The European Union Council Regulation on illegal, unreported and unregulated fishing states that, exports of fish and fishery products from those countries which do not comply with its articles would be rejected by the EU from 1 January 2010 onwards. Since the EU is the major seafood market for developing countries, this regulation is of great significance to trade in fish and fishery products. The definitions of illegal, unreported and unregulated fishing, on which the entire EU regulation is built upon, is loaded against the special circumstances prevailing in the fisheries sector of the developing countries.

The growth of exports of fish and fishery products from developing countries have been regularly threatened by various non-tariff barriers from the developed countries, especially those in the European Union (EU). The European Union through the Council Regulation (EC) No 1005/2008, of 29 September 2008, seeks to establish a community system to “prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing”, amending Regulation (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 (and repealing Regulations (EC) No 1093/94 and (EC) No 1447/99). Also the detailed rules for the implementation of Council Regulation (EC) No 1005/2008 was brought about by the Commission Regulation (EC) No 1010/2009 on 22 October 2009. This paper argues that the new regulation is bound to hit the export of fish and fishery products from developing countries to the EU market.

According to the above regulation, the EU would stop accepting exports of fish and fishery products from those countries, which do not comply with the articles of the aforesaid regulation. The regulation marks the first attempt to link trade in fish and fishery products with efforts made by these countries in the area of fisheries resources conservation and management, in the waters under their jurisdiction.

As per the regulation, exports to the EU will be determined by the exporting country’s success in preventing, deterring and eliminating, “illegal, unreported and unregulated (IUU) fishing” which has been identified as the major indicator with regard to fishery resource management in these countries. Exporting countries which fail to set up a management mechanism to comply with the EU regulation are technically denied access to EU markets. A “catch certificate” will function as the “precondition for the imports of fishery products into the community”, as per the regulation. Those fishing vessels, which according to the EU have been engaged in IUU fishing, will be put on a “community vessel list”. And fishery products imported from non-cooperating third countries, identified by the EU as having engaged in IUU fishing will be prohibited and “accordingly catch certificates accompanying such products shall not be accepted”. The enforcement of the regulation will have serious consequences because the seafood market of the EU, the largest in the world, is of great significance for all countries which export fish and fishery products and in particular to the developing countries including India which accounts for 33% of its fish and fishery products in value terms (and about 25% excluding aquaculture products).
Biased Definitions

According to the EC regulation, the basic commitment of the EU in putting forth the EC regulation on fighting IUU fishing in “third countries” originates from the commitment in implementing the Common Fisheries Policy (CFP) in the EU, aimed at conservation and sustainable management and exploitation of its fisheries resources. Fully realising the fact that IUU fishing is the “most serious threat to sustainable exploitation of living aquatic resources” and since it “jeopardises the very foundation of the Common Fisheries Policy and international efforts to promote better ocean governance”, the preamble of the EC regulation to prevent IUU fishing states that it has endorsed the Food and Agriculture Organisation (FAO) adopted Internal Plan of Action (IPA) on IUU fishing.

The basic tenet of the present EC regulation is to “substantially enhance its action against IUU fishing and adopt new regulatory measures designed to cover all facets of the phenomenon” in line with “its international commitments” and “given the scale and urgency of the problem” (para 5). The non-European Union countries (hereafter referred to as third countries) are bound to comply with the articles of this regulation and if any third country fails in this regard, exports of fish and fishery products from these countries would not be accepted by the EU from 1 January 2010.

Article 2 of the EC regulation defines “illegal”, “unreported” and “un-regulated” fishing for the purposes of the regulation as follows:

