

6. Key policy and governance issues

Private standards and related certification is becoming a significant feature of international fish trade and marketing. However, as outlined in previous chapters, the impact of private standards is not uniform across markets, species or types of products. Demands for ecolabelled fish and seafood are currently concentrated in certain species and in certain markets. Demands for certified aquaculture products are also fairly concentrated. The demands for fish and seafood to be certified to an FSMS increase according to the level of value addition involved and the product risk category, and they affect products destined for sale in supermarkets and/or as commercial brand and private label products.

Demands for certification are driven mainly by large-scale retailers, as well as commercial brand owners (supplying to those retailers) and the foodservice industry (especially in the United States). Large-scale retailers are selling more fish and seafood as they attempt to offer consumers a “one-stop-shopping” experience. As described above, private standards add to the value of the retailer’s brand, often forming part of their CSR strategies, and provide an important and cost-effective risk management function. They enable more direct supply relationships by communicating detailed supply specifications to operators upstream in the supply chain. Robust private standards schemes can offer guarantees of traceability, chain of custody and good governance.

The impact of private standards in the trade and marketing of fish and seafood is likely to increase as supermarket chains consolidate their role as the primary distributors of fish and seafood products, and as their procurement policies move away from open markets towards contractual supply relationships. These supply relationships are increasingly defined by private standards with detailed product and process specifications. As the leading retail transnationals extend their global reach, their buying strategies are likely to progressively influence retail markets in East Asia, Africa, Eastern Europe and Latin America.

The preceding chapters have raised some key questions and issues related to the impact of private standards in fisheries and aquaculture, and how they affect various stakeholders. These issues require resolution or further enquiry.

6.1 HOW CAN THE QUALITY AND CREDENCE OF PRIVATE STANDARDS AND RELATED CERTIFICATION BE ASSESSED?

The proliferation of private standards causes confusion for many stakeholders: fishers and fish farmers trying to decide which certification scheme will bring most market returns, buyers trying to decide which standards have most credence in the market and will offer returns to reputation and risk management, and governments trying to decide whether to take a “hands off” or “hands on” approach to market-based mechanisms introduced by the private sector and NGOs.

From an overall fisheries and aquaculture industry perspective, the range and breadth of private standards is significant, especially when set alongside parallel regulatory requirements. However, when taken separately, in each sector – wild capture ecolabels, aquaculture certification schemes, overall food safety and quality management schemes – the “proliferation” story is a little more muted. There do not appear to be “too many” private standards in any one sector. In any case, there is no

optimal number of private certification schemes. Too many might cause confusion, too few might lead to a monopoly situation with industry becoming beholden to one scheme, with standards that could ratchet up over time or become less accessible and/or credible. Transparency and good governance in private voluntary schemes is imperative. The question is: How can the quality of schemes be determined?

A mechanism for judging the quality of schemes (from a buyer's perspective) has been proposed by Peter Hajjipieris, Director of Sustainability and External Affairs for Birds Eye Iglo. His "wish list" outlines his view of the essential quality attributes of any certification scheme in the fisheries and aquaculture sector (see Box 22).

BOX 22

Buyers' wish list for certification schemes

- Does it operate to an internationally agreed or harmonized reference, such as the FAO Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries?
- Is the certification process compliant with relevant international standards, e.g. ISO 65, ISEAL?
- Is the governance and transparency of the organization and/or standard robust?
- Does the issuing organization have credibility (related to above)?
- Is the scheme easily used by industry (e.g. easily understood using simple language)?
- Is it affordable? Does the cost structure incentivize the market to adopt the standard?
- Is a continuous business improvement process built into the scheme?
- Do its label declarations align to international standards (i.e. ISO 14020 aspects)?

Source: P. Hajjipieris, presentation to the OECD/FAO Round Table on Ecolabelling and Certification in the Fisheries Sector.

6.1.1 Benchmarks and evaluation tools

Industry stakeholders have highlighted the need for a benchmark against which to judge the quality and credence of the various certification schemes in each sector: ecolabelling schemes, aquaculture schemes, food safety and quality management schemes. The aforementioned GFSI has a mechanism for benchmarking FSMSs. The FAO Guidelines on Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries, and from inland capture fisheries, and the FAO guidelines for certification in aquaculture, provide minimum substantive criteria and an agreed international reference for capture fisheries and aquaculture respectively. In all areas, however, there is likely to be some debate on assessment methodologies, and on who should carry out any benchmarking exercises. While the FAO Members have agreed to the development of an assessment methodology for ecolabels, there is less agreement – and no clear mandate – as to whether the FAO should assess any private scheme against those criteria.

