

**PROMOTING SUSTAINABLE FISH TRADE BETWEEN
CARICOM STATES AND THEIR TRADING PARTNERS
THE EU AND US:
THE CASE OF ST VINCENT AND THE GRENADINES**

Ferique Shortte

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Contact Information

Ferique Shortte,

Email: fshotte@hotmail.com

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Abstract

Ferique Shortte

Promoting Sustainable Fish Trade between CARICOM States and Their Trading Partners the EU and US: The Case of St Vincent and the Grenadines

Fish and fishery products are ranked among the most traded food commodities globally; the majority of fish that are being traded comes from developing countries. It is estimated that worldwide capture fisheries stands at 90 million tonnes with an estimated sale value of US\$93.9 billion. Fisheries account for up to 8% of the GDP of some of the islands in the Caribbean. The possibility exists that this figure is much higher as activities such as processing and distribution are not included in the fisheries sub-sector GDP. The fishing industry provides employment for approximately 182,000 persons in the CARICOM region. The importation of fisheries products by some CARICOM states is as high as 50-60% and consists mainly of dried, salted and smoked products.

St Vincent and the Grenadines (SVG) and other Caribbean Community (CARICOM) member states are faced with the challenges in the development in the international trade of fish and fish products. The region is particularly concerned with the fish trade measures implemented in the fisheries regulations of the US and EU. The issue of illegal, unreported and unregulated (IUU) fishing is of global concern at the moment, and developed states such as the EU and US are using trade sanctions against flag states who fail to effectively control vessels flying their flag and for flagged vessels that undermine the conservation and management measures of RFMOs.

In 2000 SVG was dealt a severe blow when the country was blacklisted and banned from exporting fish and fishery products to the EU. Other CARICOM countries were subsequently affected when the EU inspectors visited their shores. Grenada was placed on a “provisional watch list” while other countries such as St Lucia and Dominica were also blacklisted. With no trade in fish, the contribution of fisheries to the GDP is tiny. Nonetheless, a small percentage of fish from St Vincent and the Grenadines is exported to the US; in addition, some Queen Conchs are exported to neighbouring island St Lucia and Spiny Lobsters to Barbados. Presently, the bulk of the fish caught are being consumed locally.

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Words cannot express the heartfelt thanks to my family, friends and staff of the Fisheries Division for their unwavering and innumerable support.

List of Acronyms

ACP	Africa, Caribbean and Pacific
BIT	Bilateral Investment Treaties
CARICOM	Caribbean Community Secretariat
CARIFTA	Caribbean Free Trade Association
CARIFORUM	Caribbean Forum
CAHFSA	Caribbean Agricultural Health and Food Safety Agency
CARIBCAN	Caribbean and Canada Agreement
CBERA	Caribbean Basin Economic Recovery Act
CBI	Caribbean Basin Initiative
CBTPA	Caribbean Basin Trade Partnership Act
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCRF	Conduct for Responsible Fisheries
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CDS	Catch Documentation Scheme
CFRAMP	CARICOM Fisheries Resource Assessment and Management Program
CITES	Convention on the International Trade in Endangered Species
CNFO	Caribbean Network of Fisherfolk Organizations
COTED	Council for Trade and Economic Development
CRFM	Caribbean Regional Fisheries Mechanism
CRNM	Caribbean Regional Negotiating Machinery

CROSQ	CARICOM Regional Organization for Standards and Quality
CSME	CARICOM Single Market and Economy
UNCLOS	United Nations Convention on Law of the Seas
EC	European Council
EU	European Union
EEZ	Exclusive Economic Zone
EPA	Economic Partnership Agreement
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
FOC	Flags of Convenience
FTAA	Free Trade Area of the Americas
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GSP	General System of Preference
HACCP	Hazard Analysis Critical Control Point
IATTC	Inter America Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
IGTF	Inter-Governmental Task Force
IOTC	Indian Ocean Tuna Commission
IPOA-IUU	International Plan of Action to Eliminate and Deter IUU fishing
IUU	Illegal, Unreported and Unregulated
LDC	Least Developed Countries
LOSC	Law of the Sea Convention

MCS	Monitoring Control and Surveillance
MFN	Most favoured Nation
NAFTA	North American Free Trade Agreement
NTB	Non-tariff Barrier
OECS	Organisation of Eastern Caribbean States
OTN	Office of Trade Negotiation
RFMO	Regional Fisheries Management Organizations
RoO	Rules of Origin
S&D	Special and Differential Treatment
SIDS	Small Island Developing States
SPS	Sanitary and Phyto-sanitary
SVG	St Vincent and the Grenadines
SVGBS	St. Vincent and the Grenadines Bureau of Standards
TBT	Technical barriers to Trade
US	United States of America
WHO	World Health Organisation
WTO	World Trade Organization

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Promoting Sustainable Fish Trade between CARICOM States and Their Trading Partners the EU and US: The Case of St Vincent and the Grenadines

INTRODUCTION

Fish and fishery products are ranked among the most traded food commodities globally, with developing countries accounting for the bulk of the world's fish exports.¹ Fish and fishery products exported from developing countries comprise 20% of all agricultural and food-processing exports – more than tropical beverages, nuts, spices, cotton, sugar and confectionary collectively.² According to the FAO “State of the World's Fisheries and Aquaculture”, it is estimated that worldwide capture fisheries stands at 90 million tonnes with an estimated sale value of US\$93.9 billion.³ Almost 40% of fish productivity is traded internationally, having an export value of US \$58.2 billion. On the whole, it has been observed that the global demand for fish is increasing. Fuelling this demand is an ever irrepressible growth in the global population and the seeming health benefits of eating fish.⁴ Current FAO data indicate that in most developed countries approximately 80% of the population obtain less than 20% of their animal protein supplies from fish, about 60% of those in many developing countries depend on fish for more than 30% of their animal protein supplies.⁵ Ultimately, fish provides 15.7% of the global population with animal protein intake and 6.1% of all protein consumed globally.⁶

In the Caribbean, fisheries account for up to 8% of the GDP of some islands. It is however understood that the true contribution of fisheries to economies of Caribbean countries is much higher. This is due to activities such as processing and distribution not being included in the

¹ Food and Agriculture Organization, State of World Fisheries and Aquaculture, 2012

² Cathy A. Roheim and Jon G. Sutinen, ‘Trade and Market place Measures to Promote Sustainable Fishing Practices’ (2006), 3 International Centre for Trade and Sustainable Development 1, 6

³ Food and Agriculture Organization, State of World Fisheries and Aquaculture, 2010

⁴ John Landos and Naveen Kumar, Consultation on Standards for Health & Sanitary Guidelines for Fish & Fishery Products (OECS Environment and Sustainable Development Unit, 2003) 13

⁵ Food and Agriculture Organization, Report of the Expert Consultation on Impact of international fish trade on food security, 27–30 January 2003

⁶ Food and Agriculture Organization, State of World Fisheries and Aquaculture, 2010

fisheries sub-sector GDP.⁷ Employment is provided for approximately 182,000 persons in CARICOM within the fishing industry.⁸ The industry is a significant employer of labour direct and indirect and account for up to 2-5% of employment in the region.⁹ The fisheries sector labour force of CARICOM states is comprised mostly of the socio-economically disadvantaged in the societies; included are the least educated, the rural poor, and women.¹⁰

There has been steady growth in fish exports from the Caribbean over the years; in 2000 it was estimated at approximately US\$ 150million. The annual per capita consumption of fish in the region is between 23 kg and 25 kg. Some CARICOM states import up to 50-60% of fish products. Fisheries import is usually subjugated by dried, salted and smoked fishery products.¹¹ As observed by the FAO CARICOM countries export fisheries products with high economic value, while alternative products with similarly high nutritive value but lower in prices are imported to satisfy basic needs.¹²

Over the years there has been significant improvement to the types of technologies involved in the fishing industry. Fishing gears have evolved from a hand cast net on the beach to net being dragged along the ocean floor and nets being deployed encircling entire shoals of fish. Additionally, there has been the introduction of mechanically operated wheels and wrenches for the deployment and retrieval of long-line fish gears. Fishing vessels have evolved from wind sail boats to steam engines and now over the last century diesel powered engines. Even small coastal communities have seen their fair share of vessel advancement. Vessels that were once termed as row boats, propelled by the use of oars, are now outfitted with up to seventy five horse power (75hp) engines.

⁷ Milton O. Haughton, 'Fisheries Subsidy And The Role Of Regional Fisheries Management Organisations: The Caribbean Experience' [2002] CRFM 1,1

⁸ Milton O. Haughton, 'Fisheries Subsidy And The Role Of Regional Fisheries Management Organisations: The Caribbean Experience' [2002] CRFM 1,1

⁹ John Landos and Naveen Kumar, Consultation on Standards for Health & Sanitary Guidelines for Fish & Fishery Products (OECS Environment and Sustainable Development Unit, 2003) 11

¹⁰ Caribbean Community (CARICOM) Secretariat, *Fisheries Caribbean Agribusiness*
<<http://www.agricarib.org/primary-dropdown/fisheries>>

¹¹ Milton O. Haughton, 'Fisheries Subsidy And The Role Of Regional Fisheries Management Organisations: The Caribbean Experience' [2002] CRFM 1,2

¹² Food and Agriculture Organization, Report of the Expert Consultation on Impact of international fish trade on food security, 27–30 January 2003

Further to that, larger fishing vessels are now more fully equipped than most naval and coast guard vessels of the developing world. These vessels are fitted with the most sophisticated sonar echo fish finders, GPS and other navigation equipment, satellite radios and imagery services. Even simple improvements to crew cabins and amenities have given modern day fishing the edge within the fishing industry. That being said the nature of the fisheries in CARICOM countries is still predominantly small scale and artisanal. Most vessels are being powered by outboard motors and employ the use of manually operated fishing gears such as handlines and beach seines. Decked vessels on the other hand are few but are outfitted with the most modern equipment.

The issue of sustainability as will be discussed in this research is one of great concern for CARICOM countries as the development and strengthening of trade initiatives regionally and internationally will bring further changes to the fishing industry. These changes can be relative to the attitude of fishers evolving into a more aggressive “all about the money” approach rather than livelihood and proper management. Changes may also occur with respect to vessel types and fishing gear and method application.

This research examines the challenges faced by St Vincent and the Grenadines (SVG) and other Caribbean Community (CARICOM) member states in addressing development in the international trade of fish and fish products. It also analyses measures to address concerns with respect to implementing fisheries trade regulations of the EU and US and proposes measures on how to improve the contribution of the fisheries sector to national economy and promote sustainable fisheries amongst CARICOM member states.

St Vincent and the Grenadines and the rest of CARICOM comprising mainly of small island developing states place significant dependence on fisheries for food security and economic growth. Within the CARICOM fish trade is seen as a potentially important source for the generation of employment and foreign income. However, with recent development on the legal and policy framework for international fish trade, particularly the increasing trade-related restrictions and focus on sustainability, the CARICOM region is faced with numerous hurdles in exporting fish and fish products to key importing states such as the US and EU. Example of these challenges include increasing competition from South America; fishing technology advantage of

Asian countries; high health and sanitary standards of developed countries; and trade restrictions to combat illegal, unreported and unregulated (IUU) fishing.

More specifically, in 2000 SVG was blacklisted and banned from exporting fish and fishery products to the EU which proved to be a severe blow to the fishing industry of the country. Other countries were subsequently affected by the EU Mission Team visit soon after; Grenada was placed on a “provisional watch list” while other countries such as St Lucia and Dominica were also blacklisted. Without the trade in fish, fisheries contribution to the GDP remains miniscule. Currently only a small percentage of fish from St Vincent and the Grenadines is exported to the US, while some Queen Conchs are exported to neighbouring island St Lucia and Spiny Lobsters to Barbados. The vast majority of fish are now being consumed locally. For these reasons, promoting sustainability in trade and strengthening fisheries relations between SVG and its developed trading partners are of paramount importance.

The research addresses two specific areas. Firstly, the current difficulties experienced by SVG in complying with stringent regulations set by the EU and US regarding the implementation of health and sanitary measures. The Second aspect focuses on the development of small-scale fisheries to increase economic growth and promote sustainable trade in the CARICOM region while fighting against Illegal, Unreported and Unregulated fishing.

Apart from highlighting measures that will help address the gaps in the implementation of relevant EU and US regulations on fish trade, the research will also propose alternative solutions or options to address general fisheries sustainability issues in SVG. One of these options is the adoption of a sound management framework to promote the utilization of some species that are considered underutilized. The second proposal is to increase relatively low per capita consumption of fish and fish products and inadequate distribution of fish products. The third is promoting self-sufficiency of the inactive fish processing section of the national fish market complex belonging to St Vincent and the Grenadines. The fourth relates to access to operational funds in order to support a comprehensive and responsive community-based fisheries management system and support collaborative effort amongst fisher folks. Lastly, the government would need to develop measures that will help eliminate distrust amongst fisheries

communities and the fishing industry. These options, which may be considered unique to small island developing States of the region, will not only help achieve compliance with relevant fisheries regulations of importing developed States but will also promote sustainable fisheries within CARICOM. Such an approach, if adopted by CARICOM member States collectively may also strengthen their position in international fish trade and promote the development of small-scale fisheries. It is further argued that if proper arrangements are made between CARICOM member states, exportation of fish and fishery product can be done as a single entity, which may result in a higher volume of trade, generating more interest and greater comparative advantage.

CARICOM: Its Structure, Mandate and Complexity

The Caribbean Community and Common Market (CARICOM) was formerly known as the Caribbean Free Trade Association (CARIFTA). It was founded by Antigua and Barbuda, Barbados, Guyana, and Trinidad and Tobago on 15 December 1965. It was concluded under the signing of the Dickenson Bay Agreement¹³. The original four islands were later on 1 July, 1968 joined by Dominica, Grenada, St Kitts-Nevis-Anguilla, Saint Lucia and St Vincent and the Grenadines; and on 1 August, 1968 joined by Montserrat and Jamaica. Belize formerly British Honduras joined the Association in 1971¹⁴.

Explicitly, the intention of CARIFTA was to encourage balanced development of the Region. This was to be achieved by; trade increase, liberation and diversification. Not to mention, ensuring that competition between members is equitably¹⁵. Apart from providing a regime for free trade among the islands, CARIFTA also sought to; ensuring the equitable distribution of benefits to members, promote the development of industries in least developed countries (LDCs), restructure the system of trade in agricultural produce while at the same time enabling the marketing of selected agricultural products of special interest to the LDCs and arrange a prolong period for the gradual removal customs duty on certain products which were more important to

¹³ Caribbean Community (CARICOM) Secretariat, *The Caribbean Free Trade Association (CARIFTA)* Caribbean Community Secretariat <<http://www.caricom.org/jsp/community/carifta.jsp?menu=community>>

¹⁴ Ibid

¹⁵ Ibid

revenue contribution for LDCs¹⁶. CARIFTA ceased its existence on 1 May 1974; it was replaced by the Caribbean Community and Common Market also known as CARICOM.

On 4 July 1973 the Treaty of Chaguaramas established the Caribbean Community and Common Market (CARICOM). The primary purpose for the establishment of this regional body was to facilitate the enhancing, through cooperation, the economic, social and cultural development of the populations of member countries. Included in the list of member states of CARICOM are Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname and Trinidad and Tobago.¹⁷ Some of which were the original members of CARIFTA.

The Heads of Government of CARICOM States made the decision to transform the Common Market into a single market and economy in 1989. This transformation was to facilitate the free movement of factors such as goods and services, thus enabling the region to become internationally competitive. The decision was also made to revise the Treaty of Chaguaramas in order for the transformation to take place. Soon after the adoption of the report of the West Indian Commission in 1992, an Inter-governmental Task Force was set up, to commence work on the revision of the Treaty.

The Inter-Governmental Task Force (IGTF) was comprised of representatives from all CARICOM Member States. During the period 1993 to 2000 the task force produced nine Protocols, for the purpose of amending the Treaty. Later the nine protocols were combined to create what is now The Revised Treaty of Chaguaramas Establishing the Caribbean Community, including the CARICOM Single Market and Economy (CSME), the revised treaty was signed in 2001.¹⁸

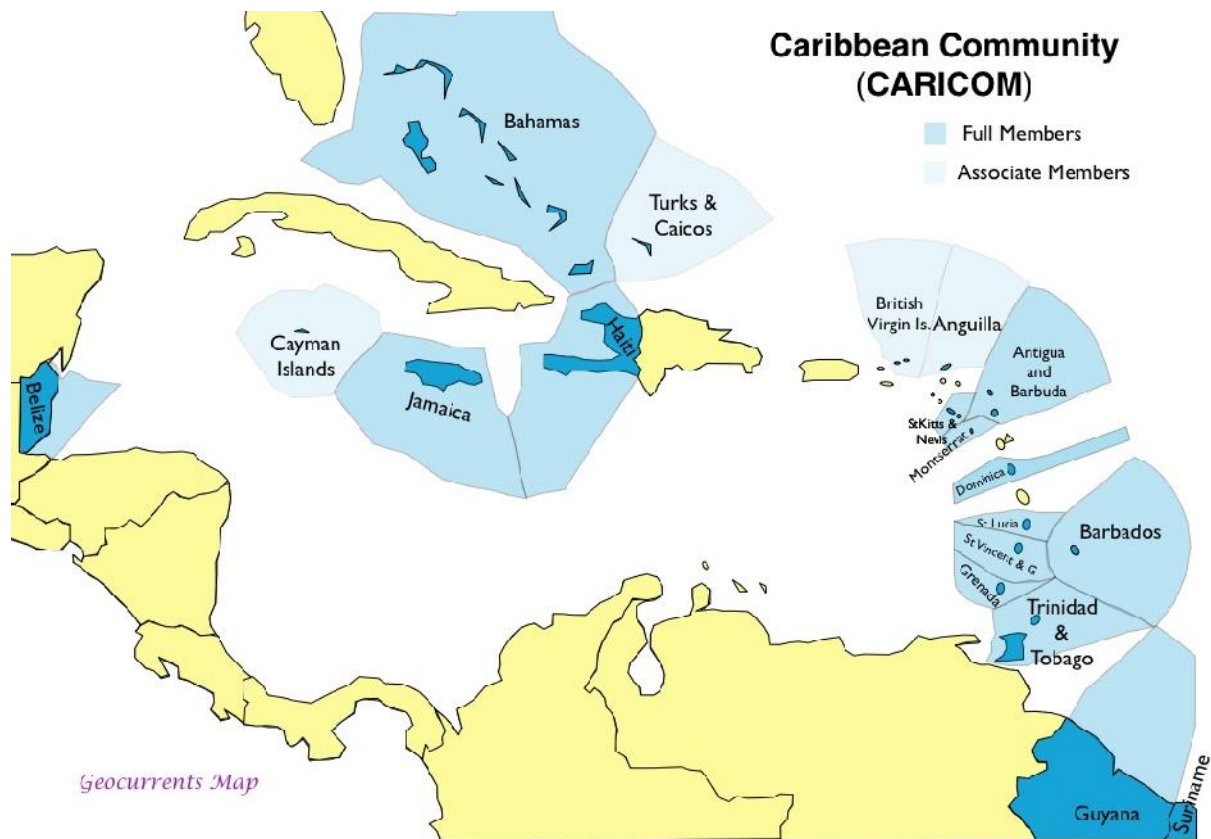
¹⁶ Ibid

¹⁷ Food and Agriculture Organization, State of World Fisheries and Aquaculture, 2002, 129

¹⁸ Through the use of GDP statistics from each country, CARICOM distinguishes between less developed countries (LDCs) and more developed countries (MDCs). Under the Revised Treaty, less developed countries are entitled to certain special concessions. The groups of more developed and less developed countries are defined in the Revised Treaty of Chaguaramas of 2001. Nonetheless, most CARICOM States have been categorized as middle income countries.

Subsequent allowances have been made in the Revised Treaty for the inclusion of additional protocols addressing issues such as e-commerce, government procurement, trade in goods from free zones, free circulation of goods, and the rights contingent on the free movement of persons.

Figure 1 – Map of Associated and Full Members of CARICOM



Source: Geocurrent Maps

CARICOM and Fisheries

CARICOM focuses on a number of things; one of the key areas of focus is fisheries. CARICOM aims to "Promote the development of the fisheries subsector in member states with a view to optimal exploitation of their resources on a sustainable basis".

To achieve this it aims to strengthen the legal and institutional framework, in part through the creation and implementation of a common CARICOM Fisheries Policy.¹⁹

As a result of the Caribbean Community and Common Market in 1991 the CARICOM Fisheries Unit was established. Located in Belize its aim was to execute the CARICOM Fisheries Resource Assessment and Management Program (CFRAMP), which subsequently ended in 2001.²⁰ Out of CFRAMP the Caribbean Regional Fisheries Mechanism (CRFM) was developed. CRFM is an intergovernmental organization whose mission is “*to promote and facilitate the responsible utilization of the region's fisheries and other aquatic resources for the economic and social benefits of the current and future population of the region*”.²¹

The Inter-Governmental Agreement establishing the CRFM was signed in 2002. The CRFM consist of three bodies – the Ministerial Council, the Caribbean Fisheries Forum and the Technical Unit. Its member states include all those of CARICOM.

The CRFM is one of the key institutions within CARICOM Fisheries. This institution is vital because it focuses on improving fisheries management information systems; strengthening the capacity of national fisheries administrations to manage fisheries; promoting fishers’ involvement in development; implementing and monitoring fishery management plans; improving scientific capability in the region’s fishery sector; supporting Caribbean researchers and managers in the sustainable management of aquatic resources; supporting the development of a multi-stakeholders approach to coastal zone management; and promoting the rational use and management of fisheries resources in the Caribbean.²²

Another CARICOM organisation that was established is the Caribbean Network of Fisher folk Organizations (CNFO). This fisher folk network of body is located in CRFM Member states. Its purpose is to improve the quality of life for fisher folk and develop a sustainable and profitable

¹⁹ Food and Agriculture Organization, State of World Fisheries and Aquaculture, 2002, 129

²⁰ Food and Agriculture Organization, State of World Fisheries and Aquaculture, 2002, 129

²¹ Caribbean Community (CARICOM) Secretariat, Fisheries Caribbean Agribusiness
<<http://www.agricarib.org/primary-dropdown/fisheries>>

²² Agreement Establishing CRFM (Article 9) 8. Also additional information about the functions of the units within the mechanism can be found in the agreement.

industry through networking, representation and capacity building. It is a coordinating unit, consisting of fisher folk leaders from the various member states.²³

CARICOM member states, like other parts of the world, are also faced with the mounting challenges affecting the fishing industry. They are also met with the challenge of creating a sustainable food production system and retaining a steady supply of healthy food at affordable prices while pressure is mounting on almost all elements affecting the process.²⁴

Sustainable trade in fish and fishery products is being viewed as a means of livelihood and food security for CARICOM nationals. In talking about sustainable fish trade, one must first ask “What is sustainable fish trade?” and “Can sustainable fish trade be achieved?” There is no predefined meaning for the term “sustainable fish trade”. Simply put, it is “the manner in which the trade in fish and fish products is conducted and coordinated so as to allow for a viable ecosystem meanwhile, ensuring the efficient and adequate distribution of fish globally”. Institutions and countries have been grappling with the idea of developing ways in which sustainability in fish trade can be achieved. According to Article 6.14 of the FAO Code of Conduct for Responsible Fisheries;

*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.*²⁵

The FAO has been playing an instrumental role in providing advice on the sustainable management and trade in fish and fishery products. It has produced a number guidelines to this effect, thus the contribution of the FAO to global trade in fisheries will be further addressed in a subsequent chapter.

²³Caribbean Community (CARICOM) Secretariat, Fisheries Caribbean Agribusiness
<<http://www.agricarib.org/primary-dropdown/fisheries>>

²⁴ Bharrat Jagdeo, Food Security in CARICOM (CARICOM View, 2011) 2

²⁵ FAO Code of Conduct for Responsible Fisheries Article 6.14

PART 1: LEGAL AND POLICY FRAMEWORK FOR CARICOM FISH TRADE

Chapter 1. International Legal Framework as Established by the WTO and FAO

1.1.1 Introduction

Currently, there is no specific legal framework governing the international trade in fish and fish products, because it is a product of international trade, fish is governed under general international trade law rules. However, fish as a commodity possesses and displays some interesting features. For instance; in developing countries like the CARICOM states, fish as a natural resource; high dependency is placed on it for livelihood and food security. It is also prone to environmental and human impact. This therefore makes it susceptible to depletion and subsequently exhaustion. Additionally fish is limited in its geographical distribution, as a result of these characteristics; there is need for special rules in international law to govern fish trade.

During the earlier decades of the twentieth century, countries were forced to get involved in increasingly complex interactions due to trade. This therefore created the need for a forum where trade talks can be facilitated and regulated. As a result the 1947 General Agreement on Tariffs and Trade (GATT) was formed. Not only did GATT provide an international round table and created a multilateral approach to trade, it further facilitated the establishment of a system of trade rules that were internationally recognised²⁶. The fundamental concept was the crafting of a level playing field for all members by “substantially reducing tariffs and other barriers to trade and the elimination of discriminatory treatment in international commerce”.²⁷

²⁶ Roberto Bendini, ‘The European Union and the world Trade Organisation’ [2013] European Parliament 1, 1

²⁷ GATT 1947, introductory paragraph

The evolution of international trade has seen the movement of trade further than tangible goods and into the exchange of services and ideas. Resultant of earlier arrangements put in place by the governments of 23 countries under the 1947 General Agreement on Tariffs and Trade (GATT); gave birth to the WTO in 1995. The WTO represents a transformed and institutionalised GATT system which integrated the earlier trade agreements from the post-war years²⁸.

1.1.2 WTO Trade Framework

Just before the formation of GATT in 1947, there were significant dialogues involving the governments of the appropriate post-war financial and trade arrangements which were anticipated would govern the global economy. Consequently, with regards to international finance, the International Monetary Fund was established. The mandate of the IMF was to maintain exchange rate parities by granting loans to countries that were under exchange rate pressure²⁹. In addition, the World Bank was also established to deal with international development and infrastructure financing. In other words the objective of the World Bank is to provide financing for infrastructure of countries, that is; roads, schools and hospitals among others. These arrangements got underway at the 1944 Bretton Woods Conference; however, agreements and other arrangements for trade were left loose for a longer period of time³⁰.