‘Illegal fishing’ activities include those
(a) Conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a state, without the permission of that state, or in contravention of its laws and regulations; (b) conducted by fishing vessels flying the flag of states that are contracting parties to a relevant regional fisheries management organisation, but which operate in contravention of the conservation and management measures adopted by that organisation and by which those states are bound, or of relevant provisions of the applicable international law; or
(c) conducted by fishing vessels in violation of national laws or international obligations, including those undertaken by cooperating states to a relevant regional fisheries management organisation; ‘Unreported fishing’ means fishing activities;
(a) Which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
(b) Which have been undertaken in the area of competence of a relevant regional fisheries management organisation and have not been reported, or have been misreported, in contravention of the reporting procedures of that organisation; ‘Unregulated fishing’ means fishing activities;
(a) Conducted in the area of application of a relevant regional fisheries management organisation by fishing vessels without nationality or by fishing vessels flying the flag of a state not party to that organisation or by any other fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organisation;
(b) Conducted in areas or for fish stocks in relation to which there are no applicable conservation or management measures by fishing vessels in a manner that is not consistent with state responsibilities for the conservation of living marine resources under international law.4

The global fishery resources are not a monolith and are not homogeneous in nature. For example, the fishery resources of the oceans in the temperate region (the Pacific Ocean, Atlantic Ocean and the Mediterranean) are characterised by exploitation of fish in huge quantities. For example, three fish species such as Walleye (Alaska) Pollock, Menhaden and Salmon together contributed 51.36% out of the total domestic fish landings of 37,76,564 tonnes, in 2008 in the US, a major temperate fishery country. On the other hand, total fish landings in India in 2006, which sustains a tropical ocean, was 27,10,988 tonnes. While this catch was totally constituted by 63 fish species, there were 38 species, which were produced above 25,000 tonnes. The oceans of the temperate region are largely dominated by around 12 species. On the other hand, major species which constitute the fishery in the west coast of India, which is a tropical ocean, number 56 in the coast of Kerala alone.4

The lifespan of fish exploited in the temperate oceans is much longer (10-12 years) compared to shorter lifespan of 3-4 years for fish from the tropical waters. While “spawning”5 is well defined among fishes in temperate waters because of the presence of lesser number of species, the spawning season of commercially important fish species along the west coast which represent a tropical fishery is synchronous, overlapping and spread across the year. Multiple spawning takes place throughout the year among fish in tropical waters. The level of technologies used for exploitation of fishery resources across the globe, also presents a diverse picture. A study on “Small-scale Fisheries in the Context of Globalisation” (Kurien 1998) has tried to sketch a rough estimate of characteristics of different scales of operation in marine fishing at the global level (Table 1). Fishing is organised by large multinational corporations in temperate waters of developed countries in the exclusive economic zones (EEZ) and high seas of the temperate/tropical waters involving factory vessels with state of the art facilities for fishing and processing and trans-shipment to various countries, where the processed fish is sold, as ready to pack products through retail chains. In contrast, the per capita labour income of non-mechanised fishing units operating in the tropical waters off the Kerala coast, in 2005, with a crew of two fishermen has been estimated to be nearly $4 per annum,6

| Table 1: Rough Estimates of Characteristics of Different Scales of Operation in Global Marine Fishing (1998) |
| Characteristics | Large Scale | Medium Scale | Small Scale |
| Estimated number of units | 5,000 to 5,500 | 30,000 to 32,000 | 35,000,000 |
| Investment range per unit ($000) | 4,000 to 10,000 | 300 to 4,000 | 1 to 80 |
| Crew range per unit | 40 to 60 | 25 to 30 | 1 to 5 |
| Range of fish harvest per unit per annum (tonnes) | 1,600 to 1,800 | 400 to 450 | 1 to 60 |
| Range of fish harvest per tonne of fuel (tonnes) | 3 to 4 | 2 to 3 | 2 to 3 |
| Range of value of output per crew per annum ($) | 15,000+ | 8,000+ | 200 to 1,500 |

Source: Kurien (1998), Table 1, p 7.

with a total catch of 19/kg per year. The vast difference in range of fish harvest per unit per annum (Table 1) ranges from 5,000 tonnes to 8,000 tonnes for large-scale units, to two tonnes to 100 tonnes for small-scale fishing units. While the range of value of output per crew per annum has been $15,000...
and above for large-scale fishing units, it has been between $200 and $1,500 and above for small-scale units.