In each area, key questions remain: Who should evaluate schemes, how, and for what purpose? Several "levels" of evaluation are possible:

- a methodological tool that could be used by all stakeholders to make their own assessments against the agreed criteria (as is in train for ecolabels);
- an actual benchmarking exercise to determine which schemes are most robust (with the potential for "league tables"); and
- a benchmarking exercise to establish mutual recognition or harmonization.

6.1.2 Some stumbling blocks

6.1.2.1 *A moving target*

As noted above in relation to benchmarking exercises that have been undertaken in the ecolabels area, a benchmarking exercise to determine the relative quality of schemes might only provide a snapshot in time. Schemes are constantly evolving (as they should to ensure continuous improvements) and often adjust in the light of questions raised or weaknesses highlighted during the evaluation process.

6.1.2.2 *Lack of consensus on key definitions*

Assessing the quality and utility of private standards and certification schemes, such as those in aquaculture that cover a range of criteria – from safety and quality, to environmental impacts, to animal health, to social and economic sustainability – is highly problematic. For both aquaculture schemes and wild-capture ecolabelling schemes, methodological issues such as the lack of any consensus on definitions of “sustainability” (or even more complex concepts like “social sustainability”) are particularly challenging.

Some advancement on how to define sustainability would be useful, not only in relation to evaluating private voluntary standards, but more importantly in fisheries and aquaculture governance generally. Governments, individually and collectively, will need to take the lead on this. As one senior fisheries policy manager commented: “Agreeing how sustainability is defined becomes the starting point for governments.”¹⁷⁷

The OECD/FAO Round Table on Ecolabelling and Certification in the Fisheries Sector urged caution in attempting to build broader aspects of sustainability (like economic and social sustainability) into an internationally applicable definition applying to fisheries and aquaculture. It concluded that: “However ‘sustainability’ is eventually defined, it needs to be transparent, consistent with multilaterally agreed standards, standardized, and comprehensive” (OECD/FAO, 2009, p. 22). There is some way to go on this.

6.1.2.3 *Harmonization and mutual recognition*

Greater harmonization or mutual recognition of standards and certification schemes would both reduce the confusion inherent in the proliferation of private standards applying to fish and seafood and would help to reduce some of the costs associated with multiple certifications. This applies to both public and private systems. Exporters have lamented the multiplicity of government food safety import requirements that differ between jurisdictions. The range of private certification schemes adds to those concerns. Developing country operators, in particular, struggle to keep up with mandatory requirements let alone the range of private standards.

Some attempts at increasing harmonization in voluntary standards have been outlined in previous chapters. For example, in the food safety and quality area, the communication between the public/private hybrid ISO and the retailer coalition GFSI, and in aquaculture, the private GLOBALG.A.P.’s add-on assessment module based on the NGO WWF’s Aquaculture Dialogues, and GLOBALG.A.P.’s joint checklist approach with the ACC, are all attempts to find some common ground in order to reduce duplication.

In terms of food safety and quality assurance, common ground already exists in the form of mandatory HACCP requirements. Indeed private safety and quality standards are based on the HACCP system and were developed to operationalize and verify prerequisite and HACCP compliance. There is less evidence of the potential

¹⁷⁷ J. Willing, Manager, International and Biosecurity, Ministry of Fisheries, New Zealand, personal communication, 2009.

for harmonization in the ecolabels arena. Some, such as Dolphin Safe and the MSC, were developed prior to any international guidelines (although the MSC subsequently adjusted in the light of the FAO ecolabelling guidelines). Despite this, while ecolabelling schemes argue that they are consistent with the FAO ecolabelling guidelines – which could form the basis of some mutual recognition – they are explicit in stating that they are not doing the same thing and, therefore, are not interchangeable.

Further avenues need to be explored towards greater harmonization and mutual recognition of schemes in the three sectors – safety and quality, ecolabels, and aquaculture – to move towards the goal expressed in the GFSA's attempts at harmonization: “once certified, accepted everywhere”. Moreover, if there is no equivalence in certification requirements, then products rejected in one market can find their way into another market with lower requirements, resulting in negative implications for overall global outcomes in food safety and quality, and for sustainability.

6.2 A “FAIR” DISTRIBUTION OF COSTS AND BENEFITS

The costs of certification vary between schemes, between sectors, between the various stakeholders in the same sector, and at various levels of the supply chain in relation to the same private certification scheme. Illustrative examples were provided above related to various stakeholders in ecolabelling schemes, aquaculture certifications and food safety management standards schemes. As explained above, the costs include the actual costs of certification (audit fees, logo-licensing payments, etc.) and the indirect costs associated with management changes (upgrading plant or gear, updating management systems, record-keeping and data collection, etc.) required to achieve certification. With such diversity in schemes, it is difficult to identify any specific areas for cost reductions. However, some efficiencies could be pursued by reducing the costs of multiple documentation and audit, and dealing with some of the issues raised in relation to the quality, consistency and capacity of certifiers.