So far creating a shared rule trading regime has proven to be a very difficult task to achieve. This is especially since globally states and people are multi-disciplinary. The efforts made to complete a new round of negotiations of which development was the focus, have thus far proven unsuccessful (Doha Development Round). This therefore has led to many WTO members becoming frustrated in their efforts to find common ground, further to that; it has pressed several nations to place emphasis on developing bilateral trade agreements.³¹

Since the WTO's entry into force, membership has grown to 144 parties; this was as at the end of 2001. There are quite a few important ways in which the WTO differs from the GATT. The

²⁸ Roberto Bendini, 'The European Union and the world Trade Organisation' [2013] European Parliament 1, 1

²⁹ J Whalley, 'World Trade Organization' *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier Science Ltd 2001) 16613, 16613

³⁰ Ibid

³¹ Roberto Bendini, 'The European Union and the world Trade Organisation' [2013] European Parliament 1, 1

GATT was somewhat a flexible institution; at its heart rests bargaining and deal-making, countries were also provided significant opportunities to pull out of specific disciplines.³² Different to that, the rules of the WTO apply to all members subjected to binding dispute settlement procedures. Groups that are hoping to implement multilateral disciplines on numerous different areas ranging from the environment standards to investment policies, are attracted to this aspect of WTO membership. On the contrary, it is a cause for concern to groups that see multilateral rules to be unsuitable. Some groups even worry that the adoption of specific rules may be a disadvantage of the ability of governments to regulate domestic activities and handle market failures.³³

The WTO can be seen as an organisation that creates codes of conduct for its member government. Having said; the primary function of the WTO is to act as a forum for international cooperation on trade-related policies. The codes for codes of conduct would usually originate from the exchange of trade policy commitments in intervallic negotiations.³⁴

In a way the WTO can be viewed as a market. It fosters the environment where countries can come together to exchange market access commitments on a mutual grounds. The fact of the matter is, the WTO is actually a barter market. Unlike trading in a town with a medium of exchange such as money, states usually barter, for example tariff reduction of an imported product for market access of another.³⁵ Within the WTO are a set of specific legal obligations regulating trade policies of member states in addition the WTO has established a framework for trade policies; it does not outline or identify outcomes. In other words the WTO does not concern itself with the outcome of the negotiations; all that matters is that the trade rule as it has stipulated are being adhered to by parties involve.³⁶

CARICOM states sees the WTO as a vital tool for ensuring equality in a global rules-based trading regime applying to members of disproportionate economic and political influence.

³² Bernard Hoekman and Michel Kosteci, *The Political Economy of the World Trading System: WTO and Beyond* (Oxford University Press, 2001) 41

³³ Bernard Hoekman and Michel Kosteci, *The Political Economy of the World Trading System: WTO and Beyond* (Oxford University Press, 2001) 41

³⁴ Ibid 42

³⁵ Ibid

³⁶ Ibid 42

Currently all CARICOM member states are members of the WTO with the exception of the Bahamas and Montserrat. In addition only a few CARICOM countries are financially able to afford a permanent office in Geneva. During WTO meetings each country votes individually, however the Office of Trade Negotiation (OTN) collectively house the trade expertise for the islands and is the main negotiating body for CARICOM.³⁷

The WTO framework linked CARICOM's perspectives to the positions of developing country groups. Perspectives include; striking a favourable balance when negotiating market access for agricultural and non-agricultural produce and ensuring the adequacy of special and differential treatment.³⁸ CARICOM has very precise preferences within the developing country groups centred on the perceptions that their small vulnerable economies merit different treatment than that given to larger developing countries. Expressly, CARICOM argues that member states have to deal with two very special obstacles in the global trading system. These obstacles are two-fold: firstly, states find it a far greater struggle adjusting to the issue of trade liberalization and secondly, states possess a less than equal voice in any negotiation process.³⁹

In the course of the 1990s, the trade regime in the CARICOM region was revolutionised, this showed signs that there was a desire for CARICOM to move away from the narrow-minded policies of the past and towards the direction of open regionalism policy. What this meant not only to broaden its horizons in terms of trade relations with extra-regional trading partners, but also, and quite fundamentally, make deeper and perfect the current intraregional integration system and institutions.⁴⁰ Just like other trade arrangements that thrived during the 1990s, CARICOM's response was geared towards the guarantee and protection of regional access to markets in light of the process of globalization which was supposedly designed to provide equal market access for all.⁴¹

³⁷ J. F. Hornbeck, 'CARICOM: Challenges and Opportunities for Caribbean Economic Integration' [2008] *Congressional Research Services* 1, 21

³⁸ J. F. Hornbeck, 'CARICOM: Challenges and Opportunities for Caribbean Economic Integration' [2008] *Congressional Research Services* 1, 21

³⁹ *Ibid*

⁴⁰ Vivianne Ventura-Dias, '*Globalization and Development*' (Economic Commission for Latin America and the Caribbean, 2002) 332

⁴¹ *Ibid*

Steps were taken by CARICOM members to strengthen the Community's integration grouping. It was agreed by the member States of the Community *"to advance beyond the Common Market towards more comprehensive integration, recognizing that while it had achieved significant liberalization of the market for goods, the further development of the regional economy was constrained by restrictive Treaty provisions limiting the free movement of services and capital and skilled labour"*.⁴² It was out of this that the concept of the CARICOM Single Market and Economy (CSME) emerged.⁴³

1.1.3 Fisheries Subsidies

Subsidies are embedded deeply in the history of many countries.⁴⁴ They were evident and in existence even as far back as when global fisheries was considered inexhaustible.⁴⁵ Developed countries have been injecting their fisheries sector with subsidies as part of a strategy aimed at developing fisheries and food security.⁴⁶ Based on studies conducted, there is general consensus that at the global level, some fishing subsidies are the cause of trade distortion and contribute to overcapacity and unsustainable fishing levels, especially in the absence of an effective fisheries management regime.⁴⁷ Given the state of the world's fisheries, there is urgent need for subsidies that are contributing to overcapacity, unsustainable fishing activities, and illegal, unreported and unregulated (IUU) fishing to be addressed.⁴⁸

WTO members have considered subsidies as belonging to two groups, namely "good subsidies" and "bad subsidies". Good subsidies refer to those subsidies that contribute to the growth and enhancement of fish stocks through conservation and the implementation of monitoring control

⁴² Vivianne Ventura-Dias, 'Globalization and Development' (Economic Commission for Latin America and the Caribbean, 2002) 332

⁴³ The application, policy and objectives of the CSME are widely discussed throughout this thesis.

⁴⁴ Fisheries subsidy is being addressed at this point because it represents a critical factor in the sustainability of the trade in fish and fish products. Some subsidies are being deemed as the causative agent of unsustainable fishing practices and undermining the sustainability fisheries globally. As a result they should be subjected to new disciplines.

⁴⁵ Ussif Rashid Sumaila et al, The World Trade Organization and global fisheries sustainability (2007) 88 *Fisheries Research* 1, 1

⁴⁶ Roman Grynberg, WTO fisheries subsidies negotiations: implications for fisheries access arrangements and sustainable management (2003) 27 *Marine Policy* 499, 502

⁴⁷ Milton O. Haughton, 'Fisheries Subsidy And The Role Of Regional Fisheries Management Organisations: The Caribbean Experience' [2002] CRFM 1,8

⁴⁸ Ibid

and surveillance measures. Some examples of good subsidies would include; finance and other resources allocated by Government to facilitate fisheries management program such as port sampling and on board fisheries observers. Another example of a good subsidy is monitoring and enforcement programs. This involves Government allocating resources to aid in coastal patrols, development of more rigid fisheries regulations and the development of mechanisms to facilitate cooperation with other states.⁴⁹ On the other hand, bad subsidies refer to those subsidies which promote growth of fishing capacity and effort, and have the distinct possibility to lead to utter destruction of the natural resource. Some examples of bad subsidies would include; fishing vessel construction and renewal programs; construction and renovation of fishing port, fuel and tax exemptions supporting increases in fishing effort.⁵⁰

Resulting from a decision arrived at by ministers at the Fourth Ministerial Conference of the WTO at Doha; members of the WTO have embarked upon negotiations on fisheries subsidies. The decision that was taken by the ministerial was structured in such language that undoubtedly recognised the importance of fisheries to developing countries and further realized the need for the development of appropriate special and differential treatment rules. Even to this point, despite the language, there has not been any substantive call from developing countries for Special and Differential Treatment.⁵¹

Small island developing states of CARICOM are in need of Special and Differential Treatment from the WTO on these subsidies. This Special and Differential Treatment is warranted due to high dependency on fisheries, the vulnerabilities and intrinsic economic disadvantages owed to the smallness of the countries and inadequate economic base.⁵² By granting developing countries

⁴⁹ Ussif Rashid Sumaila et al, *The World Trade Organization and global fisheries sustainability* (2007) 88 *Fisheries Research* 1, 2

⁵⁰ *Ibid* 3

⁵¹ Roman Grynberg, *WTO fisheries subsidies negotiations: implications for fisheries access arrangements and sustainable management* (2003) 27 *Marine Policy* 499, 499

⁵² At the time of the Uruguay Round negotiations, states expressed their worry about the difficulty in the implementation of certain obligations by developing and least developed countries. As a result a number of WTO and WTO Member States agreements contain provisions for the “special and differential treatment” of developing and least-developed countries. Within the different WTO agreements S&DT includes: provisions geared towards increasing trade opportunities for developing countries; provisions which request that WTO Members to keep in mind the interests of developing country Members when adopting protective trade measures; provisions which grants flexibility to developing countries in using economic and commercial policy instruments; provisions allowing

Special and Differential Treatment allowing them to provide subsidies to develop their domestic fishing sectors, it will aid in servicing local demand for fish products and in gaining a foothold in international trade for fish products.⁵³

The impact of fisheries subsidies is one area of focus for the CAROCOM region. Though, it is not yet possible to determine the extent of subsidies and whether or not they are impacting the environment, economic or social aspects of CARICOM fisheries negatively.⁵⁴ However, several CARICOM Member States and Associate Member States are known to provide subsidies to the fisheries sector. Governments provide direct or indirect subsidies to the fishing industry by way of incentives geared towards the stimulation of growth and development of fisheries and aquaculture primarily through the reduction cost inputs. Typically, these subsidies have included the provision of fuel, duty concessions on fishing gear and equipment purchased, including fishing boats and engines. Additionally Governments have provided subsidized loans to fishermen for the purchase of fishing boats and engines through special credit programs. The level of incentives and support provided, vary from country to country, however within the CARICOM region it is considered minor.

Relative to international fish trade between CARICOM and its trading partners, there are other issues emerging from GATT/ WTO Agreements that are affecting the islands. For instance the WTO principles and what they mean for CARICOM namely Most Favoured Nation treatment, Generalised System of Preference and National Treatment. Notably these principles were adopted by the WTO to ensure that multilateral trade is conducted in a non-discriminatory manner.⁵⁵

longer transitional periods for the implementation by developing countries of various commitments which stem from these agreements; and the provision of technical assistance to facilitate the implementation of their commitments in addition to their efforts to obtaining maximum benefits from the results of the Uruguay Round. S&DT is particularly important with regards to the application of Sanitary and Phytosanitary Measures.

⁵³ Milton O. Haughton, 'Fisheries Subsidy And The Role Of Regional Fisheries Management Organisations: The Caribbean Experience' [2002] CRFM 1,8

⁵⁴ Ibid 7

⁵⁵ A lot of the trading agreements that CARICOM is involved in is under the MFN principles. In addition, agreements such as CBI, CARIFORUM EPA and CARIBCAN are conducted under the GSP principle. This is due to the vulnerability of the region's economies, limitations in the availability of resources and raw material, limited products range in small quantities and the smallness of the islands. Under these agreements, the respective developed state has granted CARICOM preferential treatment.

Article I of the GATT/ WTO agreement call for members to treat other members the same way they treat their 'favourite or most favoured' States with whom they have the least restricted trade. However as an exception to this principle, within the GATT agreement, provision has been made for general system of preferences. This allows developing states who are WTO members to have some measure of preferential treatment when trading. This GSP is also somewhat limited with regards to product coverage, benefits developing members can obtain, the amount of cuts to tariff, rules of origin, or non-tariff barriers application.⁵⁶ Additionally Article III of GATT stipulates that WTO members should treat imported products from other WTO members with the same favour that they give to their domestic products.⁵⁷ Similar products that are being imported from these developed states are also being produced in the CARICOM region; this is as a means of obtaining variety and diversity. These imported products are being treated with the same respect that the locally produced once are given. For example salted cod imported from the EU and Canada are being treated the same as salted shark produced in Trinidad and Tobago. The same goes for imported frozen tuna loins and smoked products.

Additionally, CARICOM states are faced with the stringent effects of GATT Article XX General Exceptions when imposed by developed countries. This is especially in the case of sub section (b) where it implies application of sanitary and phyto-sanitary measures and sub section (g) implying the application of fisheries conservation measures.⁵⁸ These issues can only be discussed using examples of states laws and agreements. They will be addressed in greater details in subsequent chapters.⁵⁹ In the meantime bear in mind that there are other agreements of

⁵⁶ Examples of Rule of Origin stipulations and tariff cuts are provided in the upcoming section on Structure of Preferential Trade Agreements between CARICOM and other Countries.

⁵⁷ M. Rafiqul Islam, *International trade law of the WTO* (Oxford University Press, 2006) 16

⁵⁸ The provisions made in GATT Article XX (b) and (g) state 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: ... (b) Necessary to protect human, animal or plant life or health; ... (g) Relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption."

⁵⁹ It is important to note that these two provisions under GATT Article XX has been the center of a number of well documented disputes internationally. These disputes include: Australia's ban on importation of fresh chilled or frozen salmon from Canada, claiming to be protecting its domestic salmon population; US ban on the importation of certain shrimp and shrimp products from the Philippines; United States Anti-Dumping Measures on Shrimp from China; United States Anti-dumping Measures on Certain Shrimp from Viet Nam; United States Measures Relating to Shrimp from Thailand; European Communities Anti-Dumping Measure on Farmed Salmon from Norway;

the WTO that have significance with regards to fish trade, namely; the SPS Agreement, TBT Agreement, Agreement on the implementation of anti-dumping measures, Import licensing procedure and Agreement on TRIPS.

1.1.4 FAO Trade Framework

International fish trade has become a quarrelsome issue globally. It is estimated to be a major cause of both wealth and widespread pockets of poverty. For some the rewards realized is gigantic, meanwhile the circumstances for generating wider and fairer sharing of this benefit are yet to be seen. Hence trade is being described as both free and partial.⁶⁰ Nonetheless, the feeling that trade should be united and recognise the needs and respect the diversity of national development patterns is also attaining merit. Because of the WTO, the interrelations of trade, the usage of global natural resources and the potential of these natural resources to contribute to enhancement of standards of living and sustainable development have now become globally accepted. In fact, all of this is realized and carefully crafted into the preamble to the Marrakech Agreement which established the WTO.⁶¹ It states: *...trade and economic endeavour should be conducted with a view to raising standards of living ... and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.*⁶²

There are various internationally legally and non-legally binding instruments that have made mention of issues that can have an impact on international fish trade. For instance; Law of the Sea Convention (LOSC), UN Fish Stocks Agreement, FAO Compliance Agreement, FAO Code of Conduct for Responsible Fisheries, International Plan of Action to Deter and Eliminate –IUU Fishing, FAO Port State Measures Agreement and Regional Fisheries Management

European Communities Definitive Safeguard Measure on Salmon complaint by Chile; European Communities Trade Description of Sardines complaint by Peru; Chile Measures affecting the Transit and Importing of Swordfish Complainant by European Communities; United States Import Prohibition of Certain Shrimp and Shrimp Products Complainants by India; Malaysia; Pakistan; Thailand. These are just a few of the fisheries related disputes which arose due to GATT Article XX.

⁶⁰ J Kurien, *Responsible fish trade and food security* (FAO Fisheries Technical Paper, No. 456, 2005) 1

⁶¹ Ibid

⁶² Marrakesh Agreement (1994) – Establishing the World Trade Organization (WTO)

Organizations.⁶³ Apart from specific articles found in the FAO Code of Conduct for Responsible Fisheries and the International Plan of Action to Deter and Eliminate –IUU Fishing, there is no direct mention of trade and trade issues in the other documents, only statements giving implications to sustainable trade. Some other documents which made reference to the international trade in fish and fish products are; Agenda 21, FAO Guidelines on responsible fish trade, FAO Guidelines on responsible fish utilisation, WHO Codex Alimentarius Commission standards, Aquatic Animal Health Code and the Convention on the International Trade in Endangered Species (CITES).⁶⁴ The provisions in these instruments are not fish trade specific; however, they contain provisions on species and environment protection, food safety and quality aspects, sustainable development of fisheries resources through the fight against IUU fishing. As international law these provisions are structured in such a way that they contribute significantly to the development of trade and trade measures.

The FAO Code of Conduct for Responsible Fisheries (CCRF) was adopted unanimously as part of a resolution at the FAO Conference in October 1995. The CCRF is an explicitly voluntary international instrument whose prime intention is the promotion of greater responsibility and sustainability in fisheries and aquaculture by establishing standards regarding trade and marketing of fish as well as standards that are globally accepted as best national practices that are also appropriate as regional policy, measures and activities.⁶⁵ Article 6.14 of the FAO Code of Conduct for Responsible Fisheries was mentioned very briefly in the introductory stages of this

⁶³ The provisions referring to international fish trade as stated by some of these agreements are; **FAO Code of Conduct for Responsible Fisheries Article 6.14** - *International trade in fish and fishery products should be conducted in accordance with the principles, rights and obligations established in WTO Agreement and other relevant international agreements.* **International Plan of Action to Deter and Eliminate –IUU Fishing Article 66** - *States should take all steps necessary, consistent with international law, to prevent fish caught by vessels identified by the relevant regional fisheries management organization to have been engaged in IUU fishing being traded or imported into their territories...* **FAO Port State Measures Agreement Article 68** - *States should cooperate, including through relevant global and regional fisheries management organizations, to adopt appropriate multilaterally agreed trade-related measures, consistent with the WTO, that may be necessary to prevent, deter and eliminate IUU fishing for specific fish stocks or species. Multilateral trade-related measures envisaged in regional fisheries management organizations may be used to support cooperative efforts to ensure that trade in specific fish and fish products does not in any way encourage IUU fishing or otherwise undermine the effectiveness of conservation and management measures which are consistent with the 1982 UN Convention.*

⁶⁴ **Agenda 21 Chapter 2:2.5** - *An open, equitable, secure, non-discriminatory and predictable multilateral trading system that is consistent with the goals of sustainable development and leads to the optimal distribution of global production in accordance with comparative advantage is of benefit to all trading partners.*

⁶⁵ Joan Parker, David Douman and Jean Collins, 'Citation Analysis for the 1995 FAO Code of Conduct for Responsible Fisheries' (2010) 34 *Marine Policy* 139, 139.

thesis. It states: *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.*⁶⁶ This article 6.14 of the CCRF is highlighting that it is essential for the international trade in fish and fish products to meet the goals of the WTO. These goals include: substantial tariff reduction as well as other trade barriers and also the elimination of discriminatory treatment in trade.

The FAO Code of Conduct for Responsible Fisheries is the overarching agreement providing the framework for international trade in fish and fishery products within the FAO. Article 6.14 of the FAO Code of Conduct for Responsible Fisheries explicitly links international fish trade to the GATT/ WTO principles, thus, applying and strengthening the rights and obligations of the WTO as they relate to the trade in fish and fishery products. Notably, these rights and obligations include; tariff and non-tariff barrier (NTB) reduction; the exclusion of discriminatory treatment from fish trade; ensuring that practises such as the implementation of Sanitary and phytosanitary measures, Catch certification and trade documentation, Product certification, tracing, and labelling do not result in becoming obstacle to fish trade. Additional rights and obligations include: the harmonisation of trade rules on fisheries; States are also advised against creating unnecessary or hidden barriers which limit consumers' freedom of choice of supplier or that restrict market access.

Further to that, Article 6.14 of the FAO Code of Conduct for Responsible Fisheries also appeal to states to ensure that whatever fish trade related policies, programs and practices that they might implemented do not constitute an obstacle to fisheries trade, environmental degradation or negative social, including nutritional impacts. However, there are numerous WTO agreements that have implications for fisheries, and concerns have been raised that the importation of fish products have given rise to other forms of trade barriers other than import duties. The SPS Agreement is one of the most relevant agreements to fisheries. SPS is being applied by states to

⁶⁶ FAO Code of Conduct for Responsible Fisheries Article 6.14

protect human health; however it is widely utilised and disguised as a barrier hindering the trade in fish products. A prime example of the application of SPS as a disguise is the EU health and safety regulations and its application against St Vincent and the Grenadines. Other non-tariff barriers affecting the importation of fish are: technical requirements, trade distortions through subsidies and dumping, import licensing.⁶⁷

Notwithstanding, contained in the code of conduct is Article 11 which further elaborates the principles mentioned in Article 6.14. This was accomplished by highlighting two crucial aspects of international fish trade that need to be kept in mind, namely; post-harvest practices and international trade. In these respects, Article 11 paid specific attention to four matters having serious implications on trade, these are; (a) safety and quality assurance in fish; (b) food security; (c) Sustainable development and utilisation of fisheries resources; and (d) international trade in-line with WTO Agreements.⁶⁸ Clearly, Article 11 can be seen as having played a critical role in helping to establish the general framework under which international trade in fish and fishery products should be conducted.

A common principle of the FAO Code of Conduct is that the harvesting, handling, processing and distribution of fish must be conducted such that it maintains the nutritional value, quality and safety of the products. Further to that, activities should reduce waste, and curtail negative impacts on the environment. The Code of Conduct also provides numerous measures promoting the safety and quality of fish. It calls for States to establish and maintain effective national safety and quality assurance systems. This is to guarantee the right of consumers to wholesome fish and fishery products. Customary quality control regimes were focused on effective hygiene control via the inspection of premises and processing establishments to ensure that guidelines established for Good Hygiene Practices (GHP) and Good Manufacturing Practices (GMP) were adhered to.⁶⁹ The FAO Code of Conduct also aims at avoiding unjustified

⁶⁷ Mary Ann Palma, Martin Tsamenyi and William Edeson, *Promoting Sustainable Fisheries : The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing* (Martinus Nijhoff Publishers, 2010) 177

⁶⁸ Ibid

⁶⁹ Over the past decades new food safety and quality assurance systems have been developed, some examples are: Hazard Analysis Critical Control Point (HACCP), Quality control (QC), International Organization for Standardization (ISO) Quality Assurance (QA)/Quality Management (QM), Standards, Quality Systems, and Total Quality Management (TQM)

sanitary barriers to trade and encourages harmonisation of national legislations in union with international law.

The requirements for global market trade by developed countries and the World Trade Organization (WTO) have changed radically over the past decades. As these changes took place, the trade and economic policies of CARICOM countries had to be adjusted. The outcomes of international laws on trade also affected CARICOM countries. For fisheries CARICOM had to adjust its policies in accordance with those of the WTO and the FAO and sometime even Developed States polices. Emerging from the WTO SPS Agreements, the Small vulnerable economies of CARICOM had to find ways and financial support to upgrade their food safety laws and regime to meet those already rigid regimes of developed countries. CARICOM countries had to further align themselves with the fisheries sustainable development and utilisation goals of the global populace. Policies had to be developed by each country for the monitoring of its flagged vessels and sustainable use of its fisheries resources. Those countries which lack compliance were dealt severe trade sanction. Although the imposition of trade sanctions on fisheries created an increased availability of fish for domestic market; it affected the livelihood of those who depended on it as a significant source of foreign income. Currently, CARICOM countries are still struggling to sustain economic improvement and to participate in the expansion of the global markets for fish and fishery products.

A major concern in the international trade of fish and fish products is IUU fishing. To date no one knows precisely how much of the fish and products traded internationally are resulting from IUU fishing. The lack of suitable controls makes it a serious challenge for States to conclude whether or not fish or fish products traded internationally which have undergone post-harvest processing or those which have been subjected to re-exportation, have been harvested through IUU means. Estimates and studies conducted in relation to the extent of illegal and unreported fishing just arrived at basic conclusions that some fish species that enter international trade, such as tuna, swordfish and tooth fish have widely been the target of IUU fishers.⁷⁰

⁷⁰ Mary Ann Palma, Martin Tsamenyi and William Edeson, *Promoting Sustainable Fisheries : The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing* (Martinus Nijhoff Publishers, 2010) 174

The IPOA-IUU is the overarching agreement that embodies the concept of IUU fishing. Under paragraph 66 of the IPOA-IUU it is stated that; “*States should take all steps necessary, consistent with international law, to prevent fish caught by vessels identified by the relevant regional fisheries management organization to have been engaged in IUU fishing being traded or imported into their territories.... Trade-related measures should be adopted and implemented in accordance with international law, including principles, rights and obligations established in WTO Agreements, and implemented in a fair, transparent and non-discriminatory manner. Trade-related measures should only be used in exceptional circumstances, where other measures have proven unsuccessful to prevent, deter and eliminate IUU fishing, and only after prior consultation with interested States. Unilateral trade-related measures should be avoided.*” Further, in paragraph 67 it is stated that; “*States should ensure that measures on international trade in fish and fishery products are transparent, based on scientific evidence, where applicable, and are in accordance with internationally agreed rules.*”

Within the IPOA-IUU these measures are referred to as Internationally Agreed Market Measures. The trade measures that are exemplified in the IPOA-IUU are to be implemented within the context of international trade in fish and fishery products. The implementation such measures are also to be done jointly with the sustainable development and utilisation of the fisheries resources.⁷¹ In a way, the IPOA-IUU actually reiterates the FAO Code of Conduct for Responsible Fisheries regarding the rights and obligatory principles of the WTO and measures to ensure sustainable development.⁷²

It seems as though a major concern of both the code of conduct and the IPOA-IUU is the application of agreed market measures to trade in a fair, transparent and non-discriminatory manner and this is understood; as it is a principle of the WTO. Notably, the IPOA-IUU does not provide any meaning for its “Agreed Market Measures” terminology; however, it is generally taken in reference to certain types of controls established to adequately safeguard importation

⁷¹ Mary Ann Palma, Martin Tsamenyi and William Edeson, *Promoting Sustainable Fisheries : The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing* (Martinus Nijhoff Publishers, 2010) 187

⁷² Ibid 174

and exportation of fish and fisheries products.⁷³ In the same way, the IPOA requires that states base their fish and fishery products trade measures on the best available scientific evidence. This requirement can be considered as working hand-in-hand with Article XX (g) of GATT 1947.⁷⁴ So essentially, upon completion of assessment of a particular fish stock and the analysis of available data, the importation of particular species can be prohibited by a state for purpose of protecting the species against over fishing, over exploitation and prevention of trade in IUU caught species.

It is well documented that within the international forum, there are states who reserve the right to implement more stringent measure than stipulated in the IPOA-IUU to combat IUU fishing, for example Norway. Rightly so, the IPOA advised that trade related measures should only be taken in exceptional circumstances; if measures taken to prevent and deter IUU fishing proved to be unsuccessful and after prior consultation with interested states. However, the IPOA-IUU further advises that trade measure should only be adopted as a last resort and only if other measure proved futile, this is especially so for restrictions based on IUU fishing infringement.

Catch certification and trade documentation are issues that have been receiving attention globally especially within realm of Regional Fisheries Management Organizations (RFMOs). These tools have recently emerged to facilitate the fight against the trade in IUU caught species. Catch Documentation Scheme (CDS) is the mechanisms established by states to track and monitor catches of certain fish stocks around the world.⁷⁵ The overall objective is to identify where the catch originated by the flag the fishing vessel is flying, the area fished, date and other information related to the catch.⁷⁶ The catch would then be tracked to the market. The national authority of some certification programs only validates catches if it can be confirmed that they were legally obtained. The catch certificate, or copies of the certificate, would accompany the

⁷³ Mary Ann Palma, Martin Tsamenyi and William Edeson, *Promoting Sustainable Fisheries : The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing* (Martinus Nijhoff Publishers, 2010) 187

⁷⁴ GATT 1947 Article XX (g) states: ...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.