In the above context, imposing uniform and generalised definitions aimed at achieving conservation of marine fishery resources will not only not serve the purpose, but also will result in grave consequences for the developing countries, especially since an attempt has been made to link such measures with trade in fish and fishery products. This would happen because the adoption of fishery resource management measures is a comparatively straightforward exercise as far as temperate water fisheries are concerned. Since the number of fish species is less in temperate waters, the age at maturity, the Maximum Sustainable Yield (MSY), the spawning period, breeding period, etc, of the fishes in this type of waters can be well defined, and makes adoption of fishery management measures rather easy. The major fishery management measures adopted in temperate waters are based on Total Allowable Catches (TACs) for each species of fish. On the other hand, the marine fish production in tropical waters are characterised by a large number of species with overlapping spawning and breeding periods. Fishing crafts and gears used in these waters also present a diverse picture ranging from mechanised to motorised and traditional fishing. Fishing practices, which prevail among these sectors are also heterogeneous in nature. Moreover, the sharp competition for the scarce and finite fishery resources, by different fishing sectors also make homogeneous solutions difficult to achieve. In total, fishery resource management has emerged as a very complicated exercise in the coastal countries adjacent to tropical waters, thereby making fishery management measures weak and ineffective.

Because of the unorganised nature of fishing activities undertaken in developing countries and the fact that the tropical fishery resources and level of technologies adopted are not homogeneous in nature, the fishery management measures adopted are not well defined and are difficult to implement in these countries, naturally leading to weak management regimes. For example, the definition on IUU fishing adopted by the EU states about “unreported fishing” has been defined as fishing activities “which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations”.

Let us take the example of India to illustrate how this definition is ill-suited for it and thus brings all fishing conducted in the country, under the category of unreported fishing. According to the FAO, during 2004, the total marine fish catch of India was 2.81 million tonnes. In that year there were 2,08,000 traditional crafts, 55,000 traditional motorised crafts, 1,250 mechanised boats and about 100 deep sea fishing vessels, engaged in fishing from the 8,118 km coastal line of the country.8 The fishing gears used have been diverse including various types of trawl nets, seines, bag nets, stake nets, etc. As per the estimates of the FAO, during 2004, there were 3,827 fishing villages and 1,914 traditional fish landing centres in the country. The total catch of 2.81 million tonnes produced by the two million fishermen (FAO 2004) using 2,64,350 fishing crafts and gear has been landed, not only in the 1,914 traditional fish landing centres but along the vast coastal areas of the coastal states of the country. The fish catches made by the fishermen in the country have not been officially reported and there has not been a system of reporting, let alone the possibility of misreporting to a relevant national authority. In such a situation, imposition of a definition of unreported fishing will result in the entire fish production of the country, being treated as unreported fishing.

In such a scenario, bringing about regulations and defining illegal fishing as activities “conducted by national or foreign vessels in maritime waters under the jurisdiction of a state, without the permission of that state, or in contravention of its laws and regulations” will not at all yield the desired result of fisheries resource conservation and management. Moreover, judging fishing activities based on such generalised definitions will be tantamount to fishing activities undertaken by the small-scale sector, for their subsistence, in the developing countries getting predominantly characterised as illegal. Especially when such a definition acts as a precondition linked with exports of fish and fishery products, to the EU, non-compliance with implementing such definitions will result in our fish and fishery products’ exports getting rejected from the EU market.

“Third Countries’ Discriminated Against”

The EU Regulation on IUU fishing defines “fishing vessel” as any vessel of any size used or intended to use for the purpose of commercial exploitation of fishery resources, including support ships, fish processing vessels, vessels engaged in transhipment of fishery products, except container vessels (Article 2.5).

This definition brings all fishing vessels other than those belonging to the EU, from factory ships employed by multinational companies in the EEZ and the high seas on the one side, to small non-mechanised fishing crafts used by artisanal fishermen in the coastal seas of the developing countries and least developed countries on the other, under the ambit of fishing vessels engaged in “commercial exploitation of fisheries resources”. However, EU in its comprehensive CFP aimed at conservation and sustainable exploitation of its fishery resources, exempts fishing vessels with overall length below 10 metres from the requirements of the policy.