6.2.1 Reducing compliance costs

Stakeholders interviewed for this research identified the duplication and inefficiencies associated with multiple audits as particularly burdensome. For example, in the food safety and quality area, a fish processor might have to be certified to several different FSMSs and have chain-of-custody certification for an ecolabelling scheme and/or an aquaculture certification scheme. Moreover, these requirements will be in addition to any regulatory mandatory requirements.

It is in the area of audit and verification, and the related documentation required, where duplication between public and private requirements is also most evident. Separate sets of compliance documents relating to public and private certification (or even several public and several private certifications) amount to heavy compliance costs. Harmonization or mutual recognition between private systems (in FSMSs) and the chain-of-custody requirements between various schemes, might help to reduce unnecessary duplication and overall costs.

6.2.2 Certifiers – improving quality, consistency and capacity

The big winners in the proliferation of private standards are undeniably the certification bodies that conduct audits and certify against private standards. Certification is a lucrative and competitive industry. Indeed, it has been suggested that in some countries aggressive marketing by certification companies is giving an exaggerated impression of the extent to which buyers are requesting suppliers to be certified.¹⁷⁸

¹⁷⁸ This comment was made in relation to FSMS certifications. F. Blaha, FAO, personal communication, 2009.

Issues related to certifiers have been raised in various fora. At the OECD/FAO Round Table on Ecolabelling and Certification in the Fisheries Sector, some fisheries representatives complained that the certification process is not always consistent and that different certifiers apply the same standard differently. This applies to fisheries in different countries, or even different operators in the same fishery seeking certification to the same ecolabelling scheme. Certifiers present at the Round Table stressed the importance of the quality of the standard and the clarity of assessment indicators – they should leave minimal room for certifier “interpretation”. They argued that consistency improves over time as certifiers become more familiar with applying any given standard.

In terms of ensuring the overall competence of auditors, international standards for auditing and accreditation should apply. As noted earlier, third-party independent certification is essential for the credibility of any certification claims. This means that certifiers must be impartial, having no conflict of interest in the products, processes or facilities they audit.

There is an apparent shortage of certifiers in some jurisdictions, especially in developing countries, where bringing in overseas auditors adds considerably to the cost of certification. As the demand for certification grows, the pool of auditors will need to expand. The range of certification schemes – ecolabels, safety and quality, and aquaculture – will put increasing pressure on existing capacity. Will the market provide or is some specific capacity building required? Should governments take some initiative on this front? These questions require more discussion.

6.2.3 Redistribution of costs and benefits

Arguably more problematic than the actual costs of certification is the distribution of those costs. In all of the areas discussed in this technical paper, the compliance costs associated with certification to a private standards scheme are borne disproportionately by those upstream in the supply chain rather than those downstream where the demands for certification generate.

The costs of certification to an ecolabelling scheme are generally borne by harvesters. Yet the most robust evidence of price premiums accruing to ecolabelled fish and seafood suggests that they accrue to the retailers that demand certification – they generally have minimal associated costs, in the form of chain-of-custody audits or licensing fees. Should they help foot the bill for certification?

The “distribution of costs” issue for environmental certification is particularly acute when the improvements required in fisheries management or practices (the “conditions of certification”) relate to the overall management of the fishery, which is generally the responsibility of public authorities. If fish from a particular fishery is excluded from a market or buyer (one requiring only certified product) on the basis of judgements about whether a government has lived up to its obligations for sustainable fisheries management, then should governments help pay for improvements?

As noted in Chapter 4, some governments use public funds to help pay for the costs of certification. Is it possible and/or practical to define a formula whereby industry pays the component of certification that relates to private benefit (market access, price premiums), and government pays the component that relates to its responsibilities to manage marine resources sustainably? This is an area where further dialogue and sharing of experiences would be useful.

The distribution of costs associated with aquaculture certifications and certification to an FSMS are, similarly, unevenly distributed. While, in both cases, it is retailers and other stakeholders downstream who demand certification, it is fish farmers and processors (of both wild capture and farmed fish) that assume the main financial burdens. Is some redistribution of those costs possible, and using what levers?

