
CONCERNING TRADE RELATED MEASURES

SUBMITTED BY EUROPEAN UNION

Background:

The IOTC, in view of improving compliance with its Conservation and Management Measures, and strengthening the Organisation's fight against Illegal, Unreported and Unregulated Fisheries (IUU), adopted in 2003 the Recommendation 03/05 Concerning Trade Measure, as non binding IOTC Measure.

The EC, following the international calls to improve the RFMOs action against IUU (as stated in UN General Assembly Resolution 61/105 of 6 December 2006 and 62/177 of 28 February 2008) and provide RFMOs with solid and effective tools to achieve this goal, and also keeping in mind that fight against IUU is a top priority for the International Community, it is now proposing to transform the Recommendation 03/05 into an IOTC Resolution, in order to put at the disposal of IOTC another binding measure to complete the arsenal of tools that IOTC can use to counter act illegal fishing together with the Nationals scheme (Resolution 07/01 and Resolution 09/03 on IUU vessels list).

The Indian Ocean Tuna Commission (IOTC),

RECALLING that the IOTC adopted Resolution 01/07 concerning its support of the IPOA-IUU Plan,

RECALLING the IOTC Recommendation 03/05 concerning Trade Related Measure and its non-binding nature;

CONSIDERING the calls of the United Nation General Assembly, included in particular in the UNGA Resolutions on Sustainable Fisheries N° 61/105 of 6 December 2006 and N° 62/177 of 18 December 2007, urging States, individually and through Regional Fisheries Management Organisation to adopt and implement trade measures in accordance with international law, including principles, rights and obligations established in World Trade Agreements;

CONSIDERING the need for action to ensure the effectiveness of the IOTC objectives;

CONSIDERING the obligation of all Contracting Parties and Co-operating Non-contracting Parties (hereinafter CPCs) to respect the IOTC conservation and management measures;

AWARE of the necessity for sustained efforts by CPCs to ensure the enforcement of IOTC's conservation and management measures, and the need to encourage non-Contracting Parties (NCPs) to abide by these measures;

NOTING that trade restrictive measures should be implemented only as last resort, where other measures have proven unsuccessful to prevent, deter and eliminate any act or omission that diminishes the effectiveness of IOTC conservation and management measures;

ALSO NOTING that trade restrictive measures should be adopted and implemented in accordance with international law, including principles, rights and obligations established in WTO Agreements, and be implemented in a fair, transparent and non-discriminatory manner.

ADOPTS, in accordance with the provisions of Article IX, paragraph 1, of the Agreement establishing the IOTC, the following:

Identification

1. CPCs that import tuna and tuna-like fish products or in whose ports those products are landed or transhipped, should collect and examine all relevant data on import, landing or transshipment and associated information and submit the following information to the Commission each year at least 60 days prior to the annual meeting of the Commission:

- a) Names of the vessels that caught, landed and/or transhipped such tuna or tuna-like species products,
- b) Flag States of those vessels,
- c) Species of tuna and tuna-like species of the products,
- d) Areas of catch (Indian Ocean, or other area),
- e) Product weight by product type,
- f) Points of export,
- g) Names and addresses of owners of the vessels,
- h) Registration

2. (a) The Commission, through the Compliance Committee should identify each year:

(i) The CPCs who have failed to discharge their obligations under the IOTC Agreement in respect of IOTC conservation and management measures, in particular, by not taking measures or exercising effective control to ensure compliance with IOTC conservation and management measures by the vessels flying their flag; and/or

(ii) The NCPs who have failed to discharge their obligations under international law to co-operate with IOTC in the conservation and management of tuna and tuna-like species, in particular, by not taking measures or exercising effective control to ensure that their vessels do not engage in any activity that undermines the effectiveness of IOTC conservation and management measures.

(b) These identifications should be based on a review of all information provided in accordance with paragraph 1 or, as appropriate, any other relevant information, such as: the catch data compiled by the Commission; trade information on these species obtained from National Statistics; the IOTC statistical document programme [catch documentation schemes]; the list of the IUU vessels adopted by the IOTC, as well as any other information obtained in the ports and on the fishing grounds.

(c) In deciding whether to make identification, the Compliance Committee should consider all relevant matters including the history, and the nature, circumstances, extent, and gravity of the act or omission that may have diminished the effectiveness of IOTC conservation and management measures.

Notification

3. The Commission should request CPCs and NCPs concerned to rectify the act or omission identified under paragraph 2 so as not to diminish the effectiveness of the IOTC conservation and management measures.

The Commission should notify identified CPCs and NCPs of the following:

- a) the reason(s) for the identification with all available supporting evidence;

- b) the opportunity to respond to the Commission in writing at least 30 days prior to the annual meeting of the Commission with regard to the identification decision and other relevant information, for example, evidence refuting the identification or, where appropriate, a plan of action for improvement and the steps they have taken to rectify the situation; and
- c) in the case of a NCP, an invitation to participate as an observer at the annual meeting where the issue will be considered.

4. The Secretariat should transmit without delay the Commission's request referred to in paragraph 3 to the identified CPC or NCP. The Secretary should seek to obtain confirmation from the CPC or the NCP that it received the notification. Absence of response from the CPC or NCP concerned within the time limit shall not prevent action from the Commission.

Evaluation and possible actions

5. The Compliance Committee should evaluate the response of the CPCs or NCPs referred to in paragraph 3 b), together with any new information, and propose to the Commission to decide upon one of the following actions:

- a) the revocation of the identification;
- b) the continuation of the identification status of the CPC or NCP; or
- c) the adoption of non-discriminatory trade restrictive measures in accordance with Article IX paragraph 1 of the IOTC Agreement.

In the case of CPCs, actions such as the reduction of existing quotas or catch limits should be implemented to the extent possible before consideration is given to the application of trade restrictive measures referred to in subparagraph c). Trade restrictive measures should be considered only where such actions either have proven unsuccessful or would not be effective.

6. The Commission, through the Secretariat, should notify the CPCs and NCPs concerned of its decision and the underlying reasons in accordance with the procedures specified in paragraph 4.

7. CPCs should notify the Commission of any measures that they have taken for the enforcement of the non-discriminatory trade restrictive measures adopted in accordance with paragraph 5.

8. The Commission should establish annually a list of CPCs and NCPs that have been subject to a non-discriminatory trade restrictive measure pursuant to paragraph 5 and, with respect to NCPs, are considered as Non Co-operating Non Contracting Parties to IOTC.

Review of trade restrictive measures

9. In order for the Commission to adopt the possible lifting of trade restrictive measures, the Compliance Committee should review each year all non-discriminatory trade restrictive measures adopted in accordance with paragraph 5. Should this review show that the situation has been rectified the Compliance Committee should recommend to the Commission the lifting of the non-discriminatory trade restrictive measures. Such decisions should in particular take into consideration whether the CPCs and/or NCPs concerned have demonstrated by submitting the necessary evidence that the conditions that led to the adoption of non-discriminatory trade restrictive measures are no longer met.

10. Where exceptional circumstances so warrant or where available information clearly shows that, despite the lifting of non-discriminatory trade restrictive measures adopted in accordance with paragraph

9, the CPC or NCP concerned continues to diminish the effectiveness of IOTC conservation and management measures, the Commission may immediately decide on action including, as appropriate, the imposition of non-discriminatory trade-restrictive measures in accordance with paragraph 5. Before making such a decision, the Commission should request the CPC or NCP concerned to discontinue its wrongful conduct and should provide the CPC or NCP with an opportunity to respond within 10 working days. Absence of response from the CPC or NCP concerned within the time limit shall not prevent action from the Commission.