While the regulation gives exemption to owners of fishing vessels of member states fishing in community waters in terms of their overall length, the very same regulation is extremely strict when it defines “third country fishing vessels”. In Article 28a, such vessels are defined as:

a vessel used ‘primarily or secondarily’ to take fisheries products, a vessel that, ‘even if not used to make catches by its own means’ takes the fisheries products by transhipment from other vessels, a vessel on board on which fisheries products are subjected to one or more of the following operations prior to packaging, filleting or slicing, skinning, mincing, freezing and/or processing, and flying the flag of, and registered in, a third country (refer Table 2, p 84). All exemptions in the above-mentioned EU regulation are to be decided by the council “acting by a qualified majority”
“on a proposal from the Commission”. Another important area of discrimination in the EU regulation is regarding the obligation of submitting catch certificate by countries in the EU and third countries. The catch certificates presented by the third countries will be validated by the competent authorities of the member states of the EU and decisions will be made as to whether to accept/reject the imports of these third countries.

Moreover, when third countries are obliged to submit a catch certificate to prove the legality of fish catches made, the countries in the EU are exempted from this all-important obligation. Vessels of the EU are obliged to submit a catch certificate only if the catch is exported to a third country and then re-exported to the EU. The argument put forth is that these vessels fall under the control scheme of the common fisheries policy of the EU. This is a clear case of violation of WTO rules, regarding discrimination between domestic and foreign fishing vessels. The summary of the Fifth International Forum on IUU Fishing rightly brings out this issue when it states that it remains unclear whether the application of different legal requirements for EU and non-EU vessels could amount to discrimination between domestic and foreign producers in contravention of world trade organisation rules (Baumüller 2009).

There is an argument that the simplified catch certificate scheme introduced by Commission Regulation No 1010/2009 of 22 October 2009, which lays down detailed rules for implementation of Council Regulation (EC) No 1005/2008, will address most of the concerns regarding small vessels. Article 6 brings in third country fishing vessels:

(a) with an overall length of less than 12 metres without towed gear,
(b) with an overall length of less than 8 metres with towed gear,
(c) without a superstructure; or
(d) if less than measured 20 GT, under the ambit of the simplified catch certificate scheme of Commission Regulation (EC) No 1010/2009 of 22 October 2009.

Even though the catch certification scheme has been simplified, it has in reality, not addressed the concerns of the smaller vessels. This can be proved by highlighting the case of the state of Kerala which produces the maximum quantity of fish (20% of the total fish production), in India. In Kerala, it is the trawlers and ring seiners (also called mini purse seiners) which catch all the fish which is exported.

According to an Expert Committee Report of the Department of Fisheries, Government of Kerala (India), published in 2009 all four major categories of trawlers which used towed gear and caught more than 80% of fish exported, had an average overall length (OAL) of 8.5 m to 18.2 m, i.e., more than 8 m length prescribed by the simplified catch certificate scheme, for vessels with towed gear. Moreover, these trawlers had superstructures also. The rest of the fish caught for export has been the contribution of ring seiners, which also uses towed gear. Here again, all the four categories of rings seiners, had on an average, 12.2 m to 21.3 m OAL, which again is above the limit prescribed by the simplified catch certificate. This clearly shows that all the fishing vessels which catch exportable varieties of fish in Kerala has been kept outside the purview of the simplified catch certificate prescribed by the Commission Regulation No 1010/2009, which lays down rules for implementing Council Regulation (EC) No 1005/2008.

A Miserably Failed Experiment

As explained earlier, the basic commitment of the EU in bringing about a regulation to fight IUU fishing in third countries has originated from its commitment in implementing the CFP in the EU, aimed at conservation and sustainable management and exploitation of its fishery resources. However, the Court of Auditors of the European Union in its notice, adopted on 25 October 2007, and brought out as a Special Report No 7/2007 “on the control, inspection and sanction systems relating to the rules on conservation of community fisheries resources together with commission’s replies”, has severely criticised the CFP for having miserably failed in all spheres and warned that “if this situation continues, it will bring grave consequences not only for the natural resources, but also for the future of the fishing industry and the areas associated with it”.