6.3 INTEGRATED TRACEABILITY

Traceability is the ability to track the origins of a product, the processes it went through, and where it ended up; in the case of fish and seafood – from boat or farm to fork. Chain of custody is a more specific concept and guarantees not only the ability to trace products but also the ability to ensure their integrity throughout the value chain. In terms of certified fish and seafood, chain of custody includes guarantees that certified product is not mixed with non-certified product. It is arguably the traceability aspects of private standards schemes that retailers and brand owners find most compelling – they provide valuable guarantees and risk-management functions when there is a lack of confidence in public systems and when governance in some exporting countries is perceived to be weak. Traceability is especially important in the context of increasingly complex supply and distribution systems and where products pass through multiple hands and even multiple countries before reaching the final consumer. Robust traceability and chain-of-custody mechanisms also prevent fraud, or non-certified products (of inferior quality or different origins) being passed off as certified product. Several large-scale retailers have specific policies related to traceability. For example:¹⁷⁹

- Coop: “Will prioritise the seafood suppliers that can PROVE full traceability (preferably certified), and where COOP is granted online access to the information all the way back to the catch”.
- Wal-Mart: “To improve transparency in the supply chain, Wal-Mart will require direct import suppliers and suppliers of own-label and non-branded products to provide the name and location of the factories they use. A new supplier agreement will require factories to certify compliance with local laws and regulations along with ‘rigorous social and environmental standards’.”

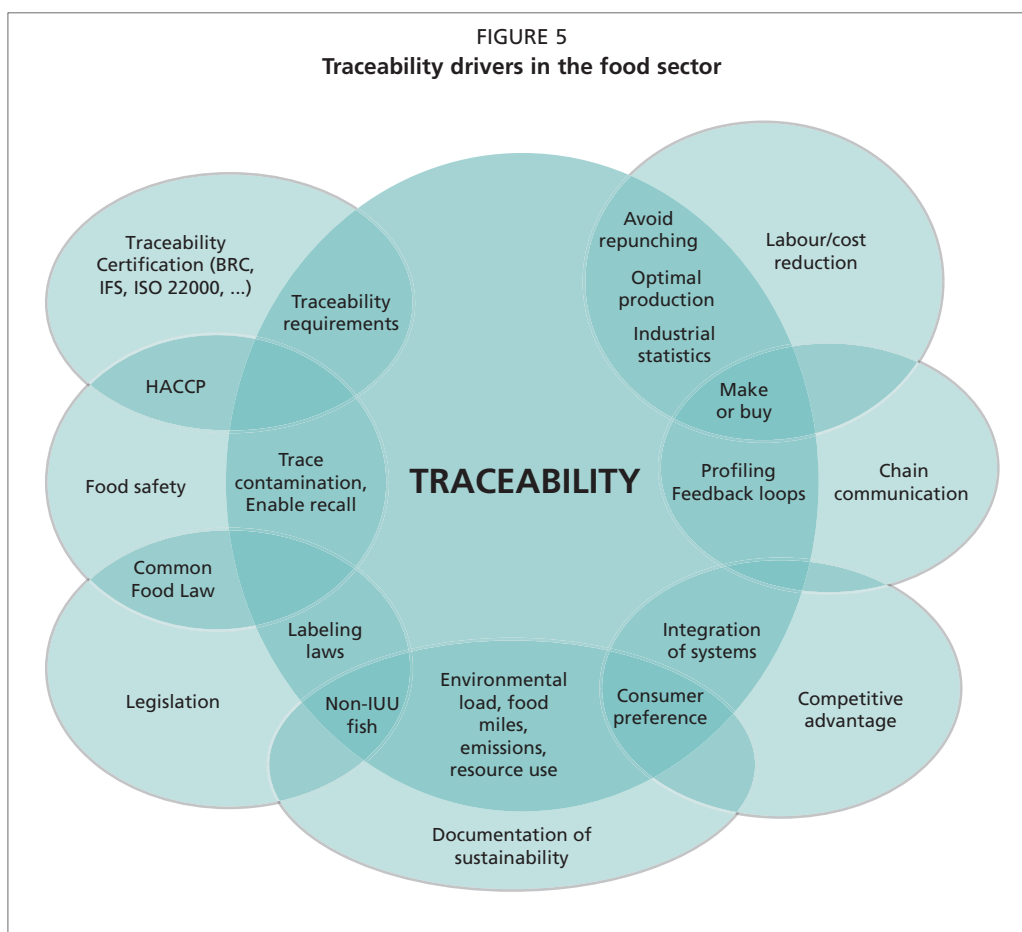
There is a multiplicity of drivers for traceability in the food sector generally: mandatory food safety requirements, private safety and quality certifications, sustainability claims, and business-related drivers such as inventory control, promoting efficiencies, and communication along the supply chain. Figure 5 indicates a range of those drivers and where they overlap.

6.3.1 Multiple traceability requirements

Multiple mandatory traceability systems already operate in the fisheries and aquaculture sector. International traceability norms for food safety assurance are well established. Codex document CAC/GL 60-2006 outlines a set of principles for competent authorities to develop traceability systems able to “identify at any specified stage of the food chain (from production to distribution) from where the food came (one step back) and to where the food went (one step forward).” Other mandatory public traceability systems relate to catch certification, country of origin, and mechanisms for IUU fishing (see Box 23).

