

Executive Summary

Background

On 29 September 2008 the Council of the European Union (EU) adopted EC Regulation No. 1005/2008 ‘establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing’ (referred to hereafter as the IUU Regulation).¹ The IUU Regulation, scheduled to enter into force on 1 January 2010, is intended to regulate the highly complex multi-channel fisheries supply system of the European Community (EC) in an effort to improve global fisheries’ sustainability.² Essentially, the IUU Regulation establishes a system of access conditionality in which access to EC markets will be partly conditioned by the extent to which the country, area or region of origin of the exported fish product is completely free or increasingly free of illegal, unreported and unregulated (IUU) fishing. This measure clearly has trade and developmental impacts for Commonwealth members of the African, Caribbean and Pacific (ACP) group of states. Hence the need for this report. The full terms of reference for the report are set out in Appendix 5.

Part A assesses the general background and context of the IUU Regulation by analysing:

- The globalisation of fisheries markets, including the inter-relationship between the globalised fisheries system and the globalised nature of IUU fishing;
- The development of international concerns regarding IUU fishing;
- The framework for ACP-EC fisheries trade; and
- Economic trends in ACP fisheries trade in the light of applicable trade frameworks.

Part B focuses more closely on the content of the IUU Regulation, analysing its likely development impacts against the overall background of the EC fisheries policy framework. It considers:

- How the IUU Regulation seeks to address the EC’s objective of combating IUU fishing;
- World Trade Organization (WTO) compatibility issues, particularly the IUU Regulation’s framework of retaliatory measures where non-EC states and vessels breach the IUU Regulation, as well as other international rules on fisheries conservation and management;
- The impact of the IUU Regulation on ACP exports that are potential beneficiaries of the duty free and quota free (DFQF) market access arrangements established by the

current round of Economic Partnership Agreements (EPAs) and Interim Economic Partnership Agreements (IEPAs) between the EC and various ACP states;

- The interaction between the IUU Regulation and possibilities for utilisation of the trade preferences granted to ACP states by the EC's Generalised System of Preferences (GSP) Regulation and the related rules of origin (RoO) under the GSP rules;
- Policy and implementation issues arising from the IUU Regulation.

Globalisation of the fisheries trade and IUU

Part A of the report analyses the core features of fisheries globalisation at the present time and shows that these globalised arrangements will significantly determine the IUU Regulation's likely effectiveness, as many of these features structurally facilitate IUU fishing. This makes enforcement against IUU fishers particularly difficult. Aspects of globalisation which inadvertently support IUU fishing include the following factors:

- The high level of demand for fish in key market centres provides high prices for most IUU products;
- The global character of production operations and product markets facilitates product laundering, while ease of transshipment, as well as the anonymity of the cold-chain for transportation of fish products, also supports such laundering and the non-traceability of IUU products;
- The anonymity and vitality of the global market in vessel flags, crews and vessels underpin the flexibility with which IUU fleets move from production area to production area, while in some parts of the world, IUU fishing now overlaps with other forms of maritime crime such as piracy and drug smuggling.

Implementation of the IUU Regulation will thus be conditioned by many aspects of currently globalised fisheries. A key conclusion of the report is that many developing countries will find it difficult to meet the requirements of the IUU Regulation as they have little control over many of the facets of globalisation which support IUU fishing. Consequently, it is argued that developing countries will require comprehensive programmes of assistance in order to comply with the Regulation.

Patterns of trade

Trends in fisheries exports for individual ACP states vary significantly; this is accounted for by various factors peculiar to the situation of each country. The factors include bilateral access agreements, immediate access to fishing grounds, production of fishery goods critical to the EC market, environmental conditions and socio-political events. Because this report focuses on Commonwealth ACP states, Appendix 4 presents the aggregate trends of the volume of fisheries exports by these states to the EC. These trends may be summarised as follows.

Stable fisheries exports: Namibia, Nigeria, Mozambique, Ghana, The Bahamas, Seychelles and South Africa. Among these countries, the Seychelles, South Africa, Nigeria and Namibia are showing declining fisheries exports to the EC.

High fisheries exports from the late 1990s to early 2000, followed by a significant decrease: Belize, Cameroon, Malawi, Sierra Leone, St Vincent and the Grenadines, Trinidad and Tobago, and Vanuatu.

Significant fisheries exports only from 2003: Guyana.

Overall continuous increase in fishery exports: Kenya, Papua New Guinea, Mauritius, Tanzania and Uganda. Grenada shows increasing fisheries exports from 1997, but these fell significantly in 2007.

Significant decrease in fisheries exports, followed by a partial recovery in recent years: Gambia, Jamaica, Fiji Islands, Solomon Islands.

Erratic increases and decreases in fisheries exports: Antigua and Barbuda, Barbados, Tonga and Zambia.

Occasional fisheries exports to the EC: Botswana, Dominica, Kiribati, Lesotho, Nauru, St Kitts and Nevis, St Lucia, Swaziland and Tuvalu.