The Court of Auditors further states, quoting the latest figures presented by the International Council for the Exploration of the Sea (ICES) (which conducts biological appraisal of a number of fish stocks in the Northern Atlantic, the area where most of the community fishery resources are concentrated),

<table>
<thead>
<tr>
<th>I UU Fishing in Third Countries</th>
<th>For Fishing Vessels of EU</th>
<th>Definition of Third Country Fishing Vessels in the CFP</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Fishing vessels means any vessel of any size used or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, fish processing vessels, vessels engaged in transshipment and carrier vessels equipped for the transportation of fishery products, except container vessels” (Article 2.5).</td>
<td>Masters of community fishing vessels with overall length less than 10 meters are exempted from keeping log book of their operations. Exemptions other than this, to be decided by a qualified majority (Article 6.4, 6.5).</td>
<td>A vessel, “whatever its dimensions” “used primarily or secondarily to take fisheries products”; “a vessel that even if not used to make catches by its own means takes fishery products by transhipment from other vessels” and “a vessel abroad on which fisheries products are subjected to one or more operations prior to packaging, filleting...” (Article 28a).</td>
</tr>
</tbody>
</table>
“that 81 per cent of the fish stocks evaluated were over exploited”. It continues to say: “After a significant downturn in landings in recent years, the continuance of this situation will inevitably have serious repercussions not only on the resource itself but also on the future of the fishing industry and the regions associated with it.”

How the concerns of this small-scale fisheries sector have been accommodated in the EU’s regulation, intended for third countries, to prevent, deter and eliminate IUU fishing in the maritime waters under their jurisdiction and a comparison with the CFP of the EU merit special attention.

It is interesting to note that the particular interests of the small-scale fisheries sector have been fully taken care of in the CFP of the EU. In the preamble of the policy itself it is stated that “…given the temporary biological situation of stocks”, “the particular needs of regions where local populations are especially dependent on fisheries and related industries must be safeguarded”, “…as decided by the Council in its resolution of 3 November 1976, and in particular annex VU thereto”. Further it is stated that “…there should be special provisions for inshore fishing to enable this sector to cope with the new fishing conditions resulting from the institution of 200 metres fishing zones”; and continues to state that “…specific arrangements of fishing effort should be agreed for certain sensitive regions, taking into consideration the problem of certain coastal fisheries as well…”.

But this commitment towards protecting their own small-scale fisheries does not get reflected in the EU’s efforts at management of fishery resources in third countries. In its regulation of EU to fight IUU fishing in third countries, the EU has not included a single clause to safeguard the interests of small-scale fisheries in the third countries (let alone in the developing countries).

Violation of WTO Agreements

The international trade in fish and fishery products, in the context of the EU regulation to fight IUU fishing in third countries is governed by the WTO Agreement on Technical Barriers to Trade (TBT). Member countries of the WTO are bound to abide by the articles of this agreement while engaging themselves in international trade in fish and fishery products. It is basically the two articles, viz, Article 2 on Preparation, Adoption and Applications of Technical Regulations by Central Government bodies and Article 12 on Special and Differential Treatment of Developing Country members of the WTO Agreement on Technical Barriers to Trade that are relevant in the context of the EU regulation proposed to fight IUU fishing in third countries.

Annex 1.1 of Agreement on Technical Barriers to Trade defines “Technical regulation” as a document, which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marketing or labelling requirements as they apply to a product, process or production method.

And, “with respect to their Central Government bodies” Article 2.1 states that

Members shall ensure that in respect of technical regulations, products imported from the territory of any member country shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

The EC regulation to fight IUU fishing, which can be considered as a technical regulation, violates Article 2 on many counts. Article 2.2 of the Agreement on Technical Barriers to Trade states that

Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade.