As outlined in previous chapters, private voluntary certification schemes also have their own traceability requirements (albeit some based on mandatory public systems). For example, the MSC encourages its client organizations to introduce Codex food safety and quality systems including HACCP and/or ISO 9001 quality management systems; independent third-party chain-of-custody audits verify compliance. All ACC-certified fisheries participate in the traceability system developed by Trace Register Inc. Various stakeholders in the fisheries value chain therefore face multiple public and private traceability requirements, each with their own requirements for verification and documentation.

¹⁷⁹ From O. Henning Fredriksen, Tracetracker, “Practical implications of dealing with a variety of standards along the fisheries value chain”, presentation to OECD/FAO Round Table on Ecolabelling and Certification in the Fisheries Sector, The Hague, April 2009.



Source: P. Olsen, 2009, presentation to OECD Round Table on Ecolabelling and Certification in the Fisheries Sector.

6.3.2 Technological tools for traceability

Businesses of various types have adopted traceability tools, largely for the purposes of inventory control, such as standardized product numbering using barcodes. Other technologies such as standardized electronic product coding (EPC) and radio frequency product identification (RFID) enable products to be traced as they pass along the supply chain. These tools could be used for public purposes, while related synergies between public and private requirements could be identified to enable cost-efficiencies to be realized.

Producing official certificates electronically could provide “a greater level of assurance of document integrity – especially if the document exists solely in cyberspace accessed only through secure business arrangements”.¹⁸⁰ Documents would be harder to falsify or duplicate. The United States National Centre for Trade Facilitation and Electronic Business has developed a standard for electronic certification (eCert) that could provide a starting point for integrating the traceability requirements related to various public objectives.

6.3.3 Integrated traceability serving multiple objectives – possible and feasible?

Are integrated traceability systems serving multiple purposes and multiple agents (public and private) possible and feasible? Is it possible to design one system that would

¹⁸⁰ From “Integrated traceability” a discussion paper prepared for FAO by A. Macfarlane in 2009.

meet multiple requirements: food safety, catch certification, IUU and the chain-of-custody aspects of various private voluntary certification schemes? Multistakeholder discussion would be required on user requirements and whether or not the public and private agents currently requiring various levels of traceability (specificity) would be prepared to give up their own systems in favour of an integrated multipurpose system. Moreover, any solutions would have to consider the risk of “overkill” (systems designed for the highest possible risk – food safety assurance – posing an increased burden for operators with relatively low risk) as well as the impacts on developing country and small-scale operators, which would find the data and technological requirements problematic.

BOX 23

Existing public traceability systems – some examples¹

Food safety

The European Union (EU) mandatory traceability requirements for food and feed, including fish and seafood products, are encapsulated in European Commission Regulation 178/2002 Article 18, which also requires adequate labelling. Traceability is generally required on a “one step backwards, one step forwards” basis.

The United States Food and Drug Administration (FDA) requires importers of seafood into the United States to notify the FDA prior to receiving shipment. Both the FDA and the Bureau of Customs and Border Security require a variety of product data. New legislation is being considered by the United States Senate – H.R. 2749, The Food Safety Enhancement Act 2009, that could enable the FDA to require each person along the value chain to “maintain the full pedigree of the origin and previous history of the food and link that history to the subsequent distribution of the food”, which is a significant change to the “one up, one down” traceability currently required.

Illegal, unreported and unregulated (IUU) fishing

Several regional fisheries management organizations (RFMOs) require that certain fish caught under the authority of member flag states be accompanied by catch or trade documentation when traded. For example, the International Commission for the Conservation of Atlantic Tunas (ICCAT) has established a statistical document program for blufin tuna, bigeye tuna and swordfish that requires each consignment to be traced back to the catching vessel, time and ocean area of catch.

The European Union IUU Regulation 1005/2008 came into force on 1 January 2010 and requires imported wild-caught fish and fish products to be accompanied by a catch certificate (Article 12) validated by the competent authority of the flag state of the vessel where the fish was caught. Where fish is processed in a country other than the flag state, the re-exporter must provide a certificate that identifies the re-exported fish and provide the original or copies of the original catch certificates (validated by a control authority in the re-exporting state). However, these requirements are not linked to the food-safety traceability and certification requirements applying to the same products.

¹ Examples drawn from a discussion paper, “Integrated traceability” prepared for FAO by A. Macfarlane in 2009.