⁷⁵ Inter-American Tropical Tuna Commission, 'Consideration of a Catch Certification System' (2002) IATTC-69-14, Inter-American Tropical Tuna Commission 1, 1

⁷⁶ Inter-American Tropical Tuna Commission, 'Consideration of a Catch Certification System' (2002) IATTC-69-14, Inter-American Tropical Tuna Commission 1, 1

product throughout the entire process from unloading, transshipment, processing, export, and wholesale and retail markets through to the final product is purchase by consumers in any market form or processing.⁷⁷

Similarly trade documentation also term as statistical document program (SDP) is in reference to schemes that were developed by Regional Fisheries Management Organizations (RFMOs) where documentation was required to accompany certain fish and fish products through international trade. One of its purposes is to identify the origin of the fish for the purpose of determining levels of unreported fishing.⁷⁸ As these documentation schemes continue to change, they are being complemented by a few other national and regional based systems of documentation. For example the development of new regulations by states with the aim of preventing, deterring and eliminating IUU fishing.

⁷⁷ Inter-American Tropical Tuna Commission, 'Consideration of a Catch Certification System' (2002) IATTC-69-14, Inter-American Tropical Tuna Commission 1, 1

⁷⁸ La Jolla, 'Expert Consultation Of Regional Fisheries Management Bodies On Harmonization Of Catch Certification' (Report No 697, Food and Agriculture Organisation, 9-11 January 2002) 1, 9

Chapter 2. Effects of ICCAT High-Seas Fisheries Regime on CARICOM Fish Trade

1.2.1 Introduction

According to the FAO a lot of pressure is being exerted on the fishing industry globally due to capture fisheries. The FAO further estimated that of the 600 stocks of fish which it currently reports on, 25% are overfished and a further 52% fully exploited.⁷⁹ While overfishing and its consequences are of global highlight, the issue of IUU fishing remains a severe threat to the sustainability of whatever remaining fish stocks there are in the oceans.

1.2.3 ICCAT

Within recent times Regional Fisheries Management Organisations (RFMOs) and some states have been sharing similar sentiments regarding the trade in fish caught on the high-seas. The high-seas jurisdiction for the CARICOM Region lies with the International Commission for the Conservation of Atlantic Tunas (ICCAT) which is a tuna RFMO. To further explain, CARICOM is a regional grouping of islands in the Caribbean, the shores of these islands are washed by the Caribbean Sea on the west and the Atlantic Ocean on the east. Within the high-seas fisheries regime the oceans of the world are regulated by RFMOs; this is to facilitate the sustainable harvesting and management of fisheries resources found on the high-seas. The CARICOM islands are located in the western and central Atlantic; the RFMO governing fishing activities in this portion of the Atlantic is ICCAT. Given that the global fish stocks are on the decline, most RFMOs are playing the role of enforcement and advisory bodies to flag states so as to ensure the conservation and management of these stocks.

⁷⁹ Grimur Valdimarsson, 'Fish in the Global Food Chain: Challenges and Opportunities', *FAO and University of Akureyri Symposium*, (1–2 February 2007) 17

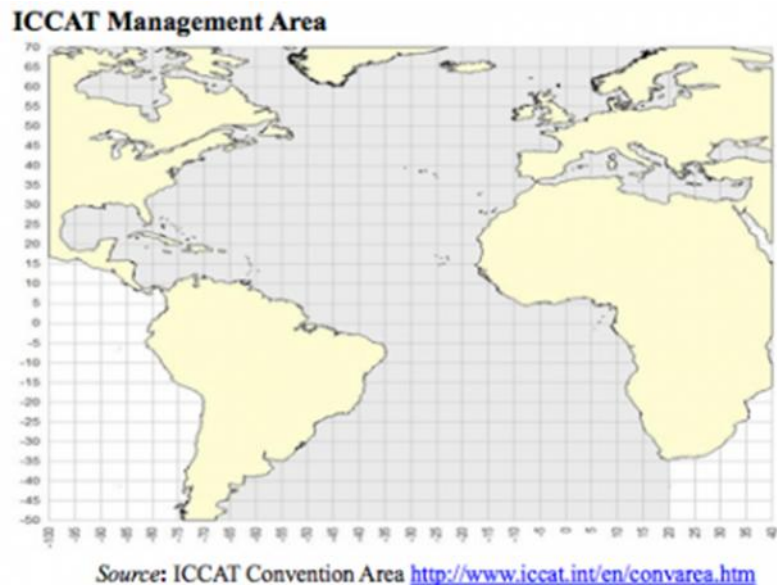


Figure 2 - The map is an illustration of the area of competence for ICCAT (all of the light blue shaded area)

The management of fisheries on the high-sea presents a naturally intrinsic challenge to all wanting to conserve and manage fisheries in this area. Flag states are being task with the responsibility of exercising control over vessels flying their flag and fishing on the high-seas. This however rarely occur as some flag states often lack the political will to exercise effective control over their vessels and sometimes, they just do not have the capabilities to do so, even if they would like to. As a result of this, there is a large increase in illegal, unregulated and unreported (IUU) fishing activities.⁸⁰

The International Commission for the Conservation of Atlantic Tunas (ICCAT) has recommended trade sanctions (import bans) against countries whose fishing vessels and activities undermine the effectiveness of the conservation and management measures of the organisation. ICCAT is responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and adjacent seas. It was established in 1969, at a Conference of Plenipotentiaries and is directly concerned about 30 species of tuna and tuna like fish. These include: Yellowfin tuna, Bigeye tuna, Skipjack, Albacore, Atlantic Bluefin, Southern Bluefin, Mediterranean

⁸⁰ Richard Tarasofsky, 'Enhancing the Effectiveness of Regional Fisheries Management Organizations through Trade and Market Measures' (2007) 07/04 Energy, Environment and Development Program 1, 2

Swordfish, sailfish, blue and white marlin, Spanish and king mackerel, small tunas such as black Skipjack, frigate tuna, and Atlantic bonito. The organisation also assumes responsibility for some pelagic sharks which are normally exploited in tuna fishing. These sharks are found in the Convention area but are not currently under the jurisdiction of other international fishery organizations. In addition, ICCAT conducts scientific research in order to obtain information on the abundance, biometry and ecology of fish within its convention area, also the oceanography of their environment, and the effects of natural and human factors upon their abundance. The goal of ICCAT is to preserve the populations of tuna and tuna like species “*at levels which will permit the maximum sustainable catch for food and other purposes*”.⁸¹

Trade and market measures can be improved and new ones can be implemented by RFMOs in an effort to better achieve the aims of the organisation. As a complement and a companion to measures relative to fish quotas, fishing rights and gear; trade and market measures can be the link that reinforces the efficiency and success of a regional fisheries management regime, thus, acting as powerful economic levers to reinforce rules.⁸² Given the short comings of numerous flag states, RFMOs, have been moving towards the strengthening of their reliance and dependency on the ability of trade and market measures for effective enforcement of RFMOs conservation and management measures. States have adopted numerous trade and market measures that have emanated from RFMOs. These include but are not limited to: (a) the requirement or requisitioning of catch or trade documentation as a condition prior to landing or transshipping in port, (b) the prohibition of landing or transshipment by certain vessels or suspected vessels, (c) the imposition of trade sanction, like import bans, against parties or non-parties for harvesting of fish species protected by an RFMO and (d) requiring products destined to be imported to be appropriately labelled and certified by an accredited body.⁸³ It must be further understood that trade related measures comprise just a part of a much wider array of

⁸¹ International Commission for the Conservation of Atlantic Tunas (ICCAT), *Description of national level detailed assessment of the state of fish stocks* Organisation for Economic Co-operation and Development <<http://www.oecd.org/tad/fisheries/ICCAT.pdf>>

⁸² Richard Tarasofsky, ‘Enhancing the Effectiveness of Regional Fisheries Management Organizations through Trade and Market Measures’ (2007) 07/04 Energy, Environment and Development Program 1, 2

⁸³ An analysis of the implementation of these measures and other measures adopted by RFMOs can be found within the convention of the various RFMOs. These measures are further binding to states party to the RFMO or those who agreed to cooperate.

measures that have been adopted by the RFMOs in an effort to achieve all around effective conservation and management and to combat IUU fishing.

Within the regime of ICCAT numerous trade measures have been adopted to encourage and ensure compliance with the conservation and management measures that have been established. Included among the list of conservation and management measures for ICCAT are: Technical characteristics of the fishing gear, Closed fishing season, records of vessels authorised to fish, landing and transshipment of fish, implementation of a Port Sampling Plan aimed at collecting fishery data and Catch limits and quota. The Resolution by ICCAT Concerning Trade Measures Paragraph 6 (c) states; “*c) the adoption of non-discriminatory trade restrictive measures*” as an action that can be taken by the Compliance Committee against Contracting Parties and Cooperating non-Contracting Parties who “*...failed to discharge their obligations under the ICCAT Convention in respect of ICCAT conservation and management measures, in particular, by not taking measures or exercising effective control to ensure compliance with ICCAT conservation and management measures by the vessels flying their flag*” or non-Contracting Parties “*that have failed to discharge their obligations under international law to co-operate with ICCAT in the conservation and management of tuna and tuna-like species*”.⁸⁴

In previous years ICCAT have emphatically demonstrated its powers against states that undermined its management measures. In 1994 and 1995 ICCAT implemented the Bluefin Tuna Action Plan and Swordfish Action Plan respectively. These two action plans can lead to relevant species from non-member states being prohibited from importation due to vessels of those states undermining the effectiveness of the ICCAT conservation measures for those species.⁸⁵ Contained in each individual Action Plan are procedures leading up to the adoption of trade measures against states for non-compliance. Firstly, ICCAT identifies non-members whose vessels were found fishing for the relevant species in an unsustainable manner that undermines relevant conservation and management measures. ICCAT then requests identified non-members to take corrective actions against the conservation measures that were violated. Failing to comply

⁸⁴ Resolution by ICCAT Concerning Trade Measures 03-15, Paragraph 2 a (i) and (ii)

⁸⁵ FAO Fisheries Department, *Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, (FAO Technical Guidelines for Responsible Fisheries, No. 9, Rome, FAO 2002) 49

will cause ICCAT to oblige all its members to refuse importation of fish of the species from the non-member that was identified.⁸⁶ Since 1996 a number of non-members who violated measures under each Action Plan have been identified and have had prohibition imposed.⁸⁷ In January 1998 ICCAT prohibited the importation of Bluefin Tuna from Panama. Panama subsequently rectified its non-compliance issues and became a member of ICCAT in December 1998.⁸⁸ ICCAT also adopted measures which prohibit the importation of swordfish and Bluefin tuna from its own members if found in breach of relevant conservation measures, namely, exceeding quota limits for two successive management periods.⁸⁹

The issue of unreported and unregulated catches of tuna in the conservation area is another problem that ICCAT has been focusing on by implementing trade measures. These unreported and unregulated catch incidents are conducted by large-scale long-line vessels. ICCAT made it a requirement for its members to submit to the Secretariat varying import and landing data relating to products derived from frozen tuna. Based on other critical information such as : catch data gathered by the Commission; trade information on these species obtained from National Statistics; the ICCAT statistical document programs; the list of the IUU vessels adopted by ICCAT, along with any other information obtained in the ports and on the fishing grounds, ICCAT can then identify both contracting parties and non-contracting parties whose vessels fail to comply with the conservation and management measures applied and request that these contracting and non-contracting parties take steps to rectify the act or omission that ICCAT has identified.⁹⁰ Failure of states to take remedial action can lead to the imposition of import restrictions on states whether member or non-member. For instance in 2000 ICCAT imposed a ban on the importation of Bigeye Tuna from Belize, Cambodia, Honduras, Equatorial Guinea and St Vincent and the Grenadines; a combination of member and non-member states for failing

⁸⁶ Currently measures stipulated under each Action Plan have been adopted by the Resolution by ICCAT Concerning Trade Measures 03-15.

⁸⁷ FAO Fisheries Department, Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, (FAO Technical Guidelines for Responsible Fisheries, No. 9, Rome, FAO 2002) 49

⁸⁸ Recommendation by ICCAT Concerning the Importation of Bluefin tuna and its Products from Panama

⁸⁹ Recommendations and Resolutions Adopted at the 1996 Commission Meeting

⁹⁰ FAO Fisheries Department, Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, (FAO Technical Guidelines for Responsible Fisheries, No. 9, Rome, FAO 2002) 50

to report.⁹¹ Over the years ICCAT has been operating a Bluefin Tuna Statistical Document program. This program was ICCAT's first attempt at curbing the IUU fishing problem for Bluefin tuna in the Atlantic region. Under this program ICCAT required all member states to provide statistical documents validated by the flag State of the fishing vessel to accompany imported Bluefin tuna.⁹² Other RFMOs have adopted and implemented similar schemes called Catch Documentation Schemes (CDS) such as CCSBT, IOTC and CCAMLR.⁹³ These RFMOs paved the way for states to adopt similar schemes to be used as verification that catches were sustainably harvested and that the fish was not derived from IUU fishing.

The IPOA-IUU provides the fundamental role played by RFMOs in the fight against IUU fishing. The nature of RFMOs allows them to adopt resolutions or conservation and management measures to which their members are bound. This ability to impose binding agreements on its members puts RFMOs in an advantageous position to develop and implement the necessary tools to combat IUU fishing, arguably, even more so than organisations having exclusive advisory or scientific functions.⁹⁴ Some tools that have been implemented by RFMOs to combat IUU fishing are: IUU fishing vessel listing, restricting the authorisation of vessels to fish through the flag state and regulating of fishing activities at sea and in port.

A range of measures and requirements are also implemented by RFMOs in order for states to have effective control over vessels flying their flag; fishing activities must be regulated, vessel position known, ensuring vessel compliance with management regimes are but a few of these requirements. The world is conscious of IUU fishing and its ramifications, no person or state wants to support or be known as a supporter of IUU fishing or its activities. The structure of international fisheries law is such that trade sanctions for IUU fishing are tightly wrapped in these binding and non-binding instruments.

⁹¹ Recommendation by ICCAT Concerning the Importation of Atlantic Bluefin Tuna, Atlantic Swordfish, and Atlantic Bigeye Tuna and their Products from Belize 02-16

⁹² FAO Fisheries Department, Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, (FAO Technical Guidelines for Responsible Fisheries, No. 9, Rome, FAO 2002) 50

⁹³ Ibid

⁹⁴ Mary Ann Palma, Martin Tsamenyi and William Edeson, Promoting Sustainable Fisheries : The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing (Martinus Nijhoff Publishers, 2010) 204

Chapter 3. Effects of the EU and US Fisheries Legislation on CARICOM Fish Trade

1.3.1 Introduction

As RFMOs progress towards promoting sustainable fisheries and combatting IUU fishing, instruments such as the IPOA-IUU has been utilized and has made significant contribution to the approach in addressing fisheries concerns. Regarding states, it is made to seem as if the main issue concerning international trade in fish and fisheries products is purely from a sustainable management standpoint. Within the fisheries and conservation legislations of states, IUU fishing is of primary focus. Through trade and internationally agreed market measures found in the IPOA-IUU, individual states have strengthened their legislation to address global fisheries concerns.⁹⁵ Two examples of measures addressing IUU fishing that have potential trade implications are those adopted by the EU and US which will be examined below.

A huge percentage of IUU activities conducted globally is being done by vessels registered under flags of convenience (FOC). Some trade and market measures, although unilateral in nature, are included in states legislations targeting FOC countries. The IPOA-IUU gave states the power to include trade and market measures in their legislations, however, during the development of these measures found in the IPOA-IUU some developing states were very sceptical about the measures and feared that they can be used discriminately against them.⁹⁶ Nevertheless, there has never been any evidence of abuse of these unilateral measures developed by states to block the entry of IUU-caught product into territories.⁹⁷ In addition to measure found in the IPOA-IUU, these measures; although unilateral in application draw largely from existing RFMO measures such as catch certification and IUU vessel listing. These “responsible unilateral measures” developed by states have been welcomed by the international community as they have been viewed as means that have sorted to curb the scope of the activity.

⁹⁵ International trade and market measure are found in the IPOA-IUU. These measures are utilized by RFMOs and individual states alike to aid in combatting IUU fishing.

⁹⁶ David J Doulman, ‘Challenging Times for Sustainable Fisheries: Combating Illegal, Unreported and Unregulated Fishing’ (2012) 18 Vertic Brief 1, 9

⁹⁷ Ibid

1.3.2 The EU

The EU in 2008 decided to take a major step in the fight against IUU fishing through the approval of Regulation No 1005/2008. The version of definition for IUU used by the EU was obtained from the IPOA-IUU. The measures outlined in the EU IUU Regulation apply to all IUU fishing and related activities conducted in EU waters, maritime zones under the jurisdiction of third States, and on the high seas. According to the EU Regulation No 1005/2008 only vessels of third states which can provide information regarding the legality of the catch and having the information validated by their flag state will be allowed to enter in EU ports. In order to facilitate the importation of fish into the community, the EU requires a certificate validated by the flag state and containing information demonstrating the legality of the fish products. The certificate further requires additional information proving that the flag state is fulfilling its duties under international law ensuring that flagged vessels comply with international rules on conservation and management of fisheries resources. The EU regulation also made provision for the listing of fishing vessels on an IUU list that it has established. Based on information obtained by the EU, vessels will be listed as such when there are sufficient grounds that fishing vessels flagged by a third state have been engaged in IUU fishing and the flag state has not taken satisfactory action to address such IUU fishing. Not only did the regulation made provisions to list IUU vessels, flag states are also affected. After being given enough time by the EU to respond to the breach in conservation and management measures, the EU will *adopt non- discriminatory, legitimate and proportionate measures with respect to those States, including trade measures.*⁹⁸

Under the regulation, the importation and exportation of marine fisheries products are prohibited from entering the EU territories unless they have been validated by the flag or exporting state and provided with the necessary documentation.⁹⁹ This is a move that mirrored ICCAT, CCSBT, IATTC and IOTC implementation of Statistical Document Program and Catch Certification. The regulations provides for the listing of vessels and flag states who failed to comply with internationally agreed and RFMO measures to combat IUU fishing.

The EU will also establish and publicise a list of non-cooperating states. Non-cooperating states according to the EU are those states that fail to discharge their obligations to ensure that their

⁹⁸ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community System to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, paragraph 10, 15, 25 and 31.

⁹⁹ David J Doulman, 'Challenging Times for Sustainable Fisheries: Combating Illegal, Unreported and Unregulated Fishing' (2012) 18 Vertic Brief 1, 9

flagged vessels adhere to EU agreed conservation and management measures. In addition, fish imports from these states and their vessels will be prohibited and accompanying catch certificates rejected. Purchase and/ or reflagging of non-cooperating state's vessels is prohibited, vessels will be denied entry for the purpose of refuelling and other services. Private trade arrangements between nationals of non-cooperating states shall be prohibited or terminated, a proposal will be made for the termination of any standing bilateral fisheries agreement or fisheries partnership agreement with such state and the EU will not enter in any further bilateral fisheries agreement or fisheries partnership agreements with such state.¹⁰⁰

Prior to the implementation of the regulation states from whom the EU imported marine products were provided with ample advance notice, yet a number of these countries encountered significant difficulties in complying with the rigorous requirements of the regulation.¹⁰¹

St Vincent and the Grenadines (SVG) has never been listed as being in support IUU in accordance with the provisions in the EU Regulations; however, most recently in January 2012 a detailed letter was sent from the EC Secretariat to the Fisheries Division of SVG. The letter gave a report of S VG flagged vessels conducting at sea transshipment with a mother ship flagged to another state. SVG immediately conducted its own investigation and made urgent efforts to rectify the issue. In November 2012, Belize another CARICOM member state operating an open registry was also served with a notice to control its flagged fishing vessels.¹⁰²

Incorporated in the regulation also are control measures for third country fishing vessels that want to utilize EU member states port facilities. Before transshipment of fish can occur between EU flagged vessel and fishing vessel flagged by a third country, there are certain conditions which must be fulfilled and transshipment must be conducted at a designated port.¹⁰³

¹⁰⁰ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community System to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Articles 31-38

¹⁰¹ David J Doulman, 'Challenging Times for Sustainable Fisheries: Combating Illegal, Unreported and Unregulated Fishing' (2012) 18 *Vertic Brief* 1, 10

¹⁰² Adele Ramos, 'Belize trying to avert EU sanctions over IUU fishing on high seas', *The Amandala* (online), 14 June 2013 <<http://amandala.com.bz/news/belize-avert-eu-sanctions-iuu-fishing-high-seas/>>

¹⁰³ Further information on Port State Control established by the EU is documented in Section 1 Article 4, 5 and 6 of Council Regulation (EC) No 1005/2008 of 29 September 2008.

1.3.2.1 Health and Safety Standards (SPS)

By far the EU is the largest importer of seafood, aquaculture and fish products globally. Rules for the importation of fish and fishery products into the EU are harmonised, this means that the same rules apply for all countries in the EU territory. Regarding the importation of fish and fishery products from non-EU states the European Commission acts as the negotiating partner defining import conditions and certification requirements. In other words, for third countries to export aquaculture and fishery products to the Community, the EU has to set the standards that third countries must meet before permission can be granted. Meeting some of these standards can be extremely difficult for developing states as they pose financial, policy and institutional challenges as is the case experienced by St Vincent and the Grenadines. These health and safety standards laid out by the EU for developing countries to meet are considered by many developing states as a technical barrier to trade (TBT). In addition, they are also being used in conjunction with the EU already stringent IUU regulation, that is; requirements for the EU health and safety standards are also implemented on countries and in particular flag states for failing to discharge obligations to ensure that their flagged vessels adhere to agreed conservation and management measures. Ideally, they are implemented within the realm of the WTO/ GATT Article XX (g), but their mode of implementation and intentions are sometimes masked. Generally, when it comes to the food industry there is a wide array of different standards and regulations affecting the industry. These include: hygiene standards, sanitary and phytosanitary standards, or maximum levels relating to aflatoxin or pesticides content.

The responsibility for food safety in the European Union lies with the Directorate- General for Health and Consumers (SANCO). Understandably, the aim of the importation rules for aquaculture and fishery products from developing countries is to ensure that all imports adhere to the same high hygiene and consumer safety standards as products from the EU Member States.¹⁰⁴ Developing countries are confronted by capacity challenges in adhering to food safety standards similar to those faced in implementing the EU IUU Regulations. For instance, the EU require laboratory tests be conducted on fishery products and the environment from which they were obtained. Laboratories conducting these tests must be accredited institutions and the developing state must bear the cost of conducting such tests. Most developing states do not have

¹⁰⁴ European Commission, 'EU Import Conditions for Seafood and other Fishery Products' *Directorate-General for Health and Consumers*, 1

the financial resources, infrastructure or expertise to develop such a laboratory, at best only basic microbial test can be conducted with a great degree of accuracy. The possibility exist that these tests can be conducted outside of the country, but even that option has a measure of cost attached to it. Currently SVG is in a position where it has a laboratory capable of conducting ‘above basic’ tests with accurate results, however the EU claims that it is insufficient. SVG attempted to utilize the resources of an accredited regional laboratory and this proved to be a very costly option. As a result SVG is without a market for its fishery products in the EU. Further to laboratory capabilities and accreditation, the EU hygiene legislation contains precise requirements on the structure of and types of fishing vessels, landing sites, fish processing establishment and product flow, the operational processes to be conducted, freezing, storage and transportation.¹⁰⁵

The Importation of fishery products into the European Union is subjected to official certification of a Competent Authority. This certification is based on the European Commission recognising the presence of a Competent Authority in the third country. This formal recognition is a pre-requisite for the country to gain eligibility and permission to export fish products into the EU territory. It further shows that some degree of reliability and accountability has been placed on the Competent Authority by the Commission. The Competent Authority must be a public entity armed with the necessary legislative powers and resources for ensuring credible inspection and controls all the way through the process chain, encasing all applicable areas of hygiene and public health.¹⁰⁶ In essence, the Competent Authority must be sanctioned, organized and resourced to implement efficient inspection and assure credible public health and animal health confirmations in the accompanying fishery products certificate destined for the EU. Additionally the EU will only permit imports from approved fishing vessels and establishments that have been inspected by the competent authority of the third country and found to meet EU requirements. The EC further maintains and publish a list of these approved establishments on its website.

¹⁰⁵ European Commission, ‘EU Import Conditions for Seafood and other Fishery Products’ Directorate-General for Health and Consumers, 2

¹⁰⁶ European Commission, ‘EU Import Conditions for Seafood and other Fishery Products’ Directorate-General for Health and Consumers, 2

1.3.2.2 Traceability

Another aspect of the EU certification system is traceability. The EU Traceability Regulation No.178/2002 defines ‘traceability’ as “*the ability to trace and follow a food, feed, food-producing animal or substance intended to be, or expected to be incorporated into a food or feed, through all stages of production, processing and distribution*”.¹⁰⁷ This aspect of traceability was cited as a major deficiency within the EU export regime of SVG. The EU legislations on food production require that food business operators implement and maintain procedures, based on HACCP principles. HACCP is a risk-based system that can be adopted by all food businesses irrespective of the size and nature of the business.¹⁰⁸ The EU also developed laws governing fish and fishery products on board fishing vessels. These laws cover hygiene conditions on board fishing vessels, equipment and facilities on fishing vessels, health standards applicable to fishery products and packaging, storage and transportation of fishery products. Laws were even developed to govern the use of potable water in relation to fish processing.¹⁰⁹ Further to that, the EU set limits for certain micro-organisms in specified, these include: *Listeria monocytogenes* in ready-to-eat food, the presence of *Salmonella* in cooked crustaceans and molluscan shellfish, the quantity of Histamine to be found in species associated with high amounts of histidine and *E. coli* and coagulase-positive staphylococci in shelled and shucked products of cooked crustaceans and molluscan shellfish.¹¹⁰

1.3.3 The US

US in 2007 made amendments to their fisheries act the ‘Magnuson-Stevens Fishery Conservation and Management Reauthorisation Act’. The primary focus of the amendments is the issue of IUU fishing. In the Magnuson-Stevens Fishery Act, authorities added Section 609 on IUU fishing. This section addresses two major components regarding fisheries domestic and globally; firstly, the US established its own definition of IUU fishing: “(A) *Fishing activities that violate conservation and management measures required under an international fishery management*

¹⁰⁷ EU Traceability Regulation No.178/2002 was entered into force in January 2005.

¹⁰⁸ Alan Reilly, ‘From Farm to Fork – New European Food Hygiene Regulations’, *FAO and University of Akureyri Symposium*, (1–2 February 2007) 51

¹⁰⁹ *Ibid*

¹¹⁰ Alan Reilly, ‘From Farm to Fork – New European Food Hygiene Regulations’, *FAO and University of Akureyri Symposium*, (1–2 February 2007) 51

agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and by-catch reduction requirements;

(B) Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; and

(C) Fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.”¹¹¹

The second component of the amendments involves the listing of nations whose vessels have been found to be engaged in IUU fishing. It states: “*The Secretary shall identify, and list... (1) Fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year in fishing activities or practices;*

(A) In waters beyond any national jurisdiction that result in by-catch of a protected living marine resource; or

(B) Beyond the exclusive economic zone of the United States that result in by-catch of a protected living marine resource shared by the United States;

(3) The nation has not adopted a regulatory program governing such fishing practices designed to end or reduce such by-catch that is comparable to that of the United States, taking into account different conditions.”¹¹²

According to GATT/ WTO trade should be non-discriminatory, transparent and unilateral measures should be avoided. Thus far the US has been one of the major violators of these WTO principles. This move by the US to implement trade measures geared towards discouraging foreign by-catch intensive harvesting methods in tuna and shrimp fisheries can be considered as a unilateral trade measure. The listing of nations whose vessels are found to be involved in IUU fishing is not only unilateral, it is also discriminatory. Only the US and EU have implemented such a listing regime, furthermore as the FAO stated 50% of all fish traded originate from

¹¹¹ Magnuson-Stevens Fishery Conservation and Management Reauthorization Act Section 609

¹¹² Ibid 610

developing countries also the majority of states with open vessel registry are developing states. The US listing these states as being in support of IUU is considered as discrimination against the states.