(In the present case, international trade in fish and fishery products). A number of articles in the EU regulation to fight IUU fishing in third countries will result in situations creating unnecessary obstacles to the export of fish and fishery products to the EU, from the third countries. Examples are presented below:

- The ambiguity, vagueness and lack of clarity in the definition of IUU (illegal), IUU (unreported), IUU (unregulated) fishing (Articles 2.1 to 2.4).
- The definition of “fishing vessel” which brings in “any vessel of any size used or intended for use for the purposes of commercial exploitation of fishery resources” (Article 2.5), under the purview of fishing vessel.
- Inclusion of regional fisheries management organisations (RFMOs) in identifying, IUU fishing without transparent and fair definitions in identification of IUU fishing (Articles 2.2 (b) (c), 2.3 (b) and 2.4 (a)).
- The clause that “member states shall carry out inspections in their designated ports of at least 5% of landing and transhipment operations by third country fishing vessels each year…” (Article 9.1).
- The use of the word “deem necessary” in Article 17 on “verification” wherein it is stated that “competent authorities of the member states may carry out all of the verifications they deem necessary to ensure that the provisions of this Regulation are correctly applied” (Article 17.1, emphasis added) and Article 17.5 which states that “Member states may decide to carry out verifications at random, in addition to the verifications referred to in paragraphs 3 and 4” (emphasis added).
- References and cross references to nine different articles in Article 18 regarding “refusal of importation” which makes it easy for the EU to reject import of fish and fishery products from other countries.
- The use of the words such as conducting “…necessary enquiries, investigations or inspections at sea, in ports or any other landing places” in Article 24 under the head “Action following issuance of alerts” (emphasis added).
- Articles under the headings which are ambiguous and vague such as “Alleged IUU fishing” (Article 25) and “Presumed IUU fishing” (Article 26) (emphasis added).
• The use of the words “...other reliable sources...” in identifying the third countries “that it considers” as non-cooperating third countries with regard to fight against IUU fishing and again use of words “...as well as any other information obtained in the ports and on fishing grounds” (Article 31.2) (emphasis added).
• Article 32.4 which states that the “commission shall give to the third country concerned adequate time to answer the notification and a reasonable time to remedy the situation” (emphasis added).
• Article 34.1 on “Removal from the list of non-cooperating third countries” which states that the council “acting by qualified majority on a proposal from the commission, shall remove a third country from the list of non-cooperating third countries if the third country concerned demonstrates that the situation that warranted its listing has been specified. A removal decision shall also take into consideration whether the identified third countries concerned have taken concrete measures capable of achieving a lasting improvement of the situation” (emphasis added).

Moreover, the EC regulation to fight IUU fishing in third countries, violates the principle of national treatment formulated in Article 3 of the General Agreement on Tarriffs and Trade (GATT) 1947 and incorporated by reference in GATT 1994 and which has also been stated in Article 2.1 of the Agreement on Technical Barriers to Trade. According to this principle, if a particular right, benefit or privilege is granted by a state to its own citizens, the same advantages must also be granted to the citizens of other states while they are in that country. In the context of international agreements, equal status should be provided for those citizens of other states who are participating in the agreement. By treating third countries and the EC differentially in the matter of conserving and managing of marine fishery resources, by discriminating them in the CFP of the EU and the EC regulation to fight IUU fishing in third countries, the EU has violated the principle of national treatment at the WTO.

Article 12 of the Agreement on Technical Barriers to Trade of the WTO discusses in detail the “Special and Differential Treatment of Developing Country Members”. Let us look into the relevant provisions of this article to judge whether the EU regulation to fight IUU fishing in third world countries complies with the provisions of Article 12 of the Agreement on Technical Barriers to Trade of the WTO. Article 12.2 states that Members shall give particular attention to the provisions of this Agreement concerning developing country members rights and obligations and shall take into account the special, development, financial and trade needs of developing country members in the implementation of this Agreement...

and goes on to further state in the next Article 12.3 that the special development, financial and trade needs of developing country members should be taken into account while preparing and applying technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country members.

Out of the top 10 fish and fishery products exporting countries to the EU in 2007, seven are developing countries such as China, Morocco, Thailand, Vietnam, Argentina, Chile and Ecuador. Frozen shrimps and prawns which constitute 21% of the export in value terms to the EU (and the most valuable item exported) are almost fully contributed by 10 developing countries. The valuable foreign exchange earned through export of fish and fishery products to the EU is very crucial for the development of these developing countries.