Integrated traceability is part of the current FAO work programme and was discussed at the COFI Sub-committee on Fish Trade in April 2010. The activity of Working Group 1 (traceability of fish products) of the ISO Technical Committee 234

on Fisheries and Aquaculture¹⁸¹ might also offer the potential for a generic but multipurpose traceability standard for seafood. Nineteen countries are participating in the working group while a further 16 are observers. The CAC, FAO and International Union for Conservation of Nature (IUCN) participate as “organizations in liaison”.

6.4 THE SPECIFIC CHALLENGES AND OPPORTUNITIES PRIVATE STANDARDS POSE FOR DEVELOPING COUNTRIES

Fish and seafood are important income earners for many developing countries. Developing countries are crucial for current and future global supplies of fish and seafood products. They account for about half by value, and about 60 percent by volume, of all seafood traded internationally.

As discussed in previous chapters, certification to private standards schemes is problematic for many developing countries. Concerns common to the various types of certification include:

- Certification is typically too costly for small-scale fishers and fish farmers (this is also true for some small-scale and artisanal operators in developed countries). The costs of certification are proportionately higher for smaller operators. Moreover, without some form of cooperative arrangements, small-scale operators are not able to deliver the volumes of supply required by buyers, nor do they have the wherewithal to engage in direct supply relationships and to manage contracts with large-scale international buyers.
- Certification methodologies are often ill-suited to data-poor, highly fragmented, developing country fisheries.

Some private certification schemes have taken these concerns on board and have attempted to develop certification methodologies more suited to data-deficient, small-scale fisheries and fish farms. For example:

- The MSC’s Developing World Fisheries Programme developed a “Risk-Based Framework” for assessing data-poor fisheries (which is now part of the overall MSC Fisheries Assessment Methodology).
- Under its Better Aquaculture Practices (BAPs), the ACC has developed two programmes allowing for group farm certifications: Integrated Operating Modules (IOMs) and Aggregate Farm Units (AFUs),¹⁸² which are both designed to “provide practical certification solutions for group farms at affordable rates”. However, the certifications require some level of organization and an overall sponsor, usually in the form of a farmers’ club or cooperative or a producer organization, or in the form of a group of farmers or fishers supplying to the same processor.

Despite attempts to be more inclusive of developing countries, developing country operators remain underrepresented, particularly among the ranks of certified fisheries (ecolabels) and certified fish processors (FSMSs). Certified operators from developing countries tend to be those that are large-scale, involved in more integrated supply chains with direct links to developed country markets (through equity or direct supply relationships).

Further inquiry is needed to determine whether private standards have a negative impact on developing countries’ market access opportunities. While some developing countries have argued that private standards pose a barrier to trade, there is no solid evidence of markets “drying up” as a result of demands for certification. As noted in previous chapters, demands for certified products tend to be concentrated in certain markets and certain species, many of which are not the main species traded

¹⁸¹ See: www.iso.org/iso/iso_technical_committee?commid=541071.

¹⁸² J. Sedacca, “Case study: small farm certification”, presentation to Global Outlook for Aquaculture Leadership conference, Seattle, the United States, 2009.

by developing countries. Moreover, evidence suggests that meeting mandatory public standards in developed country markets currently poses more of a barrier to trade than requirements to meet private standards. Developing countries often fall short in areas that are crucial for meeting either public or private standards, including:

- the lack of any overarching policy strategy – on food safety, fisheries and aquaculture – with supporting regulatory frameworks consistent with market requirements in key import markets; and
- poor institutional capacities: poor fisheries management, control and surveillance, an absence of, or poorly performing, “competent authorities”, weak inspection and monitoring services, insufficient data collection and analysis, weak or non-existent testing facilities, and the absence of technical and advisory services (including advice on food safety management and international import market requirements).

For developing countries to take advantage of the opportunities presented by private standards, they must first be able to meet the requirements of mandatory regulatory requirements in importing countries. This would create the foundations for future responses to private sector standards.

Any technical cooperation in developing countries would be best focused on ensuring that the public systems are appropriate rather than diverting attention and resources towards meeting private standards. Assisting with capacity building in countries with weak administrative systems is likely to be a more effective strategy than imposing a parallel private system to compensate for perceived or real administrative shortcomings. Any operator wishing to access sophisticated developed country markets must first comply with the basic mandatory requirements of food safety (HACCP compliance) as well as being able to offer quality products, reliability of supply and robust traceability guarantees.

Large-scale buyers will not engage with any business that does not meet mandatory requirements, nor with any operator that is unable to provide sufficient volumes of sufficient quality, as well as providing assurance of safety, quality, provenance and chain of custody (and, increasingly, able to verify minimal environmental impacts).

