conduct for Responsible Fisheries¹.

The concept of responsible fishing was first raised by the FAO Committee on Fisheries (COFI) at its session in 1991. In May 1992, the Government of Mexico, in cooperation with the FAO, organized the International Conference on Responsible Fishing that led to the Declaration of Cancún on responsible fishing and which called upon the FAO to draft, in consultations with relevant international organizations, an "International Code of Conduct for Responsible Fishing". Subsequently, the Cancún Declaration was endorsed by the UN Conference on Environment and Development held in Rio in June 1992, and in November 1992 the FAO Council formally approved the preparation of a draft Code.

The negotiations of the Code of Conduct for Responsible Fishing (the latter word changed to "Fisheries" in 1994 in line with the French and Spanish versions) started in 1993 on the basis of an outline and a first draft prepared by the FAO Secretariat on its own responsibility. Negotiators met in various settings and smaller groups of delegates under the auspices of the FAO several times a year until, late in September 1995, a final version of the Code of Conduct was adopted by the drafting group and submitted to the FAO Council and Conference for endorsement, respectively adoption, in October 1995. The Code is not likely to become operational in the immediate future, however, since guidelines on the use of the Code still need to be elaborated. The drafting of such guidelines are scheduled to start in the Spring of 1996. The guidelines should be submitted to COFI at its 1997 session.

The Code of Conduct contains 12 Articles consisting of five introductory Articles dealing respectively with the nature and scope of the Code; its objectives; its relationship with other international instruments; the implementation, monitoring and updating of the Code; and the application of the Code to developing countries. These are followed by an Article on general principles which precedes the six thematic articles on fisheries management, fishing operations,

¹This Note has been prepared on the basis of the "final version" of the Code of Conduct, dated 1 November 1995.

aquaculture development, integration of fisheries into coastal area management, post-harvest practices and trade, and fisheries research. In addition, 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.

According to its introductory paragraph, the Code establishes principles and international norms of conduct for responsible practices in order to "ensure the effective conservation, management and development of living aquatic resources, with due respect for the ecosystem and biodiversity." It acknowledges the nutritional, economic, social, environmental and cultural importance of fisheries, and the interests of all those concerned with the fishery sector. The biological characteristics of the resources and their environment as well as the interests of consumers and other users are also addressed.

The Code of Conduct is in principle voluntary, i.e. not legally binding on countries ratifying it. However, its Article 1 specifies that certain parts of the Code are based on relevant rules of international law. These include those set out in the United Nations Convention on the Law of the Sea of 10 December 1982. The Code also comprises provisions that are, or may become, binding due to other mandatory legal instruments signed and ratified by countries that also sign and ratify the Code of Conduct for Responsible Fisheries. One such legal instrument is the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas², which forms an integral part of the Code according to FAO Conference resolution 15/93, paragraph 3.

The objectives of the Code are *inter alia* to "establish principles, in accordance with the relevant rules of international law, for responsible fishing and fisheries activities..."; "establish principles and criteria for the elaboration and implementation of national policies for responsible conservation of fisheries resources and fisheries management and development"; "promote the trade of fish and fishery products in conformity with relevant international rules and avoid the use of measures that constitute hidden barriers to such trade"; and "provide standards of conduct for all persons involved in the fisheries sector".

The Code of Conduct contains provisions related to international trade and trade policy. These provisions of particular interest in the context of the WTO are contained mainly in Article 11:2 "Responsible international trade". For ease of reference, Article 11.2 has been annexed *in extenso*.

²This Agreement, commonly known as the "Flagging Agreement", was finalized in 1993 and has been ratified to date by seven countries.

ANNEX

Excerpts from the Code of Conduct on Responsible Fisheries:

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.

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.

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.

11.2.4 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.

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.

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.

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.

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

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

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.

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.

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

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.

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.

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.