As is seen from Table 3, for all the seven major developing countries which export fish and fishery products to the EU, this market is of great significance. For Morocco and Argentina, the level of dependence on the EU market is very high at 72% and 65%. Ecuador exports 46.4% of its total export of fishery products to the EU. So erecting barriers to trade in fish and fishery products from these countries to the EU will create serious hurdles in the development of these countries. For India also, foreign exchange earnings from the EU is of extreme significance. For example, in 2008-09, out of the total export of $830 million worth of fish and fishery products exported by India, 33% ($274 million) was exported to the EU. (If aquaculture products are excluded, it will be around 25%.)

### Table 3: Total Exports of Fish and Fishery Products of the Seven Major Developing Countries and Their Share of Exports to the European Union (2006, in $ million)

<table>
<thead>
<tr>
<th>Sl No</th>
<th>Name of the Countries</th>
<th>Total Exports</th>
<th>Exports to EU</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>China</td>
<td>8,968</td>
<td>1,411</td>
<td>16</td>
</tr>
<tr>
<td>2</td>
<td>Ecuador</td>
<td>1,336</td>
<td>619</td>
<td>46.4</td>
</tr>
<tr>
<td>3</td>
<td>Chile</td>
<td>3,556.60</td>
<td>595.3</td>
<td>16.7</td>
</tr>
<tr>
<td>4</td>
<td>Vietnam</td>
<td>5,358</td>
<td>658.2</td>
<td>19.6</td>
</tr>
<tr>
<td>5</td>
<td>Thailand</td>
<td>5,236.30</td>
<td>674</td>
<td>13</td>
</tr>
<tr>
<td>6</td>
<td>Morocco</td>
<td>1,225</td>
<td>881</td>
<td>72</td>
</tr>
<tr>
<td>7</td>
<td>Argentina</td>
<td>1,250.2</td>
<td>812</td>
<td>65</td>
</tr>
</tbody>
</table>

Source: Compiled and calculated from Statistics related to trade in fish and fishery products, published by the FAO for the year 2006.

According to Article 12.4, TBT, members should recognise that even though “...international standards, guidelines or recommendations may exist, in their particular technological and socio-economic conditions”, that should not prevent developing country members from adopting...

...certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs.

And the Article goes on to reiterate that members should recognize that developing country members should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.

This Article is of great importance to the developing countries, in the context of the EC regulation. The definition of IUU fishing, according to the EC regulation, is based, among other things, on fishing vessels complying or violating “...relevant provisions of the applicable international law”, or violating “...international obligations” or “fishing conducted in areas or for fish stocks”... “in a manner that is not consistent with state responsibilities for the conservation of living marine resources under international law”. Article 12.4 states that “developing country members should not be expected to use international standards as a basis for their technical regulations or standards.” “...which are not appropriate to their development,
resources. The EU resource conservation and management measures in the which are major exporters of fish and fishery products to the India and particularly the least developed among them, countries in the area of fishery resources conservation and trade in fish and fishery products with efforts made by third countries including India. The vague, generalised definitions of what activities across different countries and the socio-economic status of the small-scale fisheries sector thriving in countries around the world. The lack of clarity in the definitions on IUU fishing, when benchmarked and linked with trade in fish and fishery products will definitely work against the interests of the third countries including developing countries and India and particularly the least developed among them, which are major exporters of fish and fishery products to the EU seafood market.

The EU regulation brought about to fight IUU fishing in third countries assumes great significance in this context. From the point of view of India, this regulation and its impact on seafood export is of great relevance since the EU is the most important market, which absorbs 33% of fish and fishery products, in terms of value. The EU regulation brought about to fight IUU fishing in third countries, for the first time, links trade in fish and fishery products with efforts made by third countries in the area of fisheries resources conservation and management, in the waters under their jurisdiction.