While certification is problematic for many developing country fishers, farmers and processors, it might also provide a tool for engagement with large-scale buyers. The challenges and costs of certification need to be weighed against the potential opportunities:

- access to high-value and/or niche markets in key importing countries;
- participation in direct supply relationships, with less price volatility than selling through traditional auction markets;
- potential for more value-addition; and
- potential for technical transfers.

In any case, developing countries are a crucial part of international fish and seafood supply chains. Any attempts to further develop global governance for food safety or fisheries and aquaculture sustainability will fail if developing countries are not an integral part of the equation.

6.5 THE EFFECTS OF PRIVATE STANDARDS ON INTERNATIONAL TRADE AND THEIR RELATIONSHIP TO WTO MECHANISMS

As discussed in previous chapters, the WTO has generated a regulatory framework to facilitate international trade. The SPS Agreement and the TBT Agreement are particularly relevant to trade in fish and seafood products. The impact of private standards on international trade has been raised for discussion in both the corresponding

committees. Ongoing concerns of member countries in relation to private standards, include those related to:

- the content of private standards and their consistency with international WTO obligations;
- the discriminatory costs of and access to private certifications;
- a lack of clarity about the jurisdiction over private sector actors; and
- the changing interface between public and private standards.

6.5.1 Content of private standards and consistency with WTO obligations

Some countries have argued that private standards go beyond relevant international public standards (the OIE, Codex and the IPPC), that those related to food safety include product and process specifications (non-safety and quality criteria) that have no particular scientific rationale, and are therefore inconsistent with SPS obligations. However, to date, there has been no robust analysis of whether private standards are, or are not, consistent with international standards or with SPS obligations.

In terms of ecolabels, some countries fear that the allowance of non-product related PPMs could open the door to developed countries imposing their domestic policy frameworks either related to fishing methods and/or other standards (labour, human rights), thereby giving further grounds for discrimination against developing country products. Other countries have supported the inclusion of non-product related PPMs in TBT coverage, emphasizing their importance for global environmental objectives.

The TBT Agreement makes a distinction between “technical regulations”, which are mandatory, and “standards”, which are voluntary requirements. Where a technical regulation is applied in accordance with a relevant international standard, then it is presumed not to create an unnecessary obstacle to trade. However, there is no such interpretation in relation to voluntary private standards, and there has been no robust analysis comparing the requirements of international standards with private standards.

Further analysis is required to determine the consistency or not of private standards with international standards and obligations of the SPS and TBT Agreements.

6.5.2 Costs of, and access to, certification

Members of the SPS Committee, in particular from developing countries, have raised concerns about the costs of third-party certification to private standards, especially the burden they place on small and medium-sized enterprises and producers in developing countries. Multiple audits, as a result of a lack of mutual recognition between schemes, have also been identified as costly and burdensome. The requirement of many FSMSs to use a limited number of accredited certification bodies has also been seen as a barrier to entry of developing country products into lucrative import markets. As discussed above, the costs, the distribution of those costs, and the extent to which demands for certification are discriminatory need to be investigated further.

6.5.3 Jurisdiction over private sector actors

While governments have the right to challenge the actions of other governments within the context of the WTO, the grounds for challenging non-governmental actors is less clear. For example, requirements for only ecolabelled fish and seafood could mean that products can be excluded from the market owing to perceptions of the buyer or retailer about whether governments (from exporting countries) have lived up to their obligations for good management. What recourse governments have to challenge these assessments and their implications is still largely unknown. It is not clear what mechanisms governments have to control what amounts to the private contractual relationships of private sector firms. Jurisdiction over non-governmental actors,

transnational firms or coalitions of firms is problematic. The SPS and TBT Agreements offer little direction on this front and “there is no jurisprudence on this matter” (WTO, 2007).

6.5.4 Interface between official measures and private standards

There are concerns that private standards might start to influence government regulatory frameworks, including those affecting trade. For example, a government standards body might give ease of entry to imports certified against a trusted private FSMS, thereby offering those products preferential treatment. Similarly, could public sector financial support for ecolabel certification be considered a “subsidy”? If governments pay outright for certification, is that a subsidy to its industry? If it leads to a trade advantage or improved market access, then should it be notifiable in the context of the WTO?

As the boundaries between public and private standards and requirements start to blur, there are implications for trade that need to be closely monitored.

6.5.5 Trade-enhancing or trade-restricting? – divergent views

In the context of discussions on private standards at the WTO, differences of opinion have been expressed, including differences between members from developing countries. For example, while some countries have argued that private standards help to expand trade, others counter that they discriminate against developing countries.

Further enquiry and evidence of the actual effects of private standards on trade opportunities, especially for developing countries, is needed. This would require an analysis of shifts in import and export statistics to determine the influence of private standards of various types. As noted above, while volumes of certified products remain modest, the impact on trade is likely to be slight. However, it is a fast-moving area that needs to be closely monitored. Work continues in the area at both the WTO and in the context of the FAO COFI Sub-committee on Fish Trade.