The report also found that patterns of fisheries export to the EC are highly complex, with those from ACP states generally outstripped by exports from other countries and regions, despite the preferences that are available. There appears to be scope for alternative markets like the USA and Japan. However, these markets are moving towards establishing IUU control restrictions similar to the EC's IUU Regulation. Options to diversify away from the EC towards other markets therefore appear to be limited.

The IUU Regulation

Part B of the report focuses on the IUU Regulation, which provides for the imposition of stringent trade measures against fishing vessels and foreign states that support IUU fishing. The control, sanctioning and conditionality elements at the heart of the Regulation include: port state controls over third country fishing vessels; catch certification requirements; establishment of an EC IUU vessel list; and the establishment of a list of non-cooperating third countries. The conclusions reached can be summarised as follows.

Interaction between the IUU Regulation and other international arrangements

The IUU Regulation needs to be viewed in the wider context of efforts through international fisheries instruments, the United Nations General Assembly, the Food and Agricultural Organisation (FAO) and regional fisheries management organisations (RFMOs) to address IUU fishing. The measures outlined in the IUU Regulation are, on paper, generally consistent with those called for under international fisheries instruments and measures being implemented by RFMOs (see Appendix 1). However, until

the measures are actually implemented, it is difficult to draw any definitive conclusions about their practical implications. One area where the IUU Regulation would appear to go further than current international efforts to combat IUU fishing relates to the restrictive trade measures against non-cooperating third countries. The reasons for this ‘global policing’ approach are obvious, given the significance of fisheries trade for the EC.³ Unless the EC adopts similar stringent measures and procedures against its members which fail to comply with the IUU Regulation and other relevant EC regulations on fisheries control and enforcement, it may be seen to be applying unilateral and discriminatory trade measures contrary to WTO rules.

Implications of the IUU Regulation for DFQF market access arrangements and applicable RoO for EPA participants

The report concludes that the IUU Regulation does not purport to modify the DFQF access granted pursuant to EPAs and IEPAs, or amend any specific EC trade regulation as a result of its future adoption.⁴ However, the implementation of the Regulation may indirectly hinder ACP states in their attempts to take advantage of DFQF access. The implementation of the IUU Regulation may also make it difficult for ACP states to take advantage of applicable rules of origin (for example, the 15 per cent value tolerance rule in all current EPAs and the global sourcing provision in the Pacific EPA).

Implications of the IUU Regulation for GSP, GSP+ and Everything but Arms (EBA) beneficiaries

Although the IUU Regulation will not directly modify the terms of the EC’s GSP, GSP+ and GSP-EBA schemes, implementation of the Regulation will create additional compliance burdens for the beneficiaries of these arrangements, and as a result may impair their ability to take advantage of preferential access arrangements.

WTO compatibility aspects of proposed retaliatory measures

WTO compatibility issues arise with respect to the catch certification requirements; actions that may be taken by EC territories against vessels listed on the EC IUU vessels list; and actions that may be taken against states on the EC List of Non-cooperating States. The report finds that the Agreement on Technical Barriers to Trade (TBT) and the exemption contained in Article XX(g) of the General Agreement on Tariffs and Trade (GATT) regarding environmental protection measures would appear to be broad enough to permit imposition of the measures contemplated by the IUU Regulation. While most of the actions proposed against IUU vessels are generally consistent with current international fisheries conservation and trade rules, the measures that may be applied against ‘non-cooperating third countries’ appear much more restrictive than those provided for in current international agreements and regional fisheries conservation and management measures. On balance, however, it can be argued that the measures contained in the IUU Regulation have achieved a high degree of international accept-

ance, and are unlikely to give rise to disputes in WTO fora, given the move towards tolerance of measures enacted to implement multilateral environmental agreements more aggressively.

Wider policy and governance issues arising from the IUU Regulation for the ACP states

Measures to combat IUU fishing, such as those contained in the IUU Regulation, will become prevalent and embedded parts of national, regional, subregional and international fisheries governance arrangements to ensure sustainable and responsible fishing practices. However, while the IUU Regulation is a welcome development, it will be important that it is implemented in a fair and transparent manner. The EC must acknowledge the vulnerability of developing countries and the difficulties that they will face in implementing the Regulation. It is essential that developing countries do not, directly or indirectly, bear a disproportionate burden of global efforts to combat IUU fishing.

The fundamental policy issue for the EU and ACP states is one of developing the required capacity to assist the ACP states to implement the IUU Regulation. Without the necessary technical and financial resources to implement and enforce these new demands, it is likely that several ACP states will suffer economic hardship as a result of the Regulation. Experience with the EC sanitary and phytosanitary (SPS) measures are a key example here; it is well-known that these involve double standards, as they seem to be less strictly enforced within certain EC member states.

The ACP states need to develop a detailed strategic approach to obtaining the necessary technical and financial assistance to support the implementation of domestic governance measures compliant with the IUU Regulation and international obligations to combat IUU fishing. Such an approach will enable the ACP states to avoid the negative effects of IUU fishing, as well as the negative effects of trade measures applied in response to failure to comply with the IUU Regulation.