In its fight against IUU fishing, in 2009 the US published its first biennial US Congress report identifying countries whose vessels have been engaged in IUU fishing. Included in the report were six countries whose vessels were involved in IUU fishing during the period 2007 to 2008.¹¹³ In addition to publishing the list of IUU countries the US also published the description of corrective actions taken by these countries in order to address their IUU situation.¹¹⁴ Also outline in the Magnuson-Stevens Fishery Act, the US Government will work along with countries that it has identified as being in support of IUU in taking remedial actions against IUU fishing.¹¹⁵

Conversely, if a country fails to take action, the US Government could impose import unilateral sanctions on fisheries products from that particular country.¹¹⁶ Upon completion of the remedial process each country will be certified by the US Government as either having adopted effective measures to combat IUU fishing or as still having vessels engaged in IUU fishing. In case of the latter, the vessels of that country could be denied entry into US ports and the importation of fish and fisheries products prohibited.¹¹⁷

Contained in the biennial congress report that US authorities will create is information indicating that the identified state has produced sufficient evidence of enforcement action against the accused vessel for IUU fishing, that the RFMO has acknowledge that the state has adopted and implemented sufficient measures to eliminate and deter IUU fishing and exercise control over its flagged vessels.¹¹⁸ Additionally the state must also provide evidence that it has adopted measures

¹¹³ David J Doulman, 'Challenging Times for Sustainable Fisheries: Combating Illegal, Unreported and Unregulated Fishing' (2012) 18 Vertic Brief 1, 10

¹¹⁴ Ibid

¹¹⁵ Ibid

¹¹⁶ Ibid

¹¹⁷ Ibid

¹¹⁸ Mary Ann Palma, Martin Tsamenyi and William Edeson, Promoting Sustainable Fisheries : The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing (Martinus Nijhoff Publishers, 2010) 242

that are equivalent to the US for the purpose of reducing or ending by-catch and also evidence that the state has or will implement a management plan for the purpose of obtaining species specific data supporting international stock assessment and conservation effort.¹¹⁹ In essence the US has stipulated that unless countries with limited financial resources, limited expertise, limited infrastructure and limited institutional framework can adopt their (the US) system of enforcement, then they will be considered as non-cooperating and listed as being in support of IUU fishing. Being deemed a non-cooperating state by the US would mean that private trade agreements between the US nationals and non-cooperating States would be prohibited and also prohibition of fish imports from those states.

In September 2011 both EU and the US made an agreement to coordinate activities combating IUU.¹²⁰ The agreement involves them working together for the improvement and expansion of multilateral catch documentation and certification requirements, including electronic schemes.¹²¹

Regarding the US definition of IUU fishing, the US assumes responsibility for areas beyond its national jurisdiction and for unregulated fisheries.¹²² The IPOA-IUU was specific in its scope; the amended US Fisheries Act is further assuming responsibility for regulating activities relative to habitats and ecosystems not addressed in the IPOA-IUU.¹²³ In addition, the US Government will solicit supporting data gathered by RFMOs, international organisations, institutions and other states as well as its own which can determine that the vessels of a particular state have been engaged in IUU fishing. This data will assist with the identification of States whose vessels engage in IUU fishing and will be used as evidence against the identified state in the congressional report to be produced by the US.¹²⁴

¹¹⁹ Mary Ann Palma, Martin Tsamenyi and William Edeson, *Promoting Sustainable Fisheries : The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing* (Martinus Nijhoff Publishers, 2010) 243

¹²⁰ David J Doulman, 'Challenging Times for Sustainable Fisheries: Combating Illegal, Unreported and Unregulated Fishing' (2012) 18 *Vertic Brief* 1, 10

¹²¹ *Ibid*

¹²² Mary Ann Palma, Martin Tsamenyi and William Edeson, *Promoting Sustainable Fisheries : The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing* (Martinus Nijhoff Publishers, 2010) 240

¹²³ *Ibid*

¹²⁴ *Ibid* 241

There are no clearly defined methods for the US to gather fisheries violation information against other states. This thus implies a lack of transparency in the system used by the US; the data gathering system is not definite and is therefore contrary to the principles of the WTO. The data gathering system is based on the ability of the US to validate testimony and evidence; to determine if multiple sources have provided information supporting the identification. The system however takes into account the data collections methodology and the specificity of the information provided. The credibility of the individuals or organisations providing the information is also considered and so too is the susceptibility of the information to tampering and falsification.¹²⁵ All in all, the information obtained whereby the US can base their accusation against states and their flagged vessel is nothing but just ‘hear say’.

Both the EU and the US have adopted similar legislations and strategies in the fight against IUU fishing. Basically both countries may consider listing a state as being non-cooperating if; the state fails to perform its duties whether considered as a flag, port, coastal, or market State, if the state fails to take measures against IUU fishing or access to fish of IUU origin, failure to cooperate with the EU or US regarding response to queries, if the state has not taken sufficient measures to eliminate and deter IUU fishing and its actors, based on the existing capacity of the competent authorities, whether the state has ratified the relevant international agreements, based on the status of the State as party to RFMOs, the history, nature, extent and gravity of the IUU fishing, and any action performed by the state that may result in the diminishing of the effectiveness of applicable laws.

¹²⁵ Mary Ann Palma, Martin Tsamenyi and William Edeson, *Promoting Sustainable Fisheries : The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing* (Martinus Nijhoff Publishers, 2010) 241

PART 2. REGIONAL FRAMEWORK FOR INTERNATIONAL TRADE OF FISH IN THE CARICOM REGION

2.1 Introduction

The figures for fish trade in CARICOM is either tied up in total agricultural exports for each country or total amount of fish and fish products traded internationally. Importantly, the FAO noted that fish constitute up to 20% of all agricultural goods traded internationally. Fish trade within the region is also relatively small, with only a few species being exported throughout the region. As coastal states, each island has certain quantity of a particular stock in its waters, those islands with very little or none, import from the other islands who have. For instance most islands import shrimps and crab from Trinidad and Tobago; St Lucia and Barbados import conch and lobsters from St Vincent and the Grenadines and Grenada. Other species traded throughout the region include: Flying-fish, Snappers and inshore pelagic native to individual islands. In intra-regional trade Jamaica and Trinidad and Tobago are currently two of the largest exporter of fish and fish products in the region.

CARICOM exports in 2008 accounted for 16.3% of total CARICOM countries' exports globally; on the other hand, CARICOM imports for other parts of the world were lower and accounted for 13.3% of total CARICOM countries' imports.¹²⁶ So, it can be said that CARICOM countries export more to each other than they import from each other.

At present agriculture and fisheries in CARICOM is based on a combination of artisanal structures and low input peasant-type production units employing laborious techniques for harvesting. This system of operation is under a considerable amount of pressure.¹²⁷ Factors contributing to this include; the steady decline in the attractiveness of traditionally produced goods, for instance most fish and fish products are still being exported without secondary processing. They are exported as gutted products chilled in ice and lack any form of attractive packaging or even a convenient market form like fillet or steak which would ease preparation

¹²⁶ The Shridath Ramphal Centre for International Trade Law, Policy and Services 'Revised Treaty of Chaguaramas Establishing the Caribbean Community and the CARICOM Single Market And Economy: Factsheet' (Factsheet, The University of the West Indies, April 2011) 2

¹²⁷ CARICOM, Office of Trade Negotiation 'CARICOM-Canada Negotiations: Prospects for the CARICOM Agriculture and Fisheries Sector' (Trade Brief Ref: 31000.3/1-2010-07-28, CARICOM Secretariat, 28 July 2010) 1

and minimize handling.¹²⁸ Other factors are; increasing competition from larger producers of more developed countries, the reduction in capability of governments to protect the sector because of commitments made to international development financing bodies, and multilateral and bilateral trade commitments, and finally high input cost to production.¹²⁹

Chapter 1. Trade Framework under CARICOM

Member states of the Caribbean Community (CARICOM) have made significant strides regarding regional integration. The region has moved from forming the Caribbean Free Trade Area (CARIFTA) in 1968, to the Common Market in 1973, and finally, in 2001 the CARICOM Single Market and Economy (CSME), with the signing of the Revised Treaty of Chaguaramas.¹³⁰ The Revised Treaty not only created the framework for the removal of legal, regulatory and tariffs barriers by member states on trade in goods, it also provides the right of establishment, ability to provide services such as banking and finance. The treaty enabled the movement of capital and current transactions as well as the movement of skilled community nationals. The equality, transparency and predictability formed by the Revised Treaty are intended to simplify and increase intra-CARICOM trade for the mutual development of states within the CARICOM Region.

The creation of the CARICOM Single Market manifested opportunities for the expansion of possibilities in trade within CARICOM. It also provided a stronger negotiating voice for the region so that CARICOM can advance and coordinate regional trade policies.¹³¹ One such policy is the CARICOM Common Fisheries Policy (CFP) which discusses the implementation of numerous fisheries related regimes in the region.

¹²⁸ Most LDCs in CARICOM do not have already developed fish products neither a brand, fresh fish is still being exported packed in ice and in leak proof boxes without and professional labeling and identification.

¹²⁹ CARICOM, Office of Trade Negotiation 'CARICOM-Canada Negotiations: Prospects for the CARICOM Agriculture and Fisheries Sector' (Trade Brief Ref: 31000.3/1-2010-07-28, CARICOM Secretariat, 28 July 2010)1

¹³⁰ The decision was made in 1989 to transform the Common Market into a single market and economy. For this to take place the Treaty of Chaguaramas needed to be revised, Inter-governmental Task Force was established in 1992 to work on the revision of the Treaty. 1993 to 2000 the Inter-governmental Task Force produced 9 protocols which were combined to produce The Revised Treaty of Chaguaramas Establishing the Caribbean Community, including the CARICOM Single Market and Economy.

¹³¹ Dr Delroy S Beckford, 'Trade Remedies within the CARICOM Single Market and Economy: Some Thoughts on the Challenge for Achieving a Coherent Administration' (Research Paper, Rutgers University) 1

The CARICOM Common Fisheries Policy was born as a result of the United Nations General Assembly Resolution 54/225 on the initiative of Caribbean States headed by members of CARICOM. The Resolution was adopted on the 15th February 2000 and was geared towards the promotion of an integrated management approach to the Caribbean Sea with a view of sustainable development.¹³² The Vision as accepted by Member States at the First Meeting of the Working Group on the Common Fisheries Regime calls for *‘Sustainable use and management of the living marine resources and ecosystems of the Caribbean through increased cooperation and collaboration among CARICOM Member States and Third States for the improved welfare of their peoples.’*¹³³ Two objectives were also forwarded to be recognised as goals of the CARICOM Common Fisheries Policy: firstly; *Optimal utilisation through efficient and effective management of the living marine resources of the Caribbean Community within the context of the CSME and in accordance with international obligations with a view to maximizing the social and economic benefits to the states of the Communities.*¹³⁴ Secondly; *Sustainable use of the living marine resources of the Caribbean Community within the context of the CSME and in accordance with international obligations with a view to maximising the social and economic benefits of the peoples of the Community.*¹³⁵

The CARICOM Common Fisheries Policy is required to perform both advisory and management functions and is further expected to play an advisory role in relation to access to and management of fisheries resources; research and data collection and marketing and trade of fish and fish products among other things.¹³⁶ The CSME called for the provision of greater access to fisheries resources for the nationals and vessels of Member States and this view is supported by the CARICOM CFP.¹³⁷ In accordance with the CSME, access to the resources should be granted to all CARICOM Member States in a non-discriminatory manner, therefore on this basis surplus

¹³² Carl Dundas and Carlyle Mitchell, ‘A Common Fisheries Regime for the Caribbean Sea’ (CARICOM Secretariat, July 2004) 15

¹³³ Jennifer Cruickshank et al, ‘Implementing Mechanism for the Common Fisheries Policy and Regime’ (Discussion Paper, Caribbean Regional Fisheries Mechanism, 2005) 11

¹³⁴ Ibid 12

¹³⁵ Ibid

¹³⁶ Ibid

¹³⁷ Carl Dundas and Carlyle Mitchell, ‘A Common Fisheries Regime for the Caribbean Sea’ (CARICOM Secretariat, July 2004) 17

stock found in regional fisheries and in the territorial waters of Member States will have to be shared to expedite the intra-regional movement of capital and labour in the region's fisheries.¹³⁸

The rules of the Revised Treaty of Chaguaramas establishing the CARICOM Single Market is fashioned in the light of the WTO/ GATT 1947. The rules of the CARICOM Single Market are carefully crafted so as to allow for the free movement of goods among CARICOM Member States.¹³⁹ The Community also has in place Rules of Origin; these are guidelines specifying which goods qualify as originating within the Community for the purpose of determining appropriate import and export duties.¹⁴⁰ Most fish and fish products originating from CARICOM Member States do not carry a tariff except to encourage sustainable harvesting and trade. For example; in St Vincent and the Grenadines fish species with the exception of queen conch and spiny lobsters are exported without tariffs. A tariff of EC \$1 per LB (pound) is currently being charged on the exportation of spiny lobsters and EC \$0.50 per LB (pound) on queen conch.¹⁴¹

Disciplines on subsidies are also included in the Revised Treaty including special provisions on subsidies to agriculture. Other areas addressed in the treaty are: dumping, quantitative restrictions and safeguards, all these areas serve to create rules to facilitate the movement of Community produced goods.¹⁴² Further to that rules are also provided in the Revised Treaty to grant freedom of transit within CARICOM with regards to goods, vessels and other vehicles transporting Community goods.¹⁴³ In essence, fish and fish products originating within the Community can move throughout CARICOM without obstruction to trade. Even if in transit, fisheries products are protected from discriminations such as those that can be initiated through sanitary and phytosanitary measures and tariff barriers.

¹³⁸ The Revised Treaty of Chaguaramas Establishing the Caribbean Community, including the CARICOM Single Market and Economy, signed 5th July 2001, Chapter IV Article 60

¹³⁹ The Shridath Ramphal Centre for International Trade Law, Policy and Services 'Revised Treaty of Chaguaramas Establishing the Caribbean Community and the CARICOM Single Market And Economy: Factsheet' (Factsheet, The University of the West Indies, April 2011) 3

¹⁴⁰ Ibid

¹⁴¹ This information was obtained from the Fisheries Division, Ministry of Agriculture, Rural Transformation, Forestry, Fisheries and the Industry of St Vincent and the Grenadines.

¹⁴² The Shridath Ramphal Centre for International Trade Law, Policy and Services 'Revised Treaty of Chaguaramas Establishing the Caribbean Community and the CARICOM Single Market And Economy: Factsheet' (Factsheet, The University of the West Indies, April 2011) 3

¹⁴³ Ibid

Regarding non-tariff barriers, the Treaty allows for harmonization and implementation of common standards which help to increase transparency and predictability of intra-regional trade.¹⁴⁴

The CARICOM Single Market and Economy has three critical objectives outlined by the Revised Treaty of Chaguaramas. The CSME seek to improve standards of living and work condition; complete employment of labour and other aspects of production; and improved international competitiveness.¹⁴⁵ Essentially the CSME is geared towards the widening of the market space for trade, investment and labour flows, inspire progress in stagnant and dynamic areas feasibly for development, and increase the competitiveness of local businesses and their readiness for global trade and investment liberalisation.¹⁴⁶

Intra-regional trade in CARICOM is a fairly small but growing activity. It comprises only a few countries and a handful of products.¹⁴⁷

Generally, trade among CARICOM members consist of very few and mostly different products.¹⁴⁸ For instance; petroleum products represent around 70% of exports to the region for Antigua and Barbuda and Trinidad and Tobago. In Dominica, chemical products such as soap constitute over 50% of that country's intraregional exports. While agricultural goods are the top products in Belize, Guyana, and Haiti; representing around half of the total exports in the region.¹⁴⁹ The smaller CARICOM economies are mainly mono-exporters, who depend significantly on the exportation of 1 or 2 products.¹⁵⁰

¹⁴⁴ The Shridath Ramphal Centre for International Trade Law, Policy and Services 'Revised Treaty of Chaguaramas Establishing the Caribbean Community and the CARICOM Single Market And Economy: Factsheet' (Factsheet, The University of the West Indies, April 2011) 3

¹⁴⁵ Andrea Symmonds, 'Towards a Regional Policy on Migration within the Context of the CSME' (Caribbean Centre for Development Administration, 2008) 2

¹⁴⁶ Ibid

¹⁴⁷ Marie Freckleton, et al, *Caribbean trade and integration: trends and future prospects* (Latin America and the Caribbean in the World Economy, 2010) 125

¹⁴⁸ Ibid

¹⁴⁹ Marie Freckleton, et al, *Caribbean trade and integration: trends and future prospects* (Latin America and the Caribbean in the World Economy, 2010) 126

¹⁵⁰ Ibid

Chapter 2. Structure of Preferential Trade Agreements Between CARICOM and Other Countries

2.2.1 Introduction

The Council for Trade and Economic Development (COTED) is the primary arm of CARICOM which deals with issues relating to trade and economic development on behalf of the Community. The agency comprises trade ministers that were nominated by Member States. The legal mandate of COTED includes to:

- (a) Promote the development and oversee the operation of the CSME;*
- (b) Evaluate, promote and establish measures to enhance production, quality control and marketing of industrial and agricultural commodities so as to ensure their international competitiveness;*
- (c) Establish and promote measures to accelerate structural diversification of industrial and agricultural production on a sustainable and regionally integrated basis;*
- (d) Determine and promote measures for the accelerated development and marketing of services;*
- (e) Promote and develop policies and programmes to facilitate the transportation of people and goods;*
- (f) Promote measures for the development of energy and natural resources on a sustainable basis;*
- (h) Promote and develop policies for the protection of and preservation of the environment and for sustainable development.¹⁵¹*

Relative to the trade in fish and fisheries products, the primary objectives of COTED are the promoting of sustainable development for the fisheries resources while ensuring that production, quality and competitiveness are maintained at a high standard. COTED is also interested in seeing diversification within the fisheries sector, it is not only interested in the production of fresh and frozen fisheries products, but also value added products such as dried and smoked products.

Under the umbrella of COTED are a number of institutions, two of which are; CARICOM Regional Organization for Standards and Quality (CROSQ) and Caribbean Agricultural Health and Food Safety Agency (CAHFSA).¹⁵² As a part of the CARIFORUM EPA, the EU

¹⁵¹ The Treaty of Chaguaramas Establishing the Caribbean Community and Common Market, signed 4 July 1973 (entered into force 1 August 1973)

¹⁵² Council for Trade and Economic Development (Coted), *Council for Trade and Economic Development* Government of Trinidad and Tobago, Ministry of Trade, Industry and Investment

recommended that CARICOM establish agencies for the purpose of addressing food safety and standards issues within the CARICOM region. As a result CROSQ and CAHFSA were established and recognized as competent agencies for addressing food safety and standards individually within the region.

CROSQ plays an advisory role in relation to COTED. It gives advice on Standards which incorporates operative and efficient collaboration between national standards bodies and encourages mutual recognition of accreditation and certification regimes. Only voluntary standards and mandatory technical regulations are recognised by the agreement which established CROSQ.¹⁵³

CAHFSA on the other hand, is intended to establish effective and efficient regional sanitary and phyto-sanitary (SPS) systems. The institution will also facilitate and harmonise the relevant legislations and administrative practices throughout CARICOM Member States. The Agreement which established CAHFSA came into force on 12 March 2010¹⁵⁴ Notably, the institution came into existence a few years after St Vincent and the Grenadines was “black listed” by the EU for failing to meet the Community’s health and safety standards for the export of fish and fisheries products. As will be discussed in a subsequent chapter, St Vincent and the Grenadines in its quest for EU certification had to utilise the expertise of both of these institutions.

Another essential arm of CARICOM in relation to trade is the Office of Trade Negotiations (OTN) formerly the Caribbean Regional Negotiating Machinery (CRNM). The CARICOM Secretariat’s Office of Trade Negotiations is responsible for the development and implementation of a solid and effective framework to facilitate the coordination and management of external trade negotiation of CARICOM Member States.¹⁵⁵ The mission of the OTN is to assist Member States in maximizing their benefits when participating in trade negotiations. This is achieved via a number of ways, namely: the provision of sound advice, development and

<<http://www.tradeind.gov.tt/Portals/0/Documents/Trade%20Directorate/COUNCIL%20FOR%20TRADE%20AND%20ECONOMIC%20DEVELOPMENT.pdf>>

¹⁵³ Council for Trade and Economic Development (Coted), Council for Trade and Economic Development Government of Trinidad and Tobago, Ministry of Trade, Industry and Investment

<<http://www.tradeind.gov.tt/Portals/0/Documents/Trade%20Directorate/COUNCIL%20FOR%20TRADE%20AND%20ECONOMIC%20DEVELOPMENT.pdf>>

¹⁵⁴ Ibid

¹⁵⁵ Caribbean Community (CARICOM) Secretariat, *The Office of Trade Negotiations* Office of Trade Negotiations Caribbean Community Secretariat <<http://www.crnmm.org/>>

facilitation of regional positions, coordination of negotiating strategy and taking lead positions where appropriate during negotiations.¹⁵⁶

The significance of the region's trading position has been strengthened in most international forum dealing with trade issues, including the WTO. This is owed to the smallness of the islands, the lack of competitiveness and the need for protection against international competition. Under bilateral negotiations that CARICOM is involved in agriculture has been well excluded. In one such negotiation up to 70% of tariff lines for agriculture were excluded.¹⁵⁷

Over the last few decades one of the major concerns for developed states regarding the importation of fish and fish products from developing countries is the management of the resource. Essentially, CARICOM countries must ensure that their catches are sustainably harvested in order to relieve the growing pressure on the resource.¹⁵⁸ The fisheries within the CARICOM region are very fragile and if collapse is to be avoided they will require constant monitoring and the use of objective, science-based methodologies. In an effort to meet the sustainable fisheries requirements of developed states; the coastal states of the CARICOM region are working with CRFM and are developing and implementing MCS strategies, strengthening domestic legislation to establish effective control over the fishing activities of nationals and also states are incorporating legislations against IUU fishing both domestic and foreign within their Fisheries Regulations. Under the agreements between CARICOM and other countries such as US, Canada and EU, the entry of fish and fish products into their territory is duty free and is primarily dominated by high value species such as queen conch and spiny lobsters.¹⁵⁹ The fisheries resource within the region is unevenly distributed; most stocks are located in coastal mainland countries. The major barriers associated with the entry of fish and fish products into territories with whom an agreement is signed are mostly connected with technical and food safety standards.¹⁶⁰

¹⁵⁶ Caribbean Community (CARICOM) Secretariat, The Office of Trade Negotiations Office of Trade Negotiations Caribbean Community Secretariat <<http://www.crnm.org/>>

¹⁵⁷ Ibid

¹⁵⁸ Ibid

¹⁵⁹ CARICOM, Office of Trade Negotiation 'CARICOM-Canada Negotiations: Prospects for the CARICOM Agriculture and Fisheries Sector' (Trade Brief Ref: 31000.3/1-2010-07-28, CARICOM Secretariat, 28 July 2010) 1

¹⁶⁰ CARICOM, Office of Trade Negotiation 'CARICOM-Canada Negotiations: Prospects for the CARICOM Agriculture and Fisheries Sector' (Trade Brief Ref: 31000.3/1-2010-07-28, CARICOM Secretariat, 28 July 2010) 2

The following are examples of agreements between CARICOM and other states. It gives an overview of the terms and arrangements negotiated by CARICOM.

2.2.2 Canada-CARICOM Trade and Economic Co-operation Agreement (CARIBCAN)

The existence of trade and economic relations between the Caribbean and Canada dates back to the 18th century. During that time the British Northern Atlantic Colonies exchanged fish and other staples for Caribbean rum, molasses and spices.¹⁶¹ At the Commonwealth Heads of Government meeting in Nassau on October 1985, Canada committed to establish an economic and trade development assistance program for Commonwealth Caribbean countries and territories; this program was called CARIBCAN. The following year on 15 June 1986, most commodities with Commonwealth Caribbean origin were granted duty-free access to the Canadian market. The objectives of CARICOM in participating in an enhanced trade agreement with Canada are to:

- (a) Preserve, build on and broaden the scope of the current instruments of trade and economic co-operation;*
- (b) Where possible, deepen disciplines to improve market access for CARICOM exports of goods and services;*
- (c) Broaden the country coverage to include all CARICOM states;*
- (d) Stimulate increased flows of Canadian investment into the region; and provide a comprehensive framework for development co-operation initiatives.*¹⁶²

A total of 18 countries are eligible to receive the duty-free benefits accorded under CARIBCAN, they include: Anguilla, Antigua-Barbuda, The Bahamas, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, Dominica, Grenada, Guyana, Jamaica, Montserrat, St.

¹⁶¹ CARICOM, Office of Trade Negotiation 'Perspectives of Regional Organizations on the Trade Relations between Latin America and the Caribbean and Canada: Current and Future Status' (Seminar Paper SP/SRREECALC/Di N° 9-12, CARICOM Secretariat, 30 March 2012) 3

¹⁶² CARICOM Secretariat, *Background to Negotiations on CARICOM Canada Trading Arrangements* (28 October 2008) Office of Trade Negotiation CARICOM Secretariat
<http://www.crn.org/index.php?option=com_docman&task=doc_view&gid=386&tmpl=component&format=raw&Itemid=113>

Christopher (St. Kitts) and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and the Turks and Caicos Islands.¹⁶³

2.2.2.1 CARIBCAN Rules of Origin

In order to qualify for the duty-free tariff treatment allowed to Commonwealth Caribbean countries, products must be:

(a) *Wholly obtained or produced” as defined in section 2(1) of the Commonwealth Caribbean Countries Tariff Rules of Origin Regulations (“Regulations”) or,*¹⁶⁴

(b) *As set out in section (2) of the Regulations, at least 60% of the ex-factory price of the goods as packed for shipment to Canada must originate in one or more beneficiary countries or Canada.*¹⁶⁵

Paragraph 3 and 4 of the memorandum further states that...

3) *The 60% qualifying content may be cumulated from various beneficiary countries or Canada.*

4) *The goods must be finished in the beneficiary country in the form in which they were imported into Canada.*¹⁶⁶

In 2006 a request made by Canada to the WTO for an extension for the waiver of the WTO’s MFN principle towards CARIBCAN countries was granted until 2011. Since then CARICOM and Canada have embarked on negotiations for a reciprocal trade and development agreement.¹⁶⁷

Salted and canned fish and fish products are among the products mainly imported by CARICOM countries from Canada. The main composition and value of imported fish is as follows; herring US\$17 million, sardines US\$12 million, cod US\$2.1 million and haddock and other fish US\$1.9

¹⁶³ Private Sector Organisation of Jamaica, Canada-CARICOM Negotiations (2008) PSOJ
<<http://www.psoj.org/?q=canada-caricom-negotiations>>

¹⁶⁴ The official version of the Commonwealth Caribbean Countries Tariff Rules of Origin Regulations is located on the Department of Justice website at: <http://lawslois.justice.gc.ca/eng/regulations/SOR-98-36/page-1.html>.

