

An Overview of the ACP-EC Fisheries Trade System

The current framework for ACP-EC fisheries relations sits within a multi-channel system of fish supply to the EC. Analysis of the ACP-EC fish sector needs to bear this multi-channel system in mind. We do not however describe this multi-channel system in systematic detail in this report and have not attempted to disaggregate the fisheries product flow statistics provided in the report on this basis.

This multi-channel system has the following elements:

- An ‘open to all’ non-preferential channel in which fish products – processed and unprocessed – are sent to the EC by commercial actors from all over the world, taking advantage of the fisheries cold-chain. Normally these products are subject to the EC customs, tariff and quota system with no preferences granted and reference prices used to control exports so as not to disrupt the market position of EC producers. However, tariffs may be reduced or quota quantities expanded from time to time to provide fuller access to the EC market to meet shortages of supply. Products from the Asian region, for example, which are increasingly competing with ACP products, fall into this category.
- An ACP preferential channel under which – principally through the Lomé/Cotonou and post-Cotonou arrangements – preferential access is granted to processed or unprocessed fish, provided such products are sourced: (1) from ACP waters as defined in the rules of origin under the Lomé/Cotonou trade arrangements; (2) from EC-ACP vessels, joint-ventures and similar arrangements.
- An access agreements framework in which fleets owned by EC commercial actors are granted access to fish resources in the EEZs of selected states around the world. Fish caught under these arrangements are automatically classified as originating in the EC, although the vessels which catch this fish are not always flagged to EC countries. Many are flagged to non-EC flag states, including those flying the flags of open register states. Such fish may be processed in ACP states, for example in Seychelles, Mauritius or Côte d’Ivoire, before export to the EC.⁴⁸
- High seas production by EC vessels; here again, such product is immediately an EC origin product.

4.1 Preferential fisheries trade

Preferential trade relations between the EC and the ACP states date back to the 1957 Treaty of Rome, which established the European Economic Community (EEC). Article

131 of the treaty established an obligation to co-operate with the dependent countries and territories of several European states with a view to promoting their economic and social development.⁴⁹ In the 1960s, the first and second Yaoundé Conventions were negotiated with 18 newly independent African states.⁵⁰ These agreements set out a framework regarding financial, technical and trade co-operation, relating primarily to the development of economic and social infrastructure.⁵¹ A more comprehensive framework of trade relations between the EC and 46 ACP states was established in 1975 by the first Lomé Convention, which was negotiated following the accession of the UK to the EEC. Three subsequent Lomé Conventions, signed in 1979, 1984 and 1989, extended preferential trade access to a total of 70 ACP states.⁵²

A key element of this treaty-based framework for ACP-EC fisheries relations has always been varied rules of origin that determine whether preferential treatment is extended to products or services on the basis that they originate from a preference-receiving country.⁵³ These preferences were maintained increasingly as a waiver from WTO rules on non-discriminatory trade arrangements.

By the late 1990s, it was increasingly argued by the Asian and Latin American states that the trade preference component of the Lomé Conventions⁵⁴ was incompatible with WTO rules in that it offered preferential access to EC markets to ACP states, but discriminated against non-ACP states in such fundamental ways that a waiver was not appropriate and the system needed to be fundamentally reformed.⁵⁵ In response to this pressure, in 2001 the EC and its ACP partners started the process of negotiating trade arrangements which would be compatible with WTO rules. The intention was to negotiate a set of regional Economic Partnership Agreements between a number of regions and the EC before the end of 2007 – the end-date for the WTO waiver. The framework for doing this was the Cotonou Partnership Agreement (CPA or Cotonou Agreement), which was signed on 23 June 2000 and entered into force in April 2003.⁵⁶ The regions that had emerged by the end of 2007 to negotiate EPAs with the EU under the remit of the CPA were:

- East and Southern Africa Group (ESA);
- East African Community (EAC);
- Southern African Development Community (SADC);
- Pacific ACP (PACP);
- Communauté Économique et Monétaire de l'Afrique Centrale (CEMAC);
- Economic Community of West African States (ECOWAS);
- Caribbean Forum (CARIFORUM).

By mid-2007 negotiations had faltered, leading to a rush to sign a variety of agreements, called generically Interim Economic Partnership Agreements (IEPAs), which are WTO-compatible arrangements covering only trade in goods. They contain clauses commit-

ting both sides to continue negotiations towards full EPAs by the end of 2008, but current IEPAs could become permanent agreements if the negotiations are not concluded successfully.

To date, only one comprehensive EPA between the EC and CARIFORUM has been concluded. Under this agreement, the CARIFORUM states immediately secured DFQF access for all exports except rice and sugar in return for removing barriers to 82.7 per cent of imports from the EC over the next 15 years. Other ACP states sought access into the EC market under variants of the EC Generalised System of Preferences scheme. Appendix 2 identifies which ACP states are party to IEPAs or EPAs.

As noted in further detail below, the EC has offered, with limited exceptions, DFQF access to its markets to all states party to EPAs and IEPAs.

4.2 The Generalised System of Preferences

The Generalised System of Preferences is a system of exemption from WTO rules aimed at promoting the exports of developing countries by allowing their products preferential access to the markets of developed countries. As noted in further detail below, the EC has established a GSP scheme containing three systems of tariff preferences. These schemes are referred to as GSP Standard, GSP-EBA (for least developed countries) and GSP+. Appendix 2 identifies which ACP states are currently granted market access under these schemes.