The definition of IUU fishing, on which the entire regulation is built, in itself is loaded against the specific circumstances prevailing in the fisheries sector of the developing countries, including India. The vague, generalised definitions of what constitutes IUU fishing do not take into consideration the specificities of the fishery resources, the level of technologies used for exploiting the resources, the organisation of fishing activities across different countries and the socio-economic status of the small-scale fisheries sector thriving in countries around the world. Moreover, the regulation creates barriers to trade in fish and fishery products from third countries to the EU, and is violative of the Agreement on Technical Barriers to Trade, in letter and spirit and also the principle of national treatment as per Article 3 of GATT 1947 and Article 2.1 of the Agreement on Technical Barriers to Trade of the WTO.

Since this regulation violates the Agreement on Technical Barriers to Trade of the WTO, the non-European Union countries in general and developing countries in particular should bring these violations to the notice of the EU, and ask for removal of those articles from the regulation, which creates barriers to trade in fish and fishery products to the EU. In parallel to these actions, those developing countries, which have significant trade in fish and fishery products to the EU should rally on a common platform, and put pressure on the EU for derogations from those articles in the EU regulation to fight IUU fishing which would create barrier to trade for these group of countries. And if the EU does not respond positively to the request of the developing countries and the non-European developed countries, they should approach the Committee on Technical Barriers to Trade, on the basis of Article 12.8 of the WTO Agreement on

Conclusions

The seafood market of the EU, the largest in the world, is of great significance for all countries, which export fish and fishery products to this market, in general, and in particular to the developing countries including India which have been increasing their exports to this market. Naturally, any policy change which is brought about, which might seriously alter the pattern of exports of fish and fishery products to the EU seafood market will be a matter of grave concern to the exporting countries.

The EU regulation brought about to fight IUU fishing in third countries does not allow for even a single exemption, let alone for the small-scale sector except to agree for a simplified catch certificate for fishing vessels less than 8-12 metres of overall length. On the other hand, the regulation recommends stringent actions against identified IUU fishing vessels of third countries, refusal of importation and sanctions against third countries involved in even “presumed” and “alleged” IUU fishing. While the CFP of the EU safeguards the interests of the small-scale fisheries sector, in the member states of the EU, this sector is not safeguarded and has not been given any exemptions in the EU regulation to fight IUU fishing in third countries.

The EU regulation to fight IUU fishing in third countries violates Articles 2 and 2.2 on preparation, adoption and applications of technical regulations of central government bodies and Articles 12 and 12.1 to 12.4 on special and differential treatment of developing country members of the Agreement on Technical Barriers to Trade of the WTO. Moreover, the regulation creates barriers to trade in fish and fishery products from third countries to the EU, and is violative of the Agreement on Technical Barriers to Trade, in letter and spirit and also the principle of national treatment as per Article 3 of GATT 1947 and Article 2.1 of the Agreement on Technical Barriers to Trade of the WTO.
Technical Barriers to Trade and request to grant specific, time-limited exception in whole or in part from the obligations taking into consideration the specific problems faced by the country, in the fisheries sector, as a developing country. And if these steps do not result in positive outcomes, efforts should be made, either individually or jointly with like-minded developing countries to approach the Dispute Settlement Forum of the WTO asking for derogations of respective articles in the EU regulation, which will hurt export of fish and fishery products from developing countries to the EU.

Lastly, as part of their fight against over exploitation of fishery resources, developing countries should initiate time-bound conservation and management measures aimed at eliminating IUU fishing in their waters by adopting clear and practical definitions which fully take into consideration the specificities of their fishery resources, the level of fishing technologies, the dispersed organisation of fishing activities and the socio-economic status of different sections of fishermen, including the small-scale fishermen subsisting in their coastal areas.

NOTES
2 Ibid, Article 12.
3 Ibid, Article 2.1 to 2.4.
5 Spawning is the process by which mating, courtship and release of eggs and sperms takes place in fishes.
7 MSY – Maximum Sustainable Yield is the biological criteria used to determine the level of annual fish catch which could be taken from a given stock of fish without harming its growth and reproductive potential and without reducing its abundance beyond certain levels.

REFERENCES