¹⁶⁵ Canada Border Services Agency, ‘Rules Of Origin Respecting Commonwealth Caribbean Countries’ (Memorandum D11-4-5, Canada Border Services Agency, 10 April 2013) 1

¹⁶⁶ Ibid

¹⁶⁷ Trade Policy Review Report by Jamaica, WT/TPR/G/242 (7 December 2010) 13 [VI 52]

million. Due to the considerations given by CARICOM to these products as basic food staples, the tariffs that are applied to the products by CARICOM are usually low or zero.¹⁶⁸

2.2.2.2 Fish Trade

Holistically, the Region is a net exporter of fish, in value terms, granting most of the Eastern Caribbean countries are net importers. The region mostly exports high-value products such as shrimp, lobster and conch while the imports mainly consist of processed low-value products, such as salted herring and canned sardines.¹⁶⁹ Exports of fish and fish products under CARIBCAN are duty-free; nonetheless, CARICOM Member States would feel a lot safer if there is a relaxation in the rules of origin requirements necessary for their fish to qualify for the duty-free market access. As a result CARICOM is interested in holding new trade negotiations with Canada.¹⁷⁰

The table below is a demonstration of the tariffs faced by CARICOM exporters to Canada. The tariffs are significantly low and are provided for under CARIBCAN and the Canadian preferential tariff for LDCs. The vast majority of products both agricultural and other origin enters Canada duty-free and without other restrictions.

¹⁶⁸ CARICOM, Office of Trade Negotiation 'CARICOM-Canada Negotiations: Prospects for the CARICOM Agriculture and Fisheries Sector' (Trade Brief Ref: 31000.3/1-2010-07-28, CARICOM Secretariat, 28 July 2010) 2

¹⁶⁹ CARICOM, Office of Trade Negotiation 'CARICOM-Canada Negotiations: Prospects for the CARICOM Agriculture and Fisheries Sector' (Trade Brief Ref: 31000.3/1-2010-07-28, CARICOM Secretariat, 28 July 2010) 2

¹⁷⁰ Ibid

Figure 3 - Main Canadian Agricultural and Fisheries Imports from CARICOM

(2004-2006 US\$ Average)

Canada Tariff Code HS 2007	Description	Value of Imports from CARICOM	Canada Tariff Treatment		
			MFN	GPT	CARIBCAN
2905.11.00	Methanol (methyl alcohol)	52,288,115	5.5 %	3 %	Free
2208.40.10	Rum	11,960,306	24.56¢/litre	Free	Free
0306.11.00	Rock lobster and other sea crawfish	6,900,022	5 %	N/A	Free
3102.10.00	Urea, whether or not in aqueous solution	6,703,818	Free	Free	Free
0807.20.00	Papaws (papayas)	4,497,998	Free	Free	Free
2208.70.00	Liqueurs and cordials	2,201,192	12.28 ¢/liter	Free	Free
0302.69.00	Other fish, fresh or chilled	1,396,040	Free	Free	Free
2203.00.00	Beer made from malt.	1,363,543	Free	Free	Free
0714.20.00	Sweet potatoes	1,257,566	Free	Free	Free
0714.90.90	Other roots, fresh, chilled, frozen or dried	1,024,621	Free	Free	Free

Source: CARICOM Secretariat, Office of Trade Negotiation

'N/A' indicates that the product is excluded from the scheme.

While products of CARICOM origin enjoy preferential access to the Canadian market given under the CARIBCAN, it is equally important to note that the MFN clause in the EU-EPA is a constraint preventing the Region from extending greater benefits to other major trading partners than those extended to the EU.¹⁷¹

¹⁷¹ CARICOM, Office of Trade Negotiation 'CARICOM-Canada Negotiations: Prospects for the CARICOM Agriculture and Fisheries Sector' (Trade Brief Ref: 31000.3/1-2010-07-28, CARICOM Secretariat, 28 July 2010) 2

2.2.3 CARIFORUM EU Economic Partnership Agreement

There is a long standing history between the countries of the European Union and those of the Africa, Caribbean and Pacific. One of the very first formal trade agreement between the EU and the ACP was the Lomé I Convention established in 1975. Out of the Lomé I Convention other trade agreements between both parties were negotiated.¹⁷² The CARIFORUM EU Economic Partnership Agreement (EPA) is the most recent arrangement between CARICOM states and the EU.¹⁷³ However, before the CARIFORUM EU Economic Partnership Agreement (EPA) came into existence, there was the EU ACP Cotonou Partnership Agreement. This agreement was signed on June 2000 in Benin and was the latest economic partnership between the EU Member States and Members of the ACP group of countries at the time.¹⁷⁴ The focus of the Cotonou Agreement was on supporting regional integration such as the CARICOM Single Market and Economy (CSME). It also encouraged the fostering and establishment of relationships between ACP countries.¹⁷⁵ In 2005 and 2010 the agreement was reviewed and amended; its focus was shifted to development support of the parties involved. Later the trade provisions of the Cotonou Agreement were replaced by the CARIFORUM EC Partnership Agreement.¹⁷⁶

The CARIFORUM EU Economic Partnership Agreement (EPA) was signed by CARIFORUM Countries, that is, CARICOM countries and the Dominican Republic, on 15 October 2008. The EPA does not have a defined period of duration but it affords exporters of nearly all CARIFORUM originated goods with duty free and quota free access to the EU market.¹⁷⁷ One of the reasons for the CARIFORUM region wanting to enter into an EPA with the EU is that the latter is traditionally an important and major trading bloc for the region.¹⁷⁸ The EU has been a vital export and import market. In addition, the EU has been a source for foreign investment and developmental aid.¹⁷⁹ Undeniably, the promise made by the EU to provide development aid to

¹⁷² Caribbean Export Development Agency, 'The Cotonou Agreement Explained' (2001) 1 (7) Trade Wins 1, 1

¹⁷³ CARIFORUM refers to CARICOM countries and the Dominican Republic.

¹⁷⁴ Caribbean Export Development Agency, 'The Cotonou Agreement Explained' (2001) 1 (7) Trade Wins 1, 1

¹⁷⁵ Ibid

¹⁷⁶ Trade Policy Review Report by Jamaica, WT/TPR/G/242 (7 December 2010) 13 [II 50]

¹⁷⁷ Trade Policy Review Report by Jamaica, WT/TPR/G/242 (7 December 2010) 13 [III 51]

¹⁷⁸ Richard Bernal, 'CARIFORUM-EU Economic Partnership Agreement Negotiations: Why And How' (2008) 33 Journal of Eastern Caribbean Studies 1, 3

¹⁷⁹ Ibid

CARICOM Countries in order to assist with the costs of adjustment and implementation of the EPA is one of the most striking aspects of the agreement.¹⁸⁰

2.2.3.1 Fish Trade

Contained in the EPA is a chapter on agriculture and fisheries, which explicitly highlights fisheries within the CARIFORUM region and highlights the significance of fisheries and the need for sustainable utilization relative to food security, employment, poverty alleviation, foreign exchange earnings and social stability of fishing communities.¹⁸¹ Additionally, it highlights the fragile nature of the marine ecosystem and the susceptibility of the resources. The EPA further identifies the need to avoid any major interference in markets for fish products in CARIFORUM States.¹⁸²

In relation to the liberalization of tariff for fisheries products, all fish and fish products entering the EU market will be duty-free and quota-free. This therefore secured the preferences that existed under the Cotonou Agreement.¹⁸³ CARIFORUM will fully exclude 66% of fisheries products imported from the EU from any tariff liberalization obligation. In 20 years 33% of the remainder of the tariffs will be liberalized and the other 1% liberalized in 25 years. Only those products that are not usually produced in the region, such as salmon, herrings, mackerel, sardines and cod will be liberalized.¹⁸⁴ The CARIFORUM tariff liberalization programme commenced in 2011 and CARIFORUM commits to eliminating the duties on fishing vessels.¹⁸⁵

If one were to take a look at this system of liberalization in the EPA, it can be grasped that the EU are the ones gaining the most from this trade agreement. Above and beyond, the CARIFORUM States are regarded as net importers of fish and fisheries products, coupled with that, the stringent hygiene and food safety standards of the EU are preventing the majority of the

¹⁸⁰ Richard Bernal, 'CARIFORUM-EU Economic Partnership Agreement Negotiations: Why And How' (2008) 33 *Journal of Eastern Caribbean Studies* 1, 3

¹⁸¹ Caribbean Regional Negotiating Machinery, 'The Cariforum-EC Economic Partnership Agreement (EPA): Agricultural and Fisheries Sectors in the EPA' (EPA Brief 3200.3/EPA-01[08], CARICOM Secretariat, 2008) 7, [22]

¹⁸² Ibid

¹⁸³ Ibid 7, [23]

¹⁸⁴ Ibid

¹⁸⁵ Ibid7, [24]

islands from exporting to the EU. Therefore it is difficult for CARIFORUM States to adequately reap benefits from the EPA in this regard.

2.2.3.2 EPA Rules of Origin

Within the EPA, rules of origin apply to production and trade in both directions, meaning, trade from the EU countries to CARIFORUM countries and vice versa.¹⁸⁶ CARIFORUM has taken the position that the provision of distorted rules of origin would not have any useful effect, especially regarding developed economies and the availability of materials and production facilities in the EU.¹⁸⁷

As they stand, the requirements of the rules are that, for fish to be qualified for preferential treatment it must originate:

- a) From inland waters or within the 12 nautical miles territorial waters of the countries, or;
- b) From vessels belonging to either the CARIFORUM states or the EU. Based on the simple rule about the ownership of vessels, the EU allows fish caught in the Exclusive Economic Zones (EEZs) of CARIFORUM states to qualify for origin treatment; however those vessels which are either leased or chartered must be operated by operators from a CARIFORUM country, and also that EU operators would be given the right of first refusal.¹⁸⁸

Nonetheless, CARIFORUM countries in the past have argued for a more thorough structure to the Rules of Origin for fisheries. Together with their other ACP counterparts, CARIFORUM have long insisted that fish harvested within their EEZs, and legally landed in their ports, should be qualified as originating goods. This position has been met with strict opposition by the EU.¹⁸⁹

¹⁸⁶ Caribbean Regional Negotiating Machinery, 'The Cariforum-EC Economic Partnership Agreement (EPA): Rules of Origin in the EPA' (EPA Brief 3200.3/EPA-11[08], CARICOM Secretariat, 2008) 2

¹⁸⁷ Ibid

¹⁸⁸ Caribbean Regional Negotiating Machinery, 'The Cariforum-EC Economic Partnership Agreement (EPA): Agricultural and Fisheries Sectors in the EPA' (EPA Brief 3200.3/EPA-01[08], CARICOM Secretariat, 2008) 7, [26]

¹⁸⁹ Ibid 27

2.2.3.3 Sanitary and Phytosanitary Measures (SPS)

The EU has made it mandatory that those countries wanting to trade in fish and fisheries products with them must develop and implement health and safety legislations in accordance with those of the EU. The EU further stated that it will not relax its health and safety laws for any country; irrespective of how stringent they are, as these laws are there to protect the health of its citizens.

CARIFORUM has developed health and safety legislation in accordance with the legal requirements of the EU. The islands have designated “competent authorities” in each state, and have established the regional body CAHFSA, through which it will direct all information regarding the implementation of the SPS chapter.¹⁹⁰

2.2.4 Caribbean Basin Initiative (CBI)

The Caribbean Basin Initiative (CBI) encompasses the Caribbean Basin Economic Recovery Act (CBERA) and the Caribbean Basin Trade Partnership Act (CBTPA). CBI is the operative and preferred name given to U.S. trade preferences for the Caribbean including CARICOM States and Central American region. The CBTPA component of the agreement was due to expire in September 2010; however it was extended until 30 September 2020. In addition, the General Council of the WTO gave approval for a further waiver of MFN principles for the CBI up to 2014.¹⁹¹

Among the goals of the US Trade and Development Act of 2000 are the expansion of trade benefits to the countries in the Caribbean Basin, the reauthorization of trade adjustment assistance programs and the renewal of the generalized system of preferences. The CBTPA is a “*comprehensive program to promote economic revitalization and facilitate expansion of economic opportunity in the Caribbean Basin region*”.¹⁹² The Caribbean Basin Economic Recovery Act of 1983 (CBERA) and the Caribbean Basin Economic Recovery Expansion Act of

¹⁹⁰ Caribbean Regional Negotiating Machinery, ‘The Cariforum-EC Economic Partnership Agreement (EPA): Agricultural and Fisheries Sectors in the EPA’ (EPA Brief 3200.3/EPA-01[08], CARICOM Secretariat, 2008) 8, [29]

¹⁹¹ Trade Policy Review Report by Jamaica, WT/TPR/G/242 (7 December 2010) 13 [V 53]

¹⁹² Quote made by then President of the US Ronald Reagan on February 1982 in a speech before the Organization of American States.

1990 provided the basis for the present American trade framework in the region.¹⁹³ In an effort to avoid violation of its international obligations under GATT 1947 resulting from preferential treatment of CBI countries, the United States requested and obtained from the GATT Contracting Parties a waiver of its obligation under GATT Article I to accord to all GATT signatories MFN (non-discriminatory) treatment, for the period January 1, 1984 through September 30, 1995.¹⁹⁴ A renewal to the waiver was further granted in November 1995 through December 31, 2005 and it continues to be applicable under the WTO Agreement.¹⁹⁵

Under the CBI most Caribbean exports are eligible for preferential treatment or the United States Generalized System of Preferences (GSP). In the key provisions of the CBERA, most of the preferential treatments contained in the overall CBI agreement are unilateral in nature. These apply to most articles imported from the 24 Caribbean Basin countries and include either the products being imported into the US duty-free, or at duty rates lower than those normally applicable.¹⁹⁶ Canned tuna was among products not eligible for the duty-free or MFN preference under the CBERA.

2.2.4.1 CBI Rules of Origin

To be accorded the duty-free or reduced-rate preference, an eligible article must be a “product of” a CBERA beneficiary country and imported directly from it, and at least 35% of the article’s import value must have originated in one or more CBERA beneficiaries.¹⁹⁷ Additionally to be able to receive duty free rates on some products of agricultural origin the exporting country was required to submit a stable food production plan which the US would either accept or reject.¹⁹⁸

When the North American Free Trade Agreement NAFTA was introduced, the advantage that most Caribbean Basin countries had over Mexico was eroded from previous participation in the

¹⁹³ Michael Cornell Dypski, ‘The Caribbean Basin Initiative: An Examination of Structural Dependency, Good Neighbour Relations, and American Investment’ (2002) 12 *Journal of Transnational Law and Policy* 96, 96

¹⁹⁴ Vladimir N. Pregelj, ‘Caribbean Basin Interim Trade Program: CBI/NAFTA Parity’ [2005] *Congressional Research Service* 1, 2

¹⁹⁵ Ibid

¹⁹⁶ Vladimir N. Pregelj, ‘Caribbean Basin Interim Trade Program: CBI/NAFTA Parity’ [2005] *Congressional Research Service* 1, 2

¹⁹⁷ Ibid 3

¹⁹⁸ Joseph Pelzman and Gregory Schoepfle, ‘Impact of the Caribbean Basin Economic Recovery Act on Caribbean Nations’ Exports and Development’ [1988] *University of Chicago* 753, 755

Caribbean Basin Initiative (CBI).¹⁹⁹ Although the GSP afforded to Mexico authorizes duty-free importation into the US, the range of articles eligible for the preference was narrower than that of the Caribbean Basin region.²⁰⁰ The CBERA was revised to include NAFTA out of this revision and canned tuna which did not have duty free access into the US has now been given preferential access.

2.2.5 Other Preferential Agreements and Arrangements

Over the years CARICOM has been involved in bilateral trade agreements with a number of other countries including: Costa Rica, Colombia, Cuba, the Dominican Republic and Venezuela.²⁰¹ The CARICOM-Colombia Agreement on Trade, Economic and Technical Cooperation afforded unilateral preferential access to some goods originating from CARICOM into Colombia. The negotiated period for this arrangement was four years. At the end of the four-year period the preferential trade scheme became reciprocal, bearing in mind the development differences between Colombia and CARICOM Countries. In addition some less developed countries of CARICOM were not obliged to grant any concessions under this agreement.²⁰²

The CARICOM-Cuba Agreement was signed on 3 July 2000; it offers duty-free access on a list of goods agreed by both CARICOM and Cuba.²⁰³ The CARICOM-Dominican Republic Free Trade Agreement came into force in 2000; it provides bilateral duty-free access for a number of products as at January 2004. Conversely, exports from the Dominican Republic to less developed countries in CARICOM continue to attract duties.²⁰⁴ The Trade and Investment Agreement between CARICOM-Venezuela was entered into force on 1 January 1993. It is a one-way preferential agreement designed to promote CARICOM exports to Venezuela by offering duty-free access for some products or phased reduction in tariffs.²⁰⁵

¹⁹⁹ Vladimir N. Pregelj, 'Caribbean Basin Interim Trade Program: CBI/NAFTA Parity' [2005] Congressional Research Service 1, 1

²⁰⁰ Vladimir N. Pregelj, 'Caribbean Basin Interim Trade Program: CBI/NAFTA Parity' [2005] Congressional Research Service 1,4

²⁰¹ Trade Policy Review Report by the Secretariat OECS-WTO Members, WT/TPR/S/190 (1 October 2007) 13 [59]

²⁰² Trade Policy Review OECS-WTO Members, Report by the Secretariat, WT/TPR/S/190 (1 October 2007) 13 [59]

²⁰³ Trade Policy Review OECS-WTO Members, Report by the Secretariat, WT/TPR/S/190 (1 October 2007) 13 [60]

²⁰⁴ Ibid

²⁰⁵ Ibid

PART 3: REGIONAL AND INTERNATIONAL TRADE IN FISH AND FISH PRODUCTS: CASE STUDIES

3.0.0 Introduction

This section of the thesis will highlight the trade status of four CARICOM islands; Trinidad and Tobago and Jamaica which are considered more developed CARICOM States, then Belize and Grenada considered as less developed CARICOM States. As mentioned previously, the trade in fish and fisheries products is not governed by a set international legal framework. Fish and fisheries products are being traded as commodities just like all other products globally; for example coffee, cotton and electrical appliances. Within this section some of the various regional and international trade agreements and trade measures adopted by these four countries will be discussed. It will become evident the ease with which these islands are able to trade regionally and internationally and how such a trading system was achieved. This section will also focus on the institutional, political and legal framework upon which each island's trading regime is based. Special interest will also be paid to the relationship of each island with the WTO.

The discussions will be within the overall context of trade as it is difficult to single out fish as an independent commodity. Special attention will be paid to the islands trade in agricultural produce; this is because in the CARICOM region the Fisheries Department constitute a part of the Ministry of Agriculture and any discussions involving agriculture will usually include fisheries as a whole. Having said, the FAO estimated that fish comprises up to 20% of all agricultural produce exported from developing countries.

Fisheries in CARICOM member states play an important role for economic and social stability. In addition, its role as an integral contributor to employment, food security, foreign exchange and a primary contributor to income generation cannot go unnoticed. This is especially evident in some coastal communities. Within CARICOM, countries that are party to the Caribbean Regional Fisheries Mechanism (CRFM) have the obligation to collect, manage, suitably utilise scientific data and information to advise the fisheries management planning and decision making process, and fulfil obligations to international reporting. In part, this therefore translates that the fisheries management regime implemented by states can impact the sustainability of trade in the CARICOM region.

Chapter 1 Domestic legal framework for achieving trade capabilities: More Developed CARICOM States Experience (Jamaica and Trinidad and Tobago).

3.1.1 Trinidad and Tobago

The main policy objective of Trinidad and Tobago is to get to a position where it can be viewed as an economic hub for the Western Hemisphere and to attain full integration into the Latin American economy while perfecting the already achieved Caribbean Community and Common Market (CARICOM).²⁰⁶ In order to achieve such goals the twin island state is pursuing, to reduce the cost of conducting business in the country, encourage investment in human capital, and to improve the efficiency of the overall economic system²⁰⁷.

As a member of CARICOM Trinidad and Tobago is a leader. It has been very instrumental in the implementation of the Revised Treaty of Chaguaramas.²⁰⁸ Within the treaty it is recognised as a more developed state.²⁰⁹

Trinidad and Tobago has been a long standing Member of the WTO. The WTO was commissioned on 1st January 1995, soon after; on 1 March 1995 Trinidad and Tobago joined and became a member.²¹⁰ The island has kept a working programme of notifications to the WTO and has never been a complainant against in any WTO dispute. Not only that, but it has lent its support as a consultant to a defendant in a single case. Trinidad and Tobago has declared its commitments in extended GATS negotiations and also has ratified the Fourth Protocol.²¹¹ As a CARICOM Island, at least all its trading partners are granted MFN treatment. With regards to the Doha Development Agenda, Trinidad and Tobago has actively supported the efforts to encourage special and differential treatment for developing countries. It has advocated "less than full reciprocity" for developing countries as a key principle in the formulation of the modalities for tariff reductions²¹².

²⁰⁶ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/151 (17 August 2005) 14

²⁰⁷ Ibid

²⁰⁸ Ibid

²⁰⁹ The Revised Treaty of Chaguaramas Establishing the Caribbean Community, including the CARICOM Single Market and Economy, signed 5th July 2001

²¹⁰ The Government of Trinidad and Tobago, *Trinidad and Tobago's Membership in the WTO* Government of Trinidad and Tobago, Ministry of Trade, Industry and Investment

<<http://www.tradeind.gov.tt/Portals/0/Documents/Trade%20Directorate/WTO.pdf>>

²¹¹ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/151 (17 August 2005) 14

²¹² Ibid.

The overall responsibility for trade policy formulation and implementation lies with the Ministry of Trade and Industry. The trade policy of Trinidad and Tobago is based on diversifying the economy by aiding the expansion of all sectors (except oil manufacturing) through the provision of policy legislation to enable such and trade agreements negotiation with third countries.²¹³

The mandate of the trade policy in Trinidad and Tobago is to:

- a) *Enhance and sustain market access opportunities for goods and services in traditional markets.*
- b) *Facilitate the improvement and sustainability of CARICOM trade in goods and services.*
- c) *Enhance market access in new markets.*
- d) *Promote the expansion of services exports.*
- e) *Oversee the implementation of trade agreements.*
- f) *Facilitate expansion of goods and services exports.*²¹⁴

The Government has made it clear that trade policy would "*focus on the further liberalization of domestic markets, the continuation of the divestment programme and the upgrading of all aspects of infrastructure*". While formulating trade policy, it was recognize that there is a general trend towards the abolition of trade preferences in favour of joint trading agreements.²¹⁵ To this end, a joint venture trading system for the fisheries sector will be viewed as a viable trade option for the Government. In other words the Government of Trinidad and Tobago will look favourably at an arrangement where and investor establish a shrimp of fish processing plant which will purchase and process fish caught in Trinidad and Tobago's waters and landed by Trinidad and Tobago fishers.

The Trade Ministry has specific trade objectives, which include: the negotiation and management of the country's participation in trade and economic arrangements, nurturing commercial relations with trading partners, and the enhancement of export competitiveness.²¹⁶

²¹³ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/151 (17 August 2005) 15

²¹⁴ The Government of Trinidad and Tobago, *About the Trade Directorate* Government of Trinidad and Tobago, Ministry of Trade, Industry and Investment

<<http://www.tradeind.gov.tt/Aboutus/Divisions/Trade/AbouttheTradeDirectorate.aspx>>

²¹⁵ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/151 (17 August 2005) 16

²¹⁶ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/151 (17 August 2005) 16

The Ministry of Trade and Industry is also responsible for WTO matters. This Ministry collaborates with the Ministry of Foreign Affairs, in providing representation Trinidad and Tobago at the WTO.²¹⁷

Trade policy development and preparation in Trinidad and Tobago involves a consultative process. A Technical Coordinating Committee (TCC) and a Standing Advisory Committee advises the Minister of Trade and Industry on Trade and Related Matters. The members of the Advisory Committee are comprised mostly of private sector personnel. Additionally the TCC is headed by the Permanent Secretary of the Ministry of Trade and Industry²¹⁸.

It is the intention of the Government to use its trade policy to develop the island's business, investment and export led trade in the non-energy sector, to attain sustainable economic growth and development²¹⁹. The development of a global niche through improvement of carefully chosen products and building strategic links with economic partners to aid in the flourishing of exports in the international markets is the government's focus for trade related policies and objectives. In order to accomplish this, the Government is concentrating on innovation, entrepreneurship, and identifying strategic sectors that it considers as having the likelihood of becoming internationally competitive.²²⁰ Trinidad and Tobago has a very diverse fisheries sector although artisanal. It is one of the few CARICOM countries that produce shrimp. According to the FAO State of the Worlds Fisheries 2010, shrimp is the world's most traded fishery commodity. However, Trinidad and Tobago is having difficulties trading its shrimps internationally due to non-competitive prices in the US and being excluded from the EU market.²²¹ Consequently, most of the island's shrimps are being traded regionally. The shrimp fishery of Trinidad and Tobago is being looked at as a possible avenue for development to the point of becoming internationally competitive. Another avenue being explored is the demersal 'groundfish' fishery; this includes species such as Red Snapper, Red Hind and Grouper. At present, only small amounts are being exported to niche markets in the US. The remainder is

²¹⁷ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/151 (17 August 2005) 17

²¹⁸ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/260 (1 February 2012) 14

²¹⁹ The Government of Trinidad and Tobago, About the Trade Directorate Government of Trinidad and Tobago, Ministry of Trade, Industry and Investment

<<http://www.tradeind.gov.tt/Aboutus/Divisions/Trade/AbouttheTradeDirectorate.aspx>>

²²⁰ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/260 (1 February 2012) 12

²²¹ CRFM, 'Report of Fourth Annual Scientific Meeting' Volume 1, Supplementary 1, (10-20 June 2008) 61

either sold locally or utilized in the national school feeding programme.²²² According to CRFM in 2004 the entire shrimp trawl fleet landed approximately 799 tonnes of shrimps, with a value of US\$2.97 million and 815 tonnes of demersal fish as by-catch valued at US\$0.6 million. It is further estimated by CRFM that in 2003 only 119 tonnes of shrimps valued at US\$0.8 million were exported.²²³

According to the WTO, over the years since 1998 the direction of exports from a regional standpoint remained relatively stable for Trinidad and Tobago. American trading partners control and maintain a sizable portion of Trinidad and Tobago's export; up to 88% in 2003. The European Union controls the minority; approximately 8% as reported in 2003²²⁴.

The WTO further reported in 2005 that the United States has consolidated its position as the major individual market for Trinidad and Tobago's exports, and stated that share increased to almost 55% in 2003. This outcome is owed partly to the extensive use of the Caribbean Basin Initiative (CBI) by Trinidad and Tobago²²⁵.