6.6 THE INTERFACE BETWEEN PRIVATE STANDARDS AND NATIONAL PUBLIC REGULATION AND POLICY FRAMEWORKS

Private standards pose key questions for governments: What role do private standards play in overall governance for food safety assurance and sustainable fisheries and aquaculture? What value-addition to they offer? Do they duplicate, complement, or undermine public regulatory frameworks?

6.6.1 Ecolabels and fisheries sustainability

After more than a decade of experience, there is some evidence of improvements resulting from ecolabelling and certification, albeit mainly indirect. Certification of one fishery does appear to result in peer pressure for competitors to also seek certification. Positive environmental impacts, such as significant reductions in bycatch and fewer impacts on ecosystems, have also been documented as well as management adjustments in certified fisheries, such as improved surveillance of bycatch and changes in data management. Moreover, certification methodologies are also being used as self-assessment tools for fisheries, as a means to define gaps in performance and to set a roadmap for improvement. However, in terms of the overall status of fisheries stocks, it is difficult to document evidence of improvements resulting from certification. Most of the fisheries certified to date were already well managed prior to certification. Further empirical evidence is required.

In any case, ecolabels are not a panacea. They were set up in response to perceptions that governments were not doing enough to ensure the sustainability of the world's marine resources. As a market-based mechanism, they are designed to incentivize good management with potential market rewards. As such, they can complement public

measures for responsible and sustainable fisheries management. Indeed, the limits of ecolabelling and certification might serve to highlight the current gaps in those public measures and the overall governance framework for fisheries sustainability.

Governments need to determine, both individually and collectively, what the essential components are of an overall governance framework for sustainable fisheries and how private market mechanisms fit into that framework. Some governments appear to see ecolabelling and certification as a mechanism for gaining traction in their own policy objectives, others have co-opted the mechanism but under public management and ownership, while still others see them more as a marketing tool. The challenge is to determine how a market-based mechanism can complement public measures for responsible and sustainable fisheries management. However, it is important not to lose sight of the fact that voluntary certification schemes are no substitute for good public management. Governments must continue to actively embed the FAO Code of Conduct for Responsible Fisheries into their national management strategies in order to ensure that fish stocks are available for future generations. The role of aquaculture needs to be part of this equation, because the industry relies on the future sustainability of fisheries used in the production of fishmeal and fish oil.

6.6.2 Private standards and food safety governance

As discussed in Chapter 5, private safety and quality standards are typically based on mandatory regulation and, therefore, are not likely to conflict with public food safety regulation. Duplication is more likely to be an issue, if not in relation to the content of requirements, then in methods of compliance and verification (including multilevel documentation). Moreover, there is little evidence to suggest that compliance with private standards might facilitate the implementation of public standards. Indeed, the inverse is a more likely scenario. Compliance with public standards provides a baseline, and is therefore essential, for meeting the requirements included in private standards schemes – a company certified to a private standards scheme will still not have access to certain markets, such as the EU, if the competent authority of the country in which it operates has not been approved by public authorities in key import markets.

Like fisheries certified to an ecolabelling scheme, operators who achieve certification to a private FSMS are mainly those that already run effective food safety management systems. Under that scenario, it is unclear whether certification incentivizes better food safety management. As noted above, it is the verification of compliance and the traceability aspects of private standards schemes – rather than the content – that retailers and other buyers requiring certification find most attractive. It appears that there is sometimes more trust in private certification schemes than in public verification of food safety management assurance in some exporting countries. Moreover, audit reports on individual operators by public authorities are generally not available publicly. In any case, efforts to improve food safety governance either at the national level or internationally are more likely to be effective if they concentrate on ensuring that the public systems are appropriate.

Private standards overall are unlikely to conflict with public regulatory systems; they are typically either based on public requirements or include compliance with public requirements as part of the criteria for certification. They may duplicate public systems (food safety) or expose gaps in governance (lack of a framework to assess fisheries sustainability), but they are unlikely to conflict with or undermine them.

Whether or not private standards incentivize better management remains unclear. Whether profit-maximizing private-sector firms or NGOs are the best agents for incentivizing better food safety management and sustainability in fisheries and aquaculture also requires further debate.

Are private standards an efficient mechanism for achieving public policy goals of food safety assurance and the sustainable use of natural resources? If they are

compensating for perceived shortfalls in public governance, then they might be simply treating the symptoms when a more effective solution would be to invest in strategies to improve those public systems. Governments need to determine, both individually and collectively, how private market mechanisms fit into public policy frameworks for fisheries and aquaculture and how they will engage with them.