During the last decade the stock of foreign direct investment (FDI) in Trinidad and Tobago has increased substantively. This more than doubled between 1995 and 2003, reaching some US\$9.5 billion, or over 90% of GDP in 2003. During the period 1999-2003 direct investment totalled US\$3.7 billion, and in 2004 it was estimated to have exceeded US\$1 billion. The main foreign investors to Trinidad and Tobago are the United Kingdom, the United States, India, Germany and Canada; with the US and UK accounting for 47% and 37% of total foreign direct investment FDI in 2003 respectively. Included in these estimates are numerous joint foreign investment ventures and partnerships between the Government of Trinidad and Tobago and foreign investors²²⁶. Currently, there have not been too many investment ventures occurring within the fisheries sector of Trinidad and Tobago, nonetheless, the sector is categorized by the Ministry of

²²² CRFM, 'Report of Fourth Annual Scientific Meeting' Volume 1, Supplementary 1, (10-20 June 2008) 61

²²³ Ibid

²²⁴ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/151 (17 August 2005) 11

²²⁵ Ibid

²²⁶ Ibid 1

Trade and Industry as the most competitive non-energy sector in the country.²²⁷ Quite notably, opportunities are available for investment. Such opportunities exist in onshore processing, establishing fish farming or aquaculture facilities and offshore harvesting. Trading internationally involves the export of chilled or frozen tuna, snapper, flying fish and shrimp.²²⁸

3.1.1.1 Foreign Investment System

Foreign investors are encouraged to invest in Trinidad and Tobago through foreign direct investment (FDI) regime. Investors are able to invest in all sectors of the country and there are no restrictions or disincentives towards this²²⁹. Currently, the Government of Trinidad and Tobago is in the process of developing new investment legislations. There was scheduled to occur in early 2012 the implementation of an Investment Policy upon which the relevant legislations will be based²³⁰. Among the numerous industries targeted by the Government for investment and development are fishing and fish processing. With the interest in diversifying the economy in mind, the Government is also emphasizing investment in steel, aluminium and polypropylene. The idea is that these can be used as inputs for prospective downstream manufacturing. Within the fishing industry this will mean the construction of processing facilities and equipment, construction of fish storage bins and bags, packaging material and other utensils necessary for the daily operation of section in the industry²³¹.

Foreign investment is governed by the 1990 Foreign Investment Act. The permission is given to foreign investors to own 100% of share capital in a private company. Investors are allowed to own limited quantities of lands for residential and trading purposes²³². Legally there are no performance requirements for investors. However, through negotiated incentives, the Government encourages ventures that are employment creating and attract foreign exchange, provide training and/or technology transfer, increase exports, and have contents which are locally

²²⁷ Bruce McKenzie, Mark Wilson and Coryse Tesheira, *Trinidad and Tobago investment Guide 2011-2012* (CITI Bank Investments, 2011) 28

²²⁸ Bruce McKenzie, Mark Wilson and Coryse Tesheira, *Trinidad and Tobago investment Guide 2011-2012* (CITI Bank Investments, 2011) 28

²²⁹ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/260 (1 February 2012) 14

²³⁰ Ibid

²³¹ Ibid 15

²³² Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/151 (17 August 2005) 18

produced²³³. No restrictions are enforced on profits, interest, dividends, repatriation of capital, distributions or gains on investment. Within the fisheries sector this translates to investment opportunities in the shrimp industry as it is one of the least invested avenue with a growing global demand. Trinidad and Tobago is involved in a number of bilateral investment treaties (BITs). These BITs include: Canada, China, Cuba, France, Germany, India, Mexico, South Korea, Spain, Switzerland, the United Kingdom, and the United States. Trinidad and Tobago has ratified all these agreements. Generally, these BITs provide for national treatment, and contain procedures for the settlement of disputes²³⁴. In addition, the country is a signatory to the International Centre for the Settlement of Investment Disputes (ICSID) Convention and the Multilateral Investment Guarantee Agency (MIGA)²³⁵.

3.1.2 Regional and International Trade Relations (CARICOM and WTO)

Trinidad and Tobago has been a long standing member of the WTO. Most favourable nation (MFN) treatment is granted to all of its trading partners and the WTO agreement has been invoked through its domestic court system²³⁶. Without any bias to previous bindings, Trinidad and Tobago bound all of its tariffs at ceiling rates during the Uruguay Round²³⁷. Specified ceiling limits by the WTO are; Developed countries 99%, Developing countries 73% and Transition economies 98%.²³⁸ Imported fish products are subjected to an average tariff rate 29.2%. Usually, the importation of fish for processing purposes is duty-free, while those imported for consumption are faced with a 20% to 40% tariff application²³⁹.

As an active supporter of efforts promoting special and differential S&D treatment for developing countries Trinidad and Tobago has made clear its consideration of special and differential S&D as an integral part of the negotiating process. Further to that, it has made a submission, on behalf of the ACP Group, advising progress in the discussions on operationalization of S&D in the post Doha era and on issues relative to S&D being putting into

²³³ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/151 (17 August 2005) 18

²³⁴ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/260 (1 February 2012) 15

²³⁵ Ibid

²³⁶ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/151 (17 August 2005) 19

²³⁷ Ibid

²³⁸ World Trade Organization, *Understanding the WTO* (World Trade Organisation, 5th ed, 2011) 12

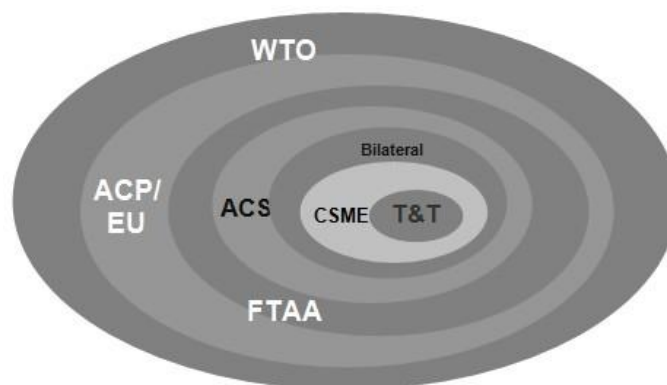
²³⁹ R H Singh, et al, 'Review of Agricultural Policies in Trinidad And Tobago' [2005] *The Department of Agricultural Economics and Extension, The University of the West Indies*, 12

practice²⁴⁰. One of area for which the country is hoping to gain S&D is in regards to fishing subsidies. Currently, fisher-folks of Trinidad and Tobago are granted subsidies by the government. These subsidies are granted in the following forms: VAT exemption on equipment, engine parts and reduce duty on new fishing vessels. Additionally, the fishermen also receive subsidies on oil and fuel used in fishing vessels.²⁴¹ As a developing state it is difficult to compete on the same scale with distant water fishing nations (DWFN) without the input of subsidies. Even so, sometimes these subsidies are not nearly enough to aid in gaining adequate returns from fishing.

Together with ACP and CARICOM partners; Trinidad and Tobago has made a call for, balanced results that take into account the issues affecting the more vulnerable Members of the WTO and for a more meaningful special and differential S&D treatment²⁴².

Trinidad and Tobago is currently involved in numerous trade initiatives globally. These trade initiatives are being pursued in a perspective that recognizes both regional and bilateral trade agreements as corresponding to agreements at the multilateral level (See illustration Figure 4).

Figure 4 - Trinidad and Tobago global trade initiatives



Source: WTO Secretariat, 'Trade Policy Review Trinidad and Tobago' (Report, World Trade Organisation, 2005) 9

²⁴⁰ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/260 (1 February 2012) 16

²⁴¹ University of the West Indies Project for Trinidad and Tobago on 'Ecosystems, Societies, Consilience, Precautionary principle(ECOST): Development of an assessment method of the societal cost for best fishing practices and efficient public policies' (Project no. 003711) 2007, 26

²⁴² Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/151 (17 August 2005) 19

In this regard that Trinidad & Tobago has been an active member of the Caribbean Community (CARICOM) and more and more through the regional grouping it has sought expanded market access with third countries²⁴³. To this effect a section of Trinidad and Tobago's fish is traded regionally. They are currently one of the major suppliers of shrimp and Flyingfish (*Hirundichthysaffinis*) throughout the region. This process is said to foster the gradual incorporation of small economies into the multilateral system and make available the necessary breathing space for the development of small firms within such economies²⁴⁴.

The centre of Trinidad & Tobago's interests has been on securing expanded market access for domestic exporters of goods and services. Simplifying rules which govern such access proved meaningful in overcoming supply side constraints and also increased inflows of foreign direct investment²⁴⁵.

As a CARICOM member, Trinidad & Tobago has grasp the concept of the CARICOM Single Market and Economy (CSME) and remains committed to the goals of the CSME. The goal of CSME involves the removal of constraints and restrictions which prohibit the free movement of goods, services and capital throughout the CARICOM Region²⁴⁶.

3.1.3 Challenges for Trinidad and Tobago

In spite of its capabilities in exporting a number of locally produced goods to the EU market, the idea of exporting fish and fish products have eluded Trinidad and Tobago for some time. This is because the EU import regime revolves around health and safety a great deal. What is lacking in Trinidad and Tobago and thus, hindering exports to the EU are the following: health standards and procedures, industry personnel trained and qualified in quality assurance practices and environmental standards as well as certified HACCP status and post-harvest management competencies and practices.²⁴⁷ Flying fish is a key species to the country and CARICOM region as a whole. Trinidad and Tobago is lacking the relevant mechanisms for surveillance purposes to control illegal fishing.²⁴⁸ Additionally, as the fisheries of the island is mainly artisanal and

²⁴³ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/151 (17 August 2005) 8

²⁴⁴ Trade Policy Review Trinidad and Tobago, Report by the Secretariat, WT/TPR/S/151 (17 August 2005) 19

²⁴⁵ Ibid 9

²⁴⁶ Ibid

²⁴⁷ Strategic Plan for the Development of the Fish and Fish Processing Industry in Trinidad and Tobago (20th September, 2005) 32

²⁴⁸ Ibid

employs the use of some semi-industrial and industrial fleets, it is difficult for Trinidad and Tobago to compete with the prices for shrimp, when placed on the US market.²⁴⁹

3.1.4 Jamaica

Jamaica is one of the original and active Members of the WTO who when it comes to developing countries within the WTO and the DDA negotiations strongly supports special and differential treatment²⁵⁰. Jamaica's trade policy and development goals are broad based and set within several policy frameworks. Its regional trade policies are set in the context of CARICOM, the 2001 New Trade Policy, the 2009 National Export Strategy, and the current national development plan (Vision 2030)²⁵¹.

3.1.5 Trade policy of Jamaica

Trade policy of Jamaica is mainly implemented within the CARICOM framework. Regarding the Caribbean Single Market and Economy (CSME), Jamaica is closely involved in the process of regional trade integration²⁵². This is being done through its participation in CARICOM in the implementation of a number of preferential trade agreements with regional neighbours; these include Venezuela, Colombia, the Dominican Republic, Cuba, and Costa Rica²⁵³.

Ever since the early years Jamaica has been dependent on a narrow productivity base. It has been dependent on a narrow range of primary products which were exported to the US, EU and a few other developed countries²⁵⁴. In the same way, Jamaica's wide array of imported manufactured goods, raw materials for processing, and capital goods come mostly from this same narrow range of trading partners²⁵⁵. Currently, the United States and the United Kingdom together dominate the Jamaican export market accounting for more than 50% (and as high as 59.7%) of exports. While the United States has been importing bauxite and alumina, the EU on the other hand has

²⁴⁹ WREN media, *Country profile - Trinidad and Tobago* (July 2013) New Agriculturist <<http://www.new-ag.info/en/country/profile.php?a=3023>>

²⁵⁰ Trade Policy Review Jamaica, Report by the Secretariat, WT/TPR/S/242 (7 December 2010) 12

²⁵¹ Ibid

²⁵² Trade Policy Review Jamaica, Report by the Secretariat, WT/TPR/S/139 (11 October 2004) 18

²⁵³ Ibid

²⁵⁴ Dr Michael Witter, 'Trade liberalization: The Jamaican Experience' [2008] The University of the West Indies Department of Economics 185, 188

²⁵⁵ Ibid

been importing traditional agricultural produce²⁵⁶. Not only that, but it has continued to pursue unilateral preferential access within these countries²⁵⁷. At present fisheries product from Jamaica are being barred from entering the EU. The bulk of the country's fish export is to the US and other neighbouring states mentioned above. Statistics show that annually Jamaica's approximate export for Queen Conch is 500MT, Shrimp 200MT, Spiny Lobsters 2800MT and farmed Tilapia 5000MT.²⁵⁸

Nonetheless, by virtue of the recently signed Economic Partnership Agreement (EPA) with the EU, Jamaica and its other CARICOM counterparts are now in the process of restructuring and improving relations with their main trading partners. Additionally, trade negotiations involving Jamaica and its CARICOM partners and Canada are already in progress. Plans are to move from unilateral to reciprocal arrangements²⁵⁹.

Jamaica through the Cotonou Agreement received unilateral preferential access to the EU for traditional agricultural exports. Over the past five year's traditional and non-traditional agricultural exports in total accounted for some US\$100mn annually.²⁶⁰ Jamaica had developed and very lucrative fisheries export market with the EU since the early 1990s.²⁶¹ The exports were dominated mainly by conch, farmed tilapia, and lobster. Most of the island's conch exports were destined for the French Caribbean territories of Guadalupe and Martinique while some smaller quantities went to the US and certain parts of the EU. All in all, at that time fish exports accounted for 1.2% of all exports out of the country.²⁶² During the later 1990s the fish export industry of Jamaica was shaken by two critical issues. Firstly the EU imposed their stringent hygiene requirements on the island and secondly, the CITES convention on endangered species became concerned about the large quantities of conch being landed and subsequently exported.²⁶³

Countries including Jamaica were given a deadline of June 31, 1998 to implemented hygiene controls the equivalent of those of the EU for fish and fisheries products. Alternatively countries

²⁵⁶ Dr Michael Witter, 'Trade liberalization: The Jamaican Experience' [2008] The University of the West Indies Department of Economics 185, 188

²⁵⁷ Trade Policy Review Jamaica, Report by the Secretariat, WT/TPR/S/242 (7 December 2010) 12

²⁵⁸ CRFM, 'Report of Eighth Annual Scientific Meeting' Volume 1, Supplementary 1, (20-30 June 2012) 26

²⁵⁹ Trade Policy Review Jamaica, Report by the Secretariat, WT/TPR/S/242 (7 December 2010) 12

²⁶⁰ Jamaica Promotions Corporation, 'Investing in Jamaica 2012' [2012] Jamaica Promotions Corporation 1, 12

²⁶¹ Spencer Henson and Steve Jaffee, 'Jamaica's Trade in Ethnic Foods and Other Niche Products: The Impact of Food Safety and Plant Health Standards' (2005) 18 *Agriculture and Rural Development Discussion Paper* 1, 33

²⁶² Ibid

²⁶³ Ibid 34

failing to implement such controls will be banned from exporting their products to the EU. Overnight Jamaica lost its main export market for conch; however other fish and fishery products were still permitted to enter into the EU on a provisional basis.²⁶⁴ As a response to this action by the EU, the government of Jamaica conducted a legislation reform and enacted the necessary legislations base on those of the EU.²⁶⁵ Subsequent inspections were being conducted by the EU and discrepancies were found. The Jamaican government wrote to the EU giving them the assurance that these discrepancies had been rectified. As a result in December 2000 the EU established special import conditions for Jamaica, and it was once again permitted to export conch to the EU.²⁶⁶

In light of the effects of globalisation and the demands of competing market, the agricultural sector can be diversified in many ways so as to improve its competitive advantage²⁶⁷. The Jamaican Government is in support of this while at the same time ensuring that consistently high traditional exports are maintained. Increasing resources in areas such as organic farming and aquaculture is another area where focus is also being placed. This will enable the cultivation of plants that contain nutrients which can be extracted for the medicinal purposes and fish production to assist in the improvement of the global foods security situation²⁶⁸. Similarly the Jamaican Government is encouraging the development of oyster culture projects; this involves developing marketable products produced from mangrove oysters to be promoted and marketed regionally and internationally.²⁶⁹ Ornamental fish production is a blooming area in the area of aquaculture. One of the primary aims within the area of aquaculture is the establishing of ornamental fish production as a small business enterprise in inner-city communities.²⁷⁰ Presently one of the main highlight of the Aquaculture Branch in Jamaica is the production of Red Tilapia hybrid male Fingerling. This type is usually produced and sold to farmers for growth and cultivation purposes after which they are sold regionally and internationally.²⁷¹

²⁶⁴ Spencer Henson and Steve Jaffee, 'Jamaica's Trade in Ethnic Foods and Other Niche Products: The Impact of Food Safety and Plant Health Standards' (2005) 18 *Agriculture and Rural Development Discussion Paper* 1, 33

²⁶⁵ Ibid 35

²⁶⁶ Spencer Henson and Steve Jaffee, 'Jamaica's Trade in Ethnic Foods and Other Niche Products: The Impact of Food Safety and Plant Health Standards' (2005) 18 *Agriculture and Rural Development Discussion Paper* 1, 35

²⁶⁷ Jamaica Promotions Corporation, 'Investing in Jamaica 2012' [2012] *Jamaica Promotions Corporation* 1, 12

²⁶⁸ Ibid

²⁶⁹ CRFM, 'Report of Eighth Annual Scientific Meeting' Volume 1, Supplementary 1, (20-30 June 2012) 31

²⁷⁰ Ibid

²⁷¹ Ibid 30

There is a growing demand for products to be exported overseas and not to mention from the tourist trade, this means that there will be a need for expansion and improved efficiency in the trade industry²⁷². At present agriculture including fisheries contributes 5.6% to the Jamaican economy and provide employment for over 18% of the workforce. This is likely to increase due to Jamaican products enjoying increasing marketability globally. For instance, shrimp production accounts for 80% of tourism consumption. Such a high demand, which most likely will grow with the tourism industry, creates an avenue for investment in facilities that can farm shrimp on a sustainable basis to levels that are sufficient to meet current and future demand²⁷³.

Manufacturing is another integral part of Jamaica's economy. From this more than US\$700 million in foreign exchange earnings is being contributed and 8.3% of the country's gross domestic product (GDP) represented. Included in the sector are small, medium and large enterprises which manufacture for both the domestic and export markets. A significant amount of Jamaican manufactured brands are internationally recognised and have become synonymous with excellence²⁷⁴. This includes for example the popular "Rainforest Seafood's" Jamaica's leading producer of various fisheries products such as fish fingers, breaded fish fillets and popcorn shrimp.²⁷⁵ Relative to the trade policy of the Government to foster an environment which encourage investment and develop enterprise and market niche Rainforest Seafood received a total of a half-a-million US dollar worth of duty during its developmental stages.²⁷⁶ At the moment some of the company's top customers within CARICOM are Antigua, Barbados and St Lucia, further to that Rainforest also has processing operations and fishing vessels in Belize and Honduras.²⁷⁷

²⁷² Jamaica Promotions Corporation, 'Investing in Jamaica 2012' [2012] Jamaica Promotions Corporation 1, 12

²⁷³ Ibid

²⁷⁴ Jamaica Promotions Corporation, 'Investing in Jamaica 2012' [2012] Jamaica Promotions Corporation 1, 15

²⁷⁵ Julian Richardson, 'Largest seafood plant in Caribbean opening in Kingston', *Jamaica Observer* (online), 27 April 2011 <http://www.jamaicaobserver.com/business/VIDEO--Largest-seafood-plant-in-Caribbean-opening-in-Kingston_7739536>

²⁷⁶ Ibid

²⁷⁷ Ibid

3.1.6 Jamaica's Investment & Trade Agreements

In an effort to facilitate the smooth inward flow of business, Jamaica has negotiated with various countries and entered into a number of Bilateral Investment Treaties (BITS) and Double Taxation Agreements (DTAs)²⁷⁸. Additionally, the island is actively involved in several multilateral trade agreements allowing goods made in Jamaica, mainly with Jamaican raw material, to enter partner countries duty free. In some instances, Jamaica will also receive select goods from its trading partners under special tax reduction provisions²⁷⁹. One such arrangement is in the Caribbean Basin Initiatives (CBI) the Enterprise for the Americas. Within this agreement some Jamaican products are allowed to enter into the United States duty free²⁸⁰. This is however dependent on the products satisfying rules of origin requirements. The product is required to be of at least 35% in local value added before it can benefit from this duty free preferential treatment. Conversely, a number of product categories are excluded, one of such product category is canned tuna fish²⁸¹.

The Jamaica and partners BITS allow for a company from a country with whom the treaty was signed to easily set up and operate a business in Jamaica. Usually, BITS would extend a raft of benefits to investors; but more specifically, if the set up and operation is in Jamaica then the company will be allowed to:

- a) *“Be accorded the same protection as any Jamaica business under the National Treatment law.*
- b) *Be exempt from any act of expropriation by the government of the host country.*
- c) *Repatriate profits generated in the host country In most cases, conditions apply under the Goods of Origin Rule contained in each agreement.*
- d) *Be absolutely secure in business operations – once conducted within the boundaries of Jamaican laws.*
- e) *Be confident in having an opportunity to explore dispute settlement through local tribunal/arbitrators”²⁸².*

²⁷⁸ Jamaica Promotions Corporation, ‘Investing in Jamaica 2012’ [2012] Jamaica Promotions Corporation 1, 27

²⁷⁹ Ibid

²⁸⁰ The Government of Jamaica, Inventory of Jamaica’s Trade Agreements, <www.pioj.gov.jm/piojdocs/special/E4C64EAA61.doc>

²⁸¹ Ibid

²⁸² Jamaica Promotions Corporation, ‘Investing in Jamaica 2012’ [2012] Jamaica Promotions Corporation 1, 27

Jamaica also has trade agreements with the WTO; in particular the Uruguay Round of Agreements (1986-1994). This resulted in the establishment of the January 1995 World Trade Organization (WTO) and its associated agreements²⁸³.

For Jamaica the agreements have three main objectives:

- a) *“Encourage trade to flow as freely as possible;*
- b) *Achieve further liberalization gradually through negotiations; and*
- c) *Set up an impartial means of settling disputes”*²⁸⁴.

Apart from these agreements, Jamaica is also a member of and is associated with various other international groups such as the G15, G77, Organization of American States, the United Nations and a few of its agencies; for example ECLAC and UNCTAD²⁸⁵.

3.1.7 Multilateral Trade Regime

Jamaica joined the General Agreement on Tariffs and Trade (GATT) in 1963. Since then Jamaica has been on the forefront of the multilateral trading environment relative to CARICOM. In 1995 following the Uruguay Round of Agreements, Jamaica agreed to and became party to the WTO. Not only has the Uruguay Round of Agreements established the WTO, but it also meant the launching of a new era in multilateral trading arrangements²⁸⁶.

Jamaica commenced the implementation of several trade reforms in 1991. First government removed all quantitative restrictions on imports and exports, tariffs were also reduced as of 1997. Jamaica as a CARICOM member applies a Common External Tariff (CET) on non-CARICOM exports, which ranges between 5-20% for products and 0-5% on capital goods²⁸⁷.

The Government of Jamaica also adopted a new trade policy in 2002. This trade policy was adopted in response to mounting pressures of globalisation and liberalisation.

The three main objectives of the Policy were:

- (i) *“expand and diversify exports by facilitating growth of domestic capital;*
- (ii) *steadily reduce the ratio of imports to exports;*

²⁸³ The Government of Jamaica, Inventory of Jamaica’s Trade Agreements, <www.pioj.gov.jm/piojdocs/special/E4C64EAA61.doc>

²⁸⁴ Ibid

²⁸⁵ Ibid

²⁸⁶ Ministry of Industry Investment & Commerce ‘National Export Strategy: Jamaica’ (Report, Ministry of Industry Investment & Commerce, 2009) 10

²⁸⁷ Ibid

(iii) *increase the flow of net positive returns from investment*”

Jamaica’s Government has developed what is known as a National Export Strategy. Outlined in this strategy are specific trade agreements that have been negotiated. These negotiated trade agreements are being used as the basis for the selection of export markets. One example is negotiated Economic Partnership Agreement (EPA) which afforded Jamaica innumerable opportunities for accessing the US\$64 trillion EU market. Initial research has indicated that there is an increasing middle class taste for the exotic Caribbean products in a number of the newer member states of the EU. In addition, trade agreements provided the framework for trade advertising and information policies for agencies like Jamaica Trade and Invest, working in collaboration with the industry bodies like the Jamaica Exporters’ Association to uncover the relevant market information (market size, value and access requirements, language, labelling, packaging and distribution channels), essential for securing niche markets for exportable Jamaican products and services in short order²⁸⁸.

In any negotiations the Caribbean Regional Negotiating Machinery (CRNM) now called The Caribbean Community (CARICOM) Secretariat’s Office of Trade Negotiations (OTN) represents Jamaica, along with the other CARICOM countries. The importance of special and differential treatment for the economies of the region is a topic that has been stressed by the OTN in several international forums. It is stated that the region needs special and differential treatment as they strive for competitiveness in the emerging global economy²⁸⁹. Conversely, policy makers in Jamaica have also expressed deep concern that developing states are unable to implement and to take part in the WTO process in granting special and differential treatment. Policy makers are also ardent in ensuring that any formula adopted, especially the non-linear formula, does not put Jamaica at too much disadvantage, especially since the country has a record of generous concessions in trade liberalization negotiations over the past two decades of adjustment²⁹⁰. The experience gained by Jamaica regarding trade liberalization offers many lessons. It perhaps explains the pursuit for a programmed approach, properly scoped, phased and timed, to further manifest the objective of tariff reductions²⁹¹.

²⁸⁸ Ministry of Industry Investment & Commerce ‘National Export Strategy: Jamaica’ (Report, Ministry of Industry Investment & Commerce, 2009) 10

²⁸⁹ Dr Michael Witter, ‘Trade liberalization: The Jamaican Experience’ [2008] The University of the West Indies Department of Economics 185, 209

²⁹⁰ Ibid

²⁹¹ Ibid

3.1.8 Challenges for Jamaica

Similar to other CARICOM states Jamaica's fisheries sector is artisanal in nature and has its own associated drawbacks. On the other hand its inland fisheries, aquaculture, is a booming industry with exports to US, France and UK.²⁹² The major challenges for aquaculture stem from farming practices and the certification of the facilities and also high import controls imposed by states.²⁹³ The government is faced with substantial ongoing costs associated with further improvements in capacity and operational expenses because of EU control measures.²⁹⁴ The government also admitted that current capacity is a representation of "*bare bones*" of what is necessary and that added investments will be required, especially in laboratory testing capabilities.²⁹⁵

There is also the problem of not being able to store large quantities of product for later distribution.²⁹⁶ There are also challenges in fish trade on the local market where weak import regulation enforcement is causing the importation of cheap poor quality product which is competing with current retailers/ buyers and preventing access to new consumers.²⁹⁷ In addition, some locals have a poor perception of fresh-water fish in terms of taste and quality in comparison to marine product that is based on inferior imports and the products of some farms.²⁹⁸

²⁹² Jamaica National Export Strategy: Aquaculture, (2008) 6

²⁹³ Ibid

²⁹⁴ Spencer Henson and Steve Jaffee, 'Jamaica's Trade in Ethnic Foods and Other Niche Products: The Impact of Food Safety and Plant Health Standards' (2005) 18 Agriculture and Rural Development Discussion Paper 1, 35

²⁹⁵ Ibid

²⁹⁶ Jamaica National Export Strategy: Aquaculture, (2008) 6

²⁹⁷ Ibid 14

²⁹⁸ Ibid

Chapter 2. Domestic Legal Framework for Achieving Trade Capabilities: Less Developed Islands Experience (Belize and Grenada).

3.2.1 Belize

Belize gained independence from the United Kingdom on 21 September 1981; consequently, Belize inherited the UK's system of common law and parliamentary democracy. The Ministry of Foreign Affairs and Foreign Trade is responsible for trade policy in Belize²⁹⁹. Conversely, a number of other government agencies hold responsibility for specific areas, such as the Ministry of Finance, the Ministry of Agriculture and Fisheries, the Belize Agricultural Health Authority, and the Ministry of Economic Development, Commerce and Industry, and Consumer Protection. There are no formal documents outlining the trade policy but Belize is converting and integrating trade into development plans through the Horizon 2030 initiative and also medium-term and sectoral policies³⁰⁰.

Towards the end of the 1990s Belize was convinced of the need for domestic consultations. To tackle this problem it set up the National Trade Negotiation Commission (NTNC) in 2002. The aim of the NTNC was to bring together the private sector, civil society and government representatives³⁰¹. In order to provide advice to the NTNC a Trade Technical Team (TTT) which comprised of representatives from various ministries was also developed. When it came to framing negotiation and development strategies the discussions generated by the NTNC were reactive rather than proactive³⁰². The Government along with representatives from the industry noticed that services that were supposed to focus on the threats to the system of agricultural preferences were not emerging from the National Trade Negotiation Commission (NTNC) discussions³⁰³.

According to the government, agriculture and fisheries is directly responsible for 41% of the total employment of the labour force in Belize.³⁰⁴ During the past 30 years the fisheries sector

²⁹⁹ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/238 (29 September 2010) 14

³⁰⁰ Ibid

³⁰¹ J. P. Singh, *Managing the Challenges of WTO Participation: Case Study 5 Services Commitments: Case Studies from Belize and Costa Rica* The World Trade Organisation

<http://www.wto.org/english/res_e/booksp_e/casestudies_e/case5_e.htm>

³⁰² Ibid

³⁰³ Ibid

³⁰⁴ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/134 (14 June 2004) 19

has contributed significantly to the economy of the island, contributing 7.1% to the GDP. The Ministry of Agriculture and Fisheries reported that in 2003 fisheries generated a total of US \$55.3 million for fish and fish products exports alone. Farmed shrimp was the major contributor generating US \$46 million.³⁰⁵ The fishing industry of Belize is classified in two main areas: artisanal fishery and high-seas fishery. The high-seas fishing fleet is registered under the International Merchant Marine Registry of Belize (IMMARBE) and is regulated by the High Seas Fishing Act. Licences are granted depending on area where fishing will occur, species of fish to be caught, and the period of the year. The Belize Fisheries Department makes the necessary arrangements to provide license based on recommendations from the Director General and the Senior Deputy Registrar of IMMARBEE. The Ministry of Agriculture and Fisheries is responsible for setting policy in the sector; this is however done bases on the advice of the Fisheries Advisory Board. This board is comprised of all fishing cooperatives in Belize, stakeholders from the private sector, non-governmental organizations, and relevant government departments.³⁰⁶

For Belize there is no presence of a permanent mission in Geneva, consequently, its participation in WTO meetings is limited. This is probably because Belize sees the WTO in a negative light. Belizean officials claimed that no tangible benefits have been derived from Belize's participation in the WTO.³⁰⁷ Government officials also admitted that Belize isolating itself from the WTO is not an option and that isolation would send the wrong signals to the international community. The officials pointed to losses that they attributed to the WTO³⁰⁸. However, with regards to the Doha Development Agenda negotiations, Belize shares similar concerns with other members of CARICOM, the ACP group and the G-33 group.

As a CARIFORUM member, Belize has signed an Economic Partnership Agreement (EPA) with the EU thus, giving it duty and quota-free access to the European Union for fisheries products exported.³⁰⁹ Canada also grants duty-free access for Belize's fisheries products, this is done under

³⁰⁵ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/134 (14 June 2004) 44

³⁰⁶ A lot more emphasis is being placed here on high-seas fisheries as it is probably the most integral part of this research having links to IUU fishing which subsequently leads to trade sanctions. This will be discussed in another chapter in this thesis.

³⁰⁷ J. P. Singh, Managing the Challenges of WTO Participation: Case Study 5 Services Commitments: Case Studies from Belize and Costa Rica The World Trade Organisation

<http://www.wto.org/english/res_e/booksp_e/casestudies_e/case5_e.htm>

³⁰⁸ Ibid

³⁰⁹ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/238 (29 September 2010) 14

CARIBCAN agreement.³¹⁰ Similarly, through the CBI fisheries products exported to the US also enjoy duty-free access.³¹¹ However, it must be noted that the CBI was updated in 2000 and now offers duty-free access to tuna which was previously omitted from the agreement.³¹² In 2001, the percentage duty-free products imported from Belize were as follows: 74% imported into U.S. market were duty-free and 75% entered the Canadian market duty-free. Bananas and sugar from Belize are imported into the EU under tariff-quota arrangements and they account for 38% and 29% of total EU imports from Belize respectively, 94% of the remaining products entered the EU duty-free and this includes fish and fishery products.³¹³

Similar to other islands in the region Belize has provided the ease for doing business in the country. The laws of Belize permit the following categories of business ownership: private company; joint venture and cooperative; partnership; international business company; and public investment company. Joint venture and partnership investments are the preferred mechanism for investment capital and are supported and encouraged by the Government, in addition 100% foreign ownership of an enterprise is also allowed.³¹⁴

The Directorate of Trade in the Ministry of Foreign Affairs and Foreign Trade has the responsibility and the leading role in, trade policy development in Belize. The Directorate also gives advice to other Ministries and coordinates Belize's official positions for trade participation in the WTO, and in other trade negotiations³¹⁵.

The development of trade policy is the undertaking of the Foreign Affairs and Foreign Trade Ministry. However, there are other government ministries and agencies that are responsible for specific products and/or aspects of trade; they too get involved in the trade policy making. For example:

- a) *“Given that the main exports are agriculture products, the Ministry of Agriculture and Fisheries and the Belize Agriculture Health Authority have important roles in the development of trade policy;*

³¹⁰ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/134 (14 June 2004) 12

³¹¹ Ibid

³¹² Ibid 57

³¹³ Ibid 55

³¹⁴ Ibid 31

³¹⁵ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/238 (29 September 2010) 15

- b) *The Ministry of Economic Development, Commerce and Industry, and Consumer Protection is responsible for import licences for non-agriculture goods and, along with the Ministry of Agriculture and Fisheries, for agricultural goods;*
- c) *The Ministry of Finance and the Customs and Excise Department are responsible for setting and collecting taxes, including import duties and the revenue replacement duty; and*
- d) *The Central Bank advises on balance-of-payment issues and is involved in legislation on offshore banking, export processing zones, and other fiscal incentives³¹⁶.*”

The trade and investment policy of Belize has sought to draw investment, expand regional integration through its participation in CARICOM, deepen trade and economic relations with Central American states, and partake in the multilateral trading system. A significant quantity of exports traded by Belize is done under preferential agreements³¹⁷. Regarding this, the Belizean Government realize that the trade and investment strategy for Belize require non-reciprocal agreements as a significant component to facilitate integration into the global trading system. In order to achieve this legislative reforms which include reformation of new legislation for customs valuation, sanitary and phytosanitary measures, intellectual property, standards, and export promotion were conducted³¹⁸.

While there is available a basic institutional structure to handle priority investment and trade issues, over the past decade, some financial and human resource constraints has affected Belize’s ability in managing trade issues³¹⁹. Additionally, Belize is a small economy, vulnerable and capable of falling with any the downturn in the global economy. Cooperation initiatives such as the FTAA Hemispheric Cooperation Program has held discussion in which the trading capacity and capacity-building activities of Belize has been discussed³²⁰. The Government has stated that the WTO’s technical capacity-building insufficient and in addition specific training needs to be designed aiming to satisfy the needs and peculiarities of individual countries. The Government is

³¹⁶ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/238 (29 September 2010) 15

³¹⁷ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/134 (14 June 2004) 14

³¹⁸ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/134 (14 June 2004) 14

³¹⁹ Ibid

³²⁰ Ibid

of the view that training should be specific to implementation and diverge from simple dissemination of information³²¹.

Belize is an original Member of the WTO; in 1983 it became a contracting party to GATT. Within the WTO Belize has sought to have provisions for special and differential treatment for developing countries³²². It has also sought recognition of the special status and needs of small, vulnerable, developing economies. Several notifications have been submitted to the WTO by Belize, however, most these remain outstanding³²³. This therefore caused a reduction in the transparency of Belize's trade regime. The Belizean Government is under the impression that the notification gap is directly related to the human, financial, and structural constraints of the country³²⁴. Similarly, Belize has been involved as a third party in two dispute settlement cases over agricultural produce in the WTO. First, a case involved the EU's export subsidies and second Dispute Settlement Understanding DSU on the import, sale, and distribution of an agricultural produce by the EU³²⁵.

Belize's main interests in the Doha Development Agenda negotiations were on preference erosion and fisheries subsidies. Along with other developing economies, Belize has raised issues regarding the sustainable development of fisheries. One of the fundamental issues among proposals made by Belize was that it should be given special and differential treatment on fisheries subsidies and particularly, access fees, fiscal incentives for exporting fisheries and protection of artisanal fisheries would not be thought as forms of subsidies.³²⁶ Belize has not been active directly in the DDA since 2005; however by way of CARICOM and the ACP group, its participation has been given in several proposals as they too share the same concerns as Belize. As a member of the G-33 group of developing countries Belize is also seeking flexibility on market access commitments during agriculture negotiations. Regarding agriculture and non-agriculture market access (NAMA), Belize is viewed as a small vulnerable economy. Under the current drafts of modalities it would be able to claim additional flexibility in making new

³²¹ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/134 (14 June 2004) 14

³²² Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/238 (29 September 2010) 16

³²³ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/134 (14 June 2004) 14

³²⁴ Ibid

³²⁵ Ibid

³²⁶ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/134 (14 June 2004) 36

commitments compared with other developing countries. Notably, preliminary and a revised offer on services have already been submitted by Belize³²⁷.

The trade policy of Belize is influenced by its participation in the Caribbean Community and Common Market (CARICOM). Through CARICOM Belize also conducts its common external policy and negotiations. Simply put, after Belize formulates its national trade policies, they are then fed into CARICOM³²⁸. Through regional cooperation in negotiations Belize gains greater weight because of its position, regional cooperation also provides a useful lever supporting the limited human resource base of the island. Being a member of CARICOM further improves Belize's capabilities in negotiating or administering trade agreements. Agreements can be done at the bilateral and regional levels. In addition, because of the advantageous geographic location of Belize, it has undergone steps to work more closely with its Mexican and Central American neighbours³²⁹.

3.2.2 Challenges for Belize

Due to the limited institutional capacity of the country it is difficult for Belize to participate in negotiations and administer the increasing number of preferential agreements. It is also a burden for Belize to observe the commitments that it has undertaken. This is to say that, it is a challenge for Belize apply and implement adjustments that may be necessary to fulfil the complex obligations from bilateral, subregional, and regional agreements³³⁰. The investment system of Belize offers a wide-ranging programme geared at promoting domestic and foreign investment. The island also grants fiscal and other benefits to entities engaged solely in international or export-oriented activities³³¹. One of the main challenges that Belize is facing is defining and implementing changes necessary for the country to adapt to reductions in trade barriers and distortions arising in a number of world markets. There is the possibility that this may also bring about a reduction in unilateral preferences³³².

³²⁷ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/238 (29 September 2010) 16

³²⁸ Ibid

³²⁹ Ibid

³³⁰ Ibid 17

³³¹ Ibid

³³² Ibid

The Trade Policy Unit (TPU) within the Ministry of Foreign Trade is tasked with the implementation of “*all trade related matters, performing a direct and hands-on role in trade policy formulation, coordination, and implementation of obligations*”. Primarily, the Unit's tasks are to be an advisor to other ministries and acting on the behalf of Belize regarding its obligations to trade policy issues relative to participation in CARICOM, ACP-EU relations, the WTO Agreements, the FTAA; and developing the country’s regional and bilateral trade policy. The TPU has a staff of five technical workers³³³.

A major challenge for Belize as it relates to fisheries is averting the imposition of trade sanctions by the EU due to Belizean flagged fishing vessels being accused of conducting IUU fishing activities on the high-seas. Most recently in November 2012 the EU through its Commission served Belize with a notice stating that unless the country takes control of its high-seas fishing fleet and properly standardize and manage the operations of the registry exporting privileges to the EU will be banned. Prior to that, the European Union Commission blacklisted Belize claiming that Belize and seven other countries had failed to fulfil their duty to cooperate in the fight against IUU fishing. The Official Journal of the EU stated that ‘Belize failed to fulfil its obligations as a flag state in combating IUU fishing on the high seas. The EU further stated that such act by Belize undermines the conservation and management of living resources on the High-seas.’³³⁴

³³³ Trade Policy Review Belize, Report by the Secretariat, WT/TPR/S/238 (29 September 2010) 17

³³⁴ Adele Ramos, ‘Belize trying to avert EU sanctions over IUU fishing on high seas’, The Amandala (online), 14 June 2013 <<http://amandala.com.bz/news/belize-avert-eu-sanctions-iuu-fishing-high-seas/>>

3.2.3 Grenada

The government of Grenada has identified fisheries as a sector having significant potential for growth which could lead to further development of the country. The fishing industry plays an important role in contributing to the development of rural economy, as well as a vital linkage to the tourism sector. Not only that, the fisheries sector in Grenada has been a significant source of income for women in the country. The government established a fisheries school during the 1980s this imparted the knowledge necessary to enable the country to become an exporter of both fresh and processed fish products.³³⁵

One of the primary focuses of the government is to further develop the fishing industry by adopting measures to increase fish exports and the value-addition and enhance the manufacturing components of the industry. This would then be streamline as a significant contributor to the socio-economic development of the economy. At the moment, exports from fish account for 51% of agricultural exports and 31% of the overall production in the agriculture sector.³³⁶

In 2002 an Inspection Mission from the European Commission made a visit to Grenada. The Mission Team in its final report recommended that the government of Grenada institute measures to upgrade the island's status from a European Community List II to a List I. This will ensure further and future fish exports from Grenada to enter into the EU. The government Grenada made an application and was accepted to be a part of the European Commission's Strengthening Fishery Products (SFP) program.³³⁷ This program was designed to help ACP countries improve health conditions of fishery products. The island has adopted the Hazard Analysis Critical Control Point (HACCP) food safety method. Through this Grenada has been able to maintain access to its traditional markets of Martinique, Guadeloupe and the United States. In order for fisheries to boost economy of Grenada, there must be an expansion of current markets, new markets and agreements must be entered into and there must be a continuation in

³³⁵ Trade and Export Development Division, Ministry of Foreign Affairs, Environment, Foreign Trade and Export Development, 'Aid for Trade Case Story: Grenada' [2011] OECD 1, 1

³³⁶ Ibid 2

³³⁷ The SFP Program commenced in 2002 as a support mechanism to aid developing countries in meeting EU regulations for fishery products. The program provides financial assistance for activities in the Group of ACP countries and in the Overseas Countries and Territories of The Netherlands and the UK.

the production and distribution of high-quality fish products which meet international standards.³³⁸

Within recent years Grenada's trade policy has changed because of its participation in international, regional and bi-lateral trade agreements. Resulting from this change Grenada is now able to secure its trade interests and enhance trade performance³³⁹. By changing trade policies Grenada reflected a shift from import substitution to a more liberalised trading system. The global move against trade preferences, which includes leaning towards a more liberalized world trading regime, the establishment of the WTO and the widespread development and rise of regional trade agreements have all had an impact on the formulation of trade policies in Grenada³⁴⁰.

Grenada's trade policy objectives are key to:

- a) Improving competitiveness in the manufacturing sector;
- b) The diversification of the agriculture sector;
- c) The development of the services sector to be internationally competitive;
- d) Gaining greater market access for non-traditional sectors;
- e) Export led growth;
- f) The generation of sustainable economic growth and reduction of poverty³⁴¹.

For these objectives to be achieved there needs to be involvement from the public and private sector in the formulation trade policy. As a result, the Grenada Cabinet has appointed a National Trade Policy Committee (NTPC); this committee is comprised of representatives from the public sector, private sector and civil society. The NTPC will be a consultative mechanism which advises on the development of trade policy and positions to be taken during trade negotiations³⁴².

3.2.4 Institutional Framework

The Ministry of Economic Development and Planning is responsible for formulating trade policy to facilitate international trade and the negotiation of trade agreements. Also involved in the process of trade policy formulation and implementation are several other Ministries and

³³⁸ Trade and Export Development Division, Ministry of Foreign Affairs, Environment, Foreign Trade and Export Development, 'Aid for Trade Case Story: Grenada' [2011] OECD 1, 2

³³⁹ *Trade Policy Review Report by Grenada*, WT/TPR/G/190/GRD (1 October 2007)11 [30]

³⁴⁰ *Ibid* 12 [37]

³⁴¹ *Ibid* 11 [31]

³⁴² *Ibid* 11 [32]

agencies. These include; the Ministries of Finance, Foreign Affairs, Health and the Environment, Tourism, Agriculture, Legal Affairs, Prime Minister's Office and the Ministry of Works and Communications. Trade related agencies involved are the Grenada Bureau of Standards and the Grenada Industrial Development Cooperation³⁴³. Within recent years, the role of Grenada in shaping OECS and CARICOM trade policy has been of a more pro-active nature regionally. Decision for trade negotiations agreed on by the National Trade Policy Committee NTPC is relayed into the OECS Trade Negotiating Group (TNG). This group consists of representatives from the Public and Private Sectors of OECS member states. As a member of the OECS, Grenada has been known to work closely with other members to assist in the development of harmonized negotiating positions; this is especially evident in the agricultural negotiations at the WTO and other forum. Decisions arrived at by the TNG are then relayed to the different CARICOM Technical Working Groups and harmonized as much as possible into an overall CARICOM position. In the same way, positions adopted by CARICOM in any external negotiations must have the approval of the Council for Trade and Economic Development (COTED)³⁴⁴.

3.2.5 Trade policy Implementation

The Grenadian Government has been working on the implementation of a new export strategy which will enhance export performance through improved value addition, national competitiveness, enhanced quality, and production cost reduction. The negotiation of regional, bilateral and multilateral trade agreements is viewed by Grenada as an avenue to secure its interests in trade and enhance trade performance³⁴⁵. Grenada was also among the 15 CARICOM States that signed the CARIFORM-EC Economic Partnership Agreement (EPA) in October 2008. However, the island has been trading with the EU long before that. Currently, the trade value between Grenada and the EU has been declining rapidly since 2005.³⁴⁶ The value of trade in goods between Grenada and the EU in 2009 was €20 million; this is considered the lowest since 2005. During that time it was €48.6 million and €31.1 in 2008. At the same time, in 2009

³⁴³ Trade Policy Review Grenada, Report by the Secretariat, WT/TPR/S/190/GRD (1 October 2007) 8 [36]

³⁴⁴ Trade Policy Review Report by Grenada, WT/TPR/G/190/GRD (1 October 2007)11 [35]

³⁴⁵ Trade Policy Review Grenada, Report by the Secretariat, WT/TPR/S/190/GRD (1 October 2007) 8 [33]

³⁴⁶ European Union Delegation, *EU Grenada Bilateral Trade* Delegation of the European Union to Barbados and the Eastern Caribbean <http://eeas.europa.eu/delegations/barbados/eu_oecs/grenada/bilateral_trade/index_en.htm>

fish accounted for 28% of goods traded in the EU.³⁴⁷ Further to that, the government has indicated that the contribution from fisheries to the GDP of Grenada stands at 1.4%.

Grenada is firmly committed to the multilateral trading system; it considers its participation in the WTO as high priority. This is largely because of concerns about the erosion of preferences and the outcome of agriculture negotiations. In addition the country is more actively involved in WTO negotiations and in the implementation of the WTO obligations. Grenada heavily dependent on regional cooperation when it comes to trade policy issues, this is partially due to significant limitations in human and technical resource when it come to trade policy formulation and implementation³⁴⁸.

The categorization of Grenada's external trade is done by a number of preferential trade agreements inclusive of; the Caribbean Basin Initiative and CARIBCAN. Besides, the island takes part in several international and regional trade agreements and initiatives. The dawn of globalization presents a significant threat to the economy of Grenada as it is seeing preferential trading agreements being replaced by reciprocal trading agreements. To this end, Grenada is compelled to shift its trade policy from import substitution to a more liberal trading system. Notably, all this is happening while still facing the challenge of resource limitation in executing its obligations and also limitation of the capacity to manage the emerging trade regime³⁴⁹.

Grenada has also displayed that it still possess the capacity for product expansion in fisheries. Pilot projects have been developed and implemented on the island with products such as sea moss (*Gracilaria*) cultivation, supported by the Canadian agency International Centre for Ocean Development; there is also a private pilot project on king crab (*Mithrax spinosissimus*) and finally a project with shrimp (*Macrobrachium*).³⁵⁰

The CARICOM region has implemented the CARICOM Single Market and Economy (CSME). This is as a response to recognizing the challenges presented by the increasingly globalised

³⁴⁷ European Union Delegation, EU Grenada Bilateral Trade Delegation of the European Union to Barbados and the Eastern Caribbean <http://eeas.europa.eu/delegations/barbados/eu_oecs/grenada/bilateral_trade/index_en.htm>

³⁴⁸ Trade Policy Review Grenada, Report by the Secretariat, WT/TPR/S/190/GRD (1 October 2007) 9 [37]

³⁴⁹ Government of Grenada, 'Grenada National Report on Sustainable Development' (Report, Ministry of Finance, 2004) 6

³⁵⁰ Food and Agriculture Organisation, *A Regional Survey of the Aquaculture Sector in the Caribbean: Aquaculture Production* FOA Corporate Document Repository <<http://www.fao.org/docrep/t8365e/t8365e05.htm#TopOfPage>>

economy and the need to enhance competitiveness in the region³⁵¹. The CSME calls for the abolition of trade barriers and includes the free movement of elements of production geared towards the stimulation of regional growth and competitiveness. The Free Trade Area of the Americas (FTAA) is another major trade initiative in motion within the CARICOM Region. The Free Trade Area of the Americas is calling for the liberal elimination of trade barriers and encourages investments among the participating countries³⁵².

3.2.6 Challenges for Grenada

As a small developing country Grenada is faced with tremendous problems in its effort to implement its trade policy and to meet its agreed trade obligations. Lack of human and financial resources has been significant constraint for the island in enforcing its commitments. The country has received and welcomed the technical assistance which it received from the WTO. However, there are still areas remaining which need to be developed, particularly; the implementation of trade-related agreements, capacity-building for participation in trade negotiations and trade policy formulation³⁵³. From a fisheries standpoint, problems exist through the island's high vulnerability to the impacts of natural disasters and climate change. More localized factors include transport and fuel costs. Additionally, there are problems which stem from rise in sea temperature causing reduction in fish stocks and also coral bleaching.³⁵⁴

³⁵¹ Government of Grenada, 'Grenada National Report on Sustainable Development' (Report, Ministry of Finance, 2004) 7

³⁵² Ibid

³⁵³ Trade Policy Review Report by Grenada, WT/TPR/G/190/GRD (1 October 2007)18 [71]

³⁵⁴ Trade and Export Development Division, Ministry of Foreign Affairs, Environment, Foreign Trade and Export Development, 'Aid for Trade Case Story: Grenada' [2011] OECD 1, 4

PART 4: THE CASE OF ST VINCENT AND THE GRENADINES

4.1 Brief Overview of the Fisheries

St. Vincent and the Grenadines is a chain of 32 islands located approximately 100 miles (161 km) west of Barbados. The main island St. Vincent is 18 miles (29 km) long and 11 miles (18 km) wide. It has rigid mountain ranges and is densely forested in most parts. The northern part of the island consist mostly of mountainous terrains and lush forest, it is being dominated by a 4,048 ft (1,234 m) volcano call La Soufrière. St. Vincent and the Grenadines is a parliamentary democracy within the Commonwealth of Nations of which Queen Elizabeth II is head of state. Parliamentary elections are held and a Prime Minister and the Cabinet control the government. The Grenadines islands of Bequia, Canouan, Mayreau, Mustique and Union Island consist largely of small scale fishing communities.

The fishing industry in St. Vincent and the Grenadines is principally small scale. It employs approximately 2500 persons with over 70% being solely dependent on fishing and fisheries related activities for their livelihood.³⁵⁵ Fisheries contribution to the GDP is approximately 1-1.9%. With this in mind, it is estimated that the population of St. Vincent and the Grenadines is 110,000 persons, thus, the per capita consumption of fish is about 23lbs. The average fish landing is 1.8 million lbs with a value of US\$3.6 million; correspondingly, fish imports stand at approximately 1.1 million lbs, at a value of US\$2.15 million; while fish exports are 276,000 lbs, at a value of US\$0.9 million. Consequently, St. Vincent and the Grenadines is a net importer of fish and fishery products.³⁵⁶ There are 770 fishing vessels in operation within the EEZ of St. Vincent and the Grenadines with a further 34 operating within the International Commission for the Conservation of Atlantic Tunas (ICCAT) High seas conservation area.³⁵⁷

³⁵⁵ Fisheries Division: Corporate Plan and Advance Proposals Fiscal Years 2012 - 2014

³⁵⁶ Ibid

³⁵⁷ Ibid

4.2 St Vincent and the Grenadines Fish Trade

Agriculture makes up the bulk of all exports, accounting for some 75% in total; in 2005, bananas alone accounted for some 32% of the total exports.³⁵⁸

During the 1980 - 1990s SVG had a vibrant fish export industry. Although the export market was and still is small, it generated significant revenue for all those involved. The bulk of the fish export from SVG is concentrated within the Grenadines; primarily Bequia, Canouan and Union Island. Fishing is the main source of income for 33%, 25% and 8% of the residents of each island respectively. Approximately 85-95% of adult males in the Grenadines is either fisher or involved in fishing related activities.³⁵⁹ Fish is exported mainly to the EU territories of Martinique and Guadeloupe, which was made possible under the Lomé I Convention, which at that time was the trade agreement between EU and ACP countries. Fish export to Martinique and Guadeloupe consisted mostly of Spiny lobsters (*Panulirus argus*), Reef fishes such as parrotfish (*Scaridae* spp.) and deep water Demersal like snappers (*Lutjanus* spp.) and groupers (*Epinephelus* and *Mycteroperca* spp.). Queen Conch (*Strombus gigas*), coastal pelagics and large pelagics were also exported occasionally. Of the total number of fishers in SVG during that time, 75% found the deep water demersals to be the most important species for export. The Fisheries Division of SVG estimated that 60% of demersal species, coastal pelagics and reef pelagics from the St. Vincent and the Grenadines were sold directly to trading vessels mainly for export to Martinique. A figure of approximately 10% was said to have reached local consumers.³⁶⁰

The economic value of demersal fish production for the Grenadines communities of Bequia, Canouan and Union Island was estimated to range between East Caribbean EC \$1,386,000-51,726,000 per year. This represented between 62.2 and 58.3% of the value of total fish landings. Additionally, estimates based on fish landings from the Grenadines between the years 1984 - 1986 is 539.8 mt, which translated to 70% of total Grenadines landed catch.³⁶¹ Fishers fetched wholesale selling prices of EC \$12.50 per kilogram for Grade 1 fish and EC \$9.00 per kilogram

³⁵⁸ Trade Policy Review St. Vincent and the Grenadines, Report by the Secretariat, WT/TPR/S/190/VCT (1 October 2007) 5 [19]

³⁵⁹ Yuri Sanjeev Chakalall, 'Fish Exporting in the Grenadine Islands: Activities of Trading Vessels and Supplying Fishers' (1993) 18 CARICOM Fishery Research 1, 1

³⁶⁰ Ibid 2

³⁶¹ Ibid 8

for Grade 2 in Martinique. Lobsters were exported live by air to Martinique and Barbados; this is in addition to local sale to residents, hotels, tourists and local yachts.³⁶² Although SVG was prohibited from exporting fish to EU territories, export of live lobsters to Barbados is still on going.

Currently, between the mainland St Vincent and the islands of the Grenadines; mainly Bequia, Canouan and Union Island, schooling coastal pelagics are extensively fished. A large quantity of these fish are being exported to neighboring island St Lucia. Apart from fish exports to Barbados and St Lucia, St. Vincent and the Grenadines also export a small quantity of fish to the US. During the period 2007 – 2011 approximately 0.9 million kg of fish was landed, of that amount approximately 0.1 million kg were exported in the same period.

4.3 Domestic Legal Framework for Fish Trade

Prior to its 1979 Independence, St. Vincent and the Grenadines applied GATT de facto as a member of the metropolitan territory of the United Kingdom. In May 1993 St. Vincent and the Grenadines, under Article XXVI: 5(c), with its rights and obligations under GATT retroactive to the date of Independence, became a contracting party to GATT. St. Vincent and the Grenadines is an original member of the WTO and applies MFN treatment to all its trading partners.³⁶³ Whereas WTO membership is of importance to the entire trade policy of SVG, the island has had to rely a great deal on regional institutions and mechanisms to push its WTO-related interests. This is largely owed to limitations of human and technical resources. Specifically, SVG collaborates actively with other CARICOM states in the formulation of trade policy and the implementation of WTO and other trade issues. Whenever resources permit SVG will participate directly in trade negotiations. However, its international trade negotiations are generally facilitated by the CARICOM Secretariat Office of Trade and Negotiation OTN.³⁶⁴

³⁶² Yuri Sanjeev Chakalall, 'Fish Exporting in the Grenadine Islands: Activities of Trading Vessels and Supplying Fishers' (1993) 18 CARICOM Fishery Research 1, 8

³⁶³ Trade Policy Review St. Vincent and the Grenadines, Report by the Secretariat, WT/TPR/S/190/VCT (1 October 2007) 9 [43]

³⁶⁴ Ibid 8 [35]

4.4 Preferential Agreements and Arrangements

The external trading regime of St. Vincent and the Grenadines takes place mainly under preferential conditions. As a founding member of CARICOM, St. Vincent and the Grenadines is automatically tied to bilateral trade agreements with Colombia, Costa Rica Cuba, the Dominican Republic, and Venezuela. St. Vincent and the Grenadines is also a member of the CARIFORUM Economic Partnership Agreement EPA, and the Association of Caribbean States (ACS).³⁶⁵ Although the exportation of fish and fish products is prohibited within the EU territories, St. Vincent and the Grenadines' exports receive traditional preferential access to the EU market under the CARIFORUM Economic Partnership Agreement EPA. Some fisheries in SVG are on a seasonal basis, and during the off season some fishers resort to farming for livelihood. Banana production had been one of SVG's major economic activities, contributing significantly to the country's development and livelihood of rural communities. Within in recent years, preferences have been eroded and there has been a steady decline in banana exports. All this is due to changes in the banana regime; for example cheaper produce in greater quantities from developed states such as Central America.³⁶⁶

Numerous products from SVG also enjoy preferential access to the US market under the CBI. Fish and fish products are among goods exported to the US, although in small quantities. Through CARIBCAN, Canada also grants preferential access to a number of produce originating from SVG.³⁶⁷ In addition, St. Vincent and the Grenadines originating goods are eligible for the GSP schemes of Australia, Canada, the European Communities, Japan, New Zealand, Switzerland, and the US. Though, the range of products may vary depending on the scheme implemented by each country.³⁶⁸

4.5 ICCAT Ban on Bluefin Tuna Exports from SVG

In the year 2000 ICCAT prohibited the sale of Bigeye Tuna and derived products from St. Vincent and the Grenadines to contracting parties of ICCAT. This included sales to Japan, Canada, USA and the EU countries. This prohibition was as a result of SVG's failure to properly

³⁶⁵ Trade Policy Review St. Vincent and the Grenadines, Report by the Secretariat, WT/TPR/S/190/VCT (1 October 2007) 10 [49]

³⁶⁶ Ibid 10 [50]

³⁶⁷ Ibid 10[51]

³⁶⁸ Ibid 11 [52]

report its Bigeye Tuna catches to ICCAT and for the involvement of Vincentian registered fishing vessels in Illegal, Unreported and Unregulated (IUU) fishing activities.³⁶⁹ The trade prohibition dealt a severe blow to the fishing industry of SVG causing significant loss of revenue. In an effort to rectify this issue and to avoid other sanctions, the Government of SVG established an inter-ministerial committee whose purpose was to develop a remedial action plan for the removal of the prohibition on Bigeye tuna. The plan included the establishment of a suitable management framework for regulating of the fishing activities of SVG flagged vessels on the high seas. This measure ensured compliance with ICCAT management measures. The plan was approved by SVG's Cabinet and upon its implementation in 2003. ICCAT lifted the prohibition on the export of Bigeye tuna from SVG.³⁷⁰

Under WTO rules, the prohibition could have been challenged by SVG. However, the SVG authorities realized that there was a lack of significant grounds to challenge ICCAT's ruling. The prohibition of the trade of Bigeye tuna also included Belize, Cambodia, Honduras and Equatorial Guinea and thus ruled out any possible discriminatory action against SVG under rules of trade. The prohibition was transparent as ICCAT had provided a format in which reporting was supposed to be conducted. Finally, it is common for RFMOs to implement trade sanctions for high-seas fisheries violations. In fact it is contained within the convention of some RFMOs; this therefore dispelled the notion that the prohibition was unilateral.

At the 2004 ICCAT scientific meeting SVG agreed to work in collaboration with Japan, USA and Chinese Taipei, to continue to strengthen the regulation governing the country's high seas fishing fleet. In November 2006, St Vincent and the Grenadines became a contracting party to ICCAT, the island is now able to harvest a number of species on which ICCA placed catch limits and quotas restriction.³⁷¹ The species caught and quotas allotted to SVG include: 75mt of Swordfish, 100mt of Northern Albacore Tuna, 100mt of Southern Albacore Tuna, 2100mt of Bigeye Tuna and Yellowfin tuna. Currently SVG is submitting its annual catch and registration

³⁶⁹ Recommendation by ICCAT Concerning the Importation of Atlantic Bluefin Tuna, Atlantic Swordfish, and Atlantic Bigeye Tuna and their Products from St Vincent and the Grenadines 02-16

³⁷⁰ Fisheries Division: Corporate Plan and Advance Proposals Fiscal Years 2012 - 2014

³⁷¹ Ibid

statistics to ICCAT prior to the stipulated deadline, as well as complying with its other obligations under the ICCAT convention.

SVG does not have a designated trans-shipment port for fish. As a result, high-seas fishing vessels flying the flag of St. Vincent and the Grenadines and are operating within the ICCAT Convention Area, land and trans-ship their catches in Trinidad and Tobago where there are 2 designated transshipment ports. Presently, the collaboration and communication with ship owners for obtaining fishery statistics is good; all relevant data is being received and on time. However, St. Vincent and the Grenadines saw the need to establish an independent port sampling program to validate landings and trans-shipping activities at these ports. Therefore, St. Vincent and the Grenadines submitted a proposal to ICCAT in 2010 to establish a 12-month sampling program at Trinidad and Tobago's trans-shipment ports. ICCAT gave approval for the program which commenced in 2012.³⁷²

4.6 European Union Ban on Fish Imports from SVG

a) Sanitary and Phyto-Sanitary Issues

In light of developments in the European Union's food laws, a team of inspectors from the Food and Veterinary Office (FVO) of the European Union (EU) visited St. Vincent and the Grenadines in early 2000. The aim of the mission was to assess the country's health and safety standards for the export of fish and fisheries products and to conduct an audit of all available fish processing facilities in the country. By and large, the mission found that there were copious deficiencies to which corrective action must be implemented before St. Vincent and the Grenadines could be returned to Part I of the list.³⁷³

Following this visit, the decision was made by the European Union Commission on 22 December 2000 to exclude St. Vincent and the Grenadines from Part I of a list of third countries from which the importation of fish and fishery products is authorized for consumption.³⁷⁴

Based on its findings from the inspection, the European Union Commission recommended:

³⁷² CRFM Secretariat, 'Report of Eighth Annual Scientific Meeting - Kingstown, St. Vincent and the Grenadines' (Report, Volume 1, Supplement 1, CARICOM Regional Fisheries Mechanism, 20 - 30 June 2012) 42

³⁷³ Annex of Commission Decision 97/296/EC

³⁷⁴ Ibid

- 1) A competent authority should be declared, with defined tasks and powers.
- 2) All EU legislation relevant to fish trade should be adopted and enacted as this ensures the achievement of EU equivalent standards.
- 3) The establishment of official laboratories certified by the competent authority to conduct relevant microbial and chemical analysis on fish products, ice and water.
- 4) Laboratory analysis should be conducted in accordance with provisions stipulated by the relevant EU legislation.
- 5) Implement a monitoring system to monitor for the presence of heavy metals, organo chlorinated substances and other contaminants in the marine environment.
- 6) The development of procedures for the approval and suspension or withdrawal of processing establishments.
- 7) A procedure for the reporting of inspections conducted should be developed and implemented.
- 8) The competent authority should develop and establish set procedures for the issuance of health certificates in accordance with provisions stipulated by the relevant EU legislation.

Further to that, a number of deficiencies were observed by the EU mission inspectors during the inspection of the country's major fish processing facility (New Kingstown Fish Market). It was recommended that these be rectified. In like manner, the EU commission requested of the competent authority of St Vincent and the Grenadines, written guarantees regarding the improvement of all deficiencies and adherence to all recommendations. In addition, the guarantee must contain a detailed analysis of all actions taken or that will be taken and the deadline by which all action would be or has been achieved.

According to the WTO/GATT 1947 Article XX (General Exceptions):

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:
... (b) necessary to protect human, animal or plant life or health;

The EU has set high health and safety standards that St Vincent and the Grenadines and other members of CARICOM are finding it difficult to comply because of lack of technical and

financial capacity and equivalent domestic measures. In addition, the EU refuses to reduce or compromise its health and safety standards for any developing country.

These standards are so difficult to achieve that without any compromise by the implementing state they can constitute technical barrier to trade (TBT). Furthermore, the EU has its health and safety standards so skilfully wrapped up in international law and in the WTO agreements that it is virtually impossible to prove them as being TBTs legally.

St Vincent and the Grenadines has developed and enacted the Fisheries (Fish and Fish Products) Regulations 2006. This regulation contains the health and safety standards for the exportation and importation of fisheries products. To further support the regulation, the Competent Authority has been working closely with the St. Vincent and the Grenadines Bureau of Standards (SVGBS) whose responsibilities are for the preparation, promotion, and implementation of national standards in relation to goods, services, processors, and practices. The St. Vincent and the Grenadines Bureau of Standards (SVGBS) has accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards contained in the TBT Agreement. However, while some national standards are compulsory, others are voluntary.³⁷⁵

The technical regulations and standards developed and implemented by the bureau are based those from international agencies such as ISO, CODEX and IEC. The EU recognizes CAHFSA the regional standards body in CARICOM and SVG is a member of this body, fulfilling its obligations. Additionally, the SVGBS is a member of Codex Alimentarius and the CARICOM Regional Organization for Standards and Quality (CROSQ).³⁷⁶

St. Vincent and the Grenadines made a submission to the SPS Committee in 2007. The Country expresses its concern regarding the adverse effects of high standards imposed by developed countries on its exporters, especially small farmers and fishers. SVG described the high standards as *"the proliferation of standards developed by private interest groups without any reference to the SPS Agreement or consultation with national authorities"*. According to a study

³⁷⁵ Trade Policy Review St. Vincent and the Grenadines, Report by the Secretariat, WT/TPR/S/190/VCT (1 October 2007) 21 [91]

³⁷⁶ Ibid

conducted by the government of SVG, these standards impose an estimated costs of more than US\$3 million on approximately 3,000 farmers and fishermen.³⁷⁷ In its submission, SVG urged that four steps be considered in the implementation of standards by developed countries: (a) the implementing companies and agencies of these standards make available a support facility for producers in small vulnerable economies; (b) the flexibility of the standards to take into account specific crops and country situations; (c) the involvement of producers as much as possible in the development of standards; and (d) compliance with the SPS Agreement and the involvement of input from international standard setting bodies during development.³⁷⁸

b) Issues Relating to Control of Vessels Under Open Register

Another part of WTO/GATT 1947 Article XX (General Exceptions) that is of concern to SVG is Part (g). It states: . . .*(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption; . . .*

St Vincent and the Grenadines through the Fisheries Division (Competent Authority) manages fishing vessels registered under the Merchant Shipping Act No. 11 of 2004. These vessels fish on the high seas and must comply with measures imposed by St Vincent and the Grenadines and various recognized competent management bodies such as ICCAT. The High Seas Fishing Act of 2002 provides the legal mandate for the management of the high seas fleet. The fleet consists of over 157 vessels at present; it is among the largest in the world. It is believed that this is one area of dissatisfaction that the EU has against SVG.

In later 2012 the EU Directorate-General for Maritime Affairs and Fisheries sent a questionnaire to the Competent Authority for Fisheries in SVG. The questionnaire titled “*European Union System to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing Questionnaire*” stated in its introductory pages that its purpose “*...is to permit the European Commission to obtain the information it deems necessary for its evaluation mission*”. It further stated that “*the European Commission may carry out on-the-spot visits at the relevant authorities to evaluate the information provided in this questionnaire*”. It also stated that; “*you*

³⁷⁷ Trade Policy Review St. Vincent and the Grenadines, Report by the Secretariat, WT/TPR/S/190/VCT (1 October 2007) 23 [103]

³⁷⁸ Ibid

should be aware that the non-submission of necessary information within the specified time limits or the submission of false or misleading information can have unfavorable consequences”.

The questionnaire was completed by the relevant authority in SVG and submitted to the EU in the middle of 2013.

According to the FAO, capture fisheries is on the decline and IUU fishing activities are a major contributor to this decline. The FAO has published numerous legally and non-legally binding agreements outlining the duties of flag states regarding vessels flying their flag. On this basis of international law, once again the EU has sorted to wrap its own legislation in these agreements. They have twisted these agreements so much that it is virtually impossible for states to challenge the EU legislation.

PART 5 CORRECTIVE ACTIONS TAKEN BY SVG

5.1 Legislative Framework

5.1.1 The Fisheries Act 1986 and Regulation 1987:

The fishing industry in SVG is governed by six legal instruments. St Vincent and the Grenadines (SVG) Fisheries Act No. 8 of 1986 and the Fisheries Regulations No. 1 of 1987 are the overarching pieces of legislation governing the management of fisheries resources in St Vincent and the Grenadines (SVG). These two pieces of legislation were revised and amended in 2009. In addition to the fisheries act and regulation, there is the Fisheries (Fish and Fish Products) Regulations 2006. This regulation encompasses all aspects of health and safety with regards to “Hygiene standards applicable to fishery products on board fishing vessels”, “Standards for handling fishery products on land”, “Health control and monitoring of production conditions”, “Hazard Analysis and Critical Control Points (HACCP)” and “The approval of fish processing establishments”. Further to these three pieces of fisheries legislation, other legal instruments which aid in the proper management of the country’s fish resources include; the High-seas Fishing Act 2001 and Regulations 2003, Marine Parks Regulations 1998 and the Maritime Areas Act 1983. At present there is to be approved by parliament the St. Vincent and the Grenadines Illegal Unreported and Unregulated Fishing Regulations 2013.

A few of the management measures that these fisheries legislation support in order to ensure sustainability of the fishery resources of SVG include:

- a) Vessel licensing and permit systems to regulate access to fishery resources
- b) Establishment of marine reserves to protect bio-diversity in certain areas
- c) Implementation of close and open seasons for vulnerable species such as lobster and sea turtles. This protects species during times when they are most susceptible for example breeding seasons.
- d) Implementation of limited size to be caught. This ensures that juvenile species are protected.
- e) Protection of breeding species to ensures continued procreation and rejuvenation of species into the fishery

- f) Implementation of restrictions on some fishing gears. This includes regulation of mesh sizes in order to allow juveniles to escape.
- g) Cooperating and collaboration with other states for the protection of species and ecosystem.

All in all, the measures that are stipulated in these acts and regulations further help in the deterring and/ or elimination of Illegal, Unreported and Unregulated (IUU) fishing domestically and on the high-seas. As demonstrated in this thesis developed states such as the European Union (EU) and the United States(US) are now moving towards the imposition of trade sanctions on coastal states whose vessels are involved or states who directly or indirectly support Illegal, Unreported and Unregulated (IUU) fishing activities. In order to further strengthen the position of SVG in relation to IUU fishing, officials are currently developing the St Vincent and the Grenadines Illegal, Unreported and Unregulated (IUU) Fishing Regulations. This will complement the High-seas Fishing Act 2001 and Regulations 2003.

The Government of SVG has had its focus on the development of a commercially viable fishing industry with a view to trade. So much so, they have been actively participating in the global scheme of international fisheries management by applying recommended measures such as those found in the FAO Compliance Agreement and FAO Code of Conduct for Responsible fishing among others. Additionally, the Government has met the legislative, administrative and reporting obligation of international and regional agreements such as those belonging to the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the European Union (EU). One such action is the development and implementation of the aforementioned Fisheries (Fish and Fish Products) Regulations 2006.

This regulation was done in accordance with the guidelines as stipulated by the EU. It was enacted and implemented at the national level in order to ensure those standards the equivalence of those of the EU were achieved.

5.1.2 The Fisheries (Fish and Fish Products) Regulation, 2006:

This regulation was issued by the Minister in exercise of power conferred in the Fisheries Act.³⁷⁹ Stipulated in this regulation are the requirements for hygiene conditions on board fishing vessels, including freezing and factory vessels, sanitary requirements after landing and sanitary conditions at fish processing plants, including requirements to Hazard Analysis and Critical Control Points (HACCP) and own check systems. Within the regulation, the Fisheries Division is designated as being the Competent Authority for the official control of fish and fishery products.³⁸⁰ The article specifies that the duties and responsibilities of the Competent Authority are those as outlined in the Fisheries Act. While the Fisheries Division is the Competent Authority, not all of the units within the division are involved in the official control of fish and fishery products. Further to that, the responsibilities and obligations of the Competent Authority as highlighted in the regulation are to give approval regarding the hygiene conditions at a fish processing establishment prior to the issuing of a license for operation and also to monitor sanitary conditions as well as specific health criteria on board vessels, at landing sites, at processing facilities and during transport.³⁸¹ HACCP requirements are addressed in the regulation in the form of an Appendix. Included are the core of “five steps” and “seven principles” of HACCP.³⁸² Other requirements that are also included are those for monitoring of hygiene and freshness/Total Volatile Basic Nitrogen (TVBN), the presence parasites and histamine on board vessels and at landing sites, to be conducted by the Competent Authority only.³⁸³ Conversely, within the EU Regulation the food business operator is deemed responsible for compliance with the indicated criteria. Therefore adequately designed monitoring procedures are established, with the Competent Authority being responsible for verification through the official control activities indicated.³⁸⁴

³⁷⁹ The Fisheries Act 1986, Part VI sec 45 (2)

³⁸⁰ The Fisheries (Fish and Fish Products) Regulation 2006, Part XIV sec 59

³⁸¹ The Fisheries (Fish and Fish Products) Regulation 2006, Part VII sec 24, 25, 26, 27, 28

³⁸² The Fisheries (Fish and Fish Products) Regulation 2006, Appendix, Part I

³⁸³ The Fisheries (Fish and Fish Products) Regulation 2006, Part VII sec 24, 25, 26

³⁸⁴ EU Regulation (EC) 853/2004 Annex III section VIII, chapter V

Available in the “Schedule” section of the Regulation is a series of “Checklists for official controls”. Elements relative to hygiene and assessment of the physical attributes and facilities of the processing establishment are included in one checklist. Meanwhile, the other assesses the elements of the fishing vessels.³⁸⁵

5.2 Institutional Framework

5.2.1 Competent Authority:

The Fisheries Division of St Vincent and the Grenadines was accepted and declared by the EU as the Competent Authority. The Division is the Competent Authority for the official control of fish and fishery products destined for export. The Chief Fisheries Officer (CFO) is thus the head of the Competent Authority. That being said, the responsibilities of the Chief Fisheries Officer (CFO) as the head of the Competent Authority include; the final verification and signing of audit and inspection reports, health certificates and other documents necessary for the exportation of fish and fish products from SVG. The members of the Competent Authority are free of any ties with any processing establishment and operations are uncompromised. Furthermore, the Competent Authority is free of conflict of interest and impartial and independent in the conducting of official controls.

The Government of St Vincent and the Grenadines with aid from the Japan International Corporate Agency (JICA) spent a large sum of money to refurbish the New Kingstown Fish Market in compliance with the recommendations stipulated by the EU. During the renovation of the New Kingstown Fish Market, a laboratory was included in the construction of office space for the Fisheries Division. Laboratory personnel were trained and also new ones were employed. However, this laboratory is not accredited for official checks on fish, fish products and water at the moment. Thus, a memorandum of understanding was signed with a Trinidad base accredited laboratory which could perform all analyses required under EU Community legislation. With respect to the implementation of a system to monitor for the presence of heavy metals and other contaminants in the ecosystem, a regional laboratory Caribbean Industrial Research Institute (CARIRI) which poses the capabilities to do so was contracted. Finally, procedure manuals were

³⁸⁵ The Fisheries (Fish and Fish Products) Regulation 2006, Schedule 2

developed for the approval and suspension or withdrawal of processing establishments, the reporting of inspections conducted and the issuance of health certificates, just to name a few. By the same token, these procedure manuals include; a Fish Inspection Manual, a Manual on Official Control of Fisheries Products and a Procedure Manuals on the Structure and Duties of the Competent Authority(Fisheries Division) and its Personnel. Overall, SVG has made significant strides towards rectifying the health and safety issues as identified by the EU. Even more so, the island now has what is probably the most modern fisheries export facility throughout CARICOM and also a proper system in place to accompany.

5.2.2 The National Fisheries Marketing Limited:

The New Kingstown Fish Market was also reinvented and renamed to the ‘National Fisheries Marketing Ltd’. As a matter of fact, the complex was outfitted with brand new air blast freezers, holding freezers, a plate freezer, chill rooms and ice machines. The layout of the building was done in a manner so as to reduce the risk of cross contamination. It includes multiple foot baths and hand-wash stations which are strategically placed, also present is an ‘air blow chamber’ placed at the entrance of the clean processing area to remove any hair, dust or unwanted debris found on staff clothing. Further to that, the product processing line flows in one direction from dirty processing such as descaling and gutting to clean processing such as filleting and packaging. Equally important, all access points are clearly marked with entrance or exit signs, other necessities included are staff changing and locker rooms, toilets and equipment and utensil storage. There is also the presence of trained and certified supervisors and a quality control officer.

Uniquely, the National Fisheries Marketing Ltd is a twofold enterprise. Apart from facilities to process products destined for export. It also houses the local fish market where consumers can purchase their fish for personal use.

PART 6: RECOMMENDATIONS FOR ST VINCENT AND THE GRENADINES

<i>OBJECTIVES</i>	<i>RECOMMENDATIONS</i>
<p>Achieve an effective legal and policy framework in international trade in fish and fish products</p>	<p>Develop a national strategy for the trade in fish and fish products.</p> <p>Develop a ‘Supplementary Guide to the Fisheries Act and the IUU Regulation’ which will be amended as necessary with the relevant fisheries arrangements, for example Quota of conch and lobsters to be exported/ shipped by each exporter.</p> <p>Development of Port State Measures and Port Sampling Program to facilitate the landing of fish from other vessels not belonging to SVG but are from within the CARICOM region (necessary to satisfy RoO).</p>
<p>Improve relationship with trading partners</p>	<p>Highlight position relative to issues that trading partners view as critical to the preservation of species and the ecosystem for example Shark fin trade.</p> <p>Pursue trade with those partners who SVG trade the least with; for example US, Canada and Central and South America.</p> <p>Find market niche and develop a sound strategy to penetrate that market.</p> <p>Encourage foreign direct investment by enabling foreign nationals who already established business on the island to pursue trade in fisheries products.</p> <p>Explore the option of value added fish products by ascertaining the likes and dislikes of the target market.</p>

<p>Sustainable management of fish products, namely Queen Conch and Spiny Lobster</p>	<p>Develop and implement Catch Certification Scheme for SVG, starting with species which are most traded internationally.</p> <p>Implement an export quota system for these species as they may be close to being fully exploited. A quota system for conch and lobster exports is necessary to show that SVG is trying to fish the stock/ species sustainably.</p>
<p>Addressing trade measures to effectively control IUU fishing</p>	<p>Ensure adequate control over nationals through the strengthening of domestic legislation and the development of an effective MCS strategy</p> <p>Exercise proper control over high-seas fishing vessels through the strengthening of legislations to include new development and issues. Also through the implementation of effective monitoring procedures such a VMS.</p> <p>Adhere to the flag state duties as prescribed by the relevant international legal and non-legal binding instruments.</p> <p>Develop and implement Catch Certification Scheme for SVG.</p>
<p>Ensure adequate steps are being taken to maintain wholesomeness and integrity of fish products</p>	<p>Develop health and safety standards based on internationally accredited standards.</p> <p>Adoption and development of comprehensive HACCP plans for each product to be exported</p> <p>Ensure that standards do not contribute as barriers to trade.</p>

Overall, St Vincent and the Grenadines need to develop products and market them as a Brand unique to the island. Work needs to be conducted on processing forms and species type.

PART 7: COLCLUDING STATEMENT

The role of International trade has become essential in connecting food producers to food consumers. Thus, trade can create the direct and indirect means of achieving food security and raise the standard of living for all those involve. At present there exist challenges in satisfying the global demand for fish and fishery products. Challenges such as overfishing and over capacity are evident, however the issue of IUU fishing has been dominating international forum for years. Some states have developed appropriate regulatory framework to combat IUU fishing and to prevent the trade in IUU caught species. The scope of IUU fishing goes way beyond the fishing vessel. Even states can be implicated and face serious repercussion. IUU fishing does not only affect the environment, livelihood and the socio-economic life of fishers; it can impact trading capabilities of states.

International trade plays a significant role in the fisheries sector of CARICOM countries, over the past years, global fish trade has grown significantly. Some states involved in the exportation of fishery products have a special interest regarding changes in national regulations of importing countries. These changes include but not limited to quality and safety control measures and traceability. Notably, these regulatory changes can be used as trade barriers as is the case between the EU and St Vincent and the Grenadines. Although SVG has made significant strides in the improvement of its health and safety systems for fish, it is still unable to export to the EU market.

The EU is very critical of FOC countries for selling their flag to vessels to fish on the high seas. SVG has an open vessel registry and has come under criticism from the EU for failing to effectively control it vessels on the high seas. To this end and judging from the structure of the EU's IUU legislation, it is fair to say that the inability of SVG to export its fisheries products to the EU is twofold; with improvements in the health and safety standards being the first element and accusation of IUU fishing the second.

Overall fisheries producing countries also have a keen interest in international trade negotiations at the WTO. Within developed countries the profiles of tariff structures and the complexity of the system vary widely. The primary market for fisheries export from developing countries is the developed countries. For this reason the tariff profiles of developed countries have a noteworthy impact on developing countries producers and exporters economic opportunities.

For quite some time, tariff barriers on the decline, it is fearful that the alternative forms of protection to be utilized will include arbitrary technical barriers and other forms of non-tariff barriers. It must be however noted that, sometimes these restrictions on imported products from certain countries are fully consistent with consumer and environmental protection policy as stipulated by the WTO. It is the responsibility of all countries to secure their borders against the importation of unsafe products.

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