4.3 Rules of origin

Table 4.1 outlines the variety of rules of origin currently applicable to trade between the EC and ACP states in fisheries products. Although the Cotonou Agreement is no longer in force, Cotonou RoO are still utilised, for example in the Ghana and Ivory Coast IEPAs, which lack a protocol setting out RoO.

Table 4.1: Rules of origin applicable to ACP-EC trade in fisheries products^a

Trade framework	Outline of rules of origin
<p>Cotonou fisheries RoO</p>	<p>Origin: The fish must be ‘wholly obtained’. This applies if fish is caught anywhere by ‘qualifying vessels’. The origin of fish caught in ‘territorial waters’ (12 mile zone) is automatic, regardless of which vessel caught it.</p> <p>Qualifying vessels: Vessels must be registered (or recorded) in and flagged by an EC, ACP or OCT (Overseas Countries and Territories of the European Communities) state. Minimum vessel ownership criteria apply.</p> <p>Leased or chartered vessels: The EC is required to recognise, upon request of an ACP state, that vessels chartered or leased by the ACP state be treated as ‘their vessels’ to undertake fisheries activities in the EEZ, provided that:</p> <ul style="list-style-type: none"> • the ACP state offered the Community the opportunity to negotiate a fisheries agreement and the Community did not accept this offer; • that at least 50 per cent of the crew, master and officers included are nationals of states party to the Agreement, or of an OCT; • it has been accepted by the ACP-EC Customs Cooperation Committee as providing adequate opportunities for developing the capacity of the ACP state to fish on its own account, and in particular as conferring on the ACP state the responsibility for the nautical and commercial management of the vessel placed at its disposal for a significant period of time. <p>Crew requirements: At least 50 per cent of crew (including the master and officers) must be nationals of the EC, ACP and/or an OCT).</p> <p>Transformation: Products must be wholly obtained.</p> <p>Derogation:^b An automatic annual derogation of 8,000mt for canned tuna and 2,000mt for tuna loins is allocated to the ACP group as a whole for negotiated distribution among all ACP states.^c A request-based specific derogation process also applies. Such requests are granted by the EC only in situations where the promotion of ‘the development of existing industries or the creation of new industries justifies them’.^d</p> <p>Value tolerance rule: The total value of non-originating fish cannot exceed 15 per cent of the ex-works price of the product. Value tolerance is determined on a single-species, single-consignment and single-consignee basis. This provision has been rarely used and is administratively difficult to satisfy.^e</p>
<p>The basic template for Post-Cotonou RoO^f</p>	<p>EC Council Regulation No 1528/2007 of 20 December 2007 establishes a RoO template to be incorporated into agreements establishing, or leading to the establishment of, EPAs with ACP states. The template is not followed strictly in current EPAs and IEPAs.</p>

Trade framework**Outline of rules of origin**

The basic template for Post-Cotonou RoO
(continued)

Definition of wholly obtained products – Article 3:^g Primary and manufactured products are considered as wholly obtained in the ACP states or in the Community in accordance with the following conditions:

For primary products:

- The products must come from aquaculture, including mariculture, and the fish in question must be born and raised in that ACP territory;^h
- The products must come from sea fishing and other products taken from the sea outside the territorial waters of that ACP state by vessels which fall into the permitted categories set out by Article 3;ⁱ or
- The products must be made aboard factory ships as defined by Article 3 and additionally must also be made exclusively from products as defined by Article 3.^j

Manufactured goods will also qualify where such goods are produced exclusively in the territory of the ACP state from primary products as specified in Article 3(1)(a)–(j).^k

Qualifying vessels or companies for the purposes of Article 3:^l Vessels or factory ships must: be registered in an EC member state or in an ACP state; sail under the flag of an EC member state or any ACP state; in addition be at least 50 per cent owned by nationals of the ACP state claiming origin privileges or 50 per cent owned by nationals of an EC member state.

Vessels or factory ships must be owned by a qualifying company, which must have a head office and main place of business in the specific ACP state claiming origin privileges, or the head office and main place of business must be an EC state. Minimum local ownership levels apply.

Recognition of chartered or leased fishing vessels as qualifying vessels in some circumstances:^m Article 3(3) requires the Community to recognise chartered or leased fishing vessels as falling within the category of qualifying vessels even though they are not owned by the ACP state. The ACP state seeking this extension must specifically request it, presumably in advance. The following conditions must be met before the Commission will recognise such a request:

- that the ACP state offered the Community the opportunity to negotiate a fisheries agreement and the Community did not accept that offer;
- that the charter or lease contract has been accepted by the Commission as providing adequate opportunities for the development of the capacity of the ACP state to fish on its own account, and in particular as conferring on the ACP state the responsibility for the nautical and commercial management of the vessel placed at its disposal for a significant period of time.

Trade framework	Outline of rules of origin
The basic template for Post-Cotonou RoO <i>(continued)</i>	<p>It should be noted that leased factory ships are not specifically mentioned and thus presumably would not qualify.</p> <p>Rules for tolerance of non-originating fish: In cases where insufficient wholly obtained fish is available, <i>all</i> IEPAs and the Caribbean EPA allow a certain level of non-originating inputs (fresh or frozen fish) to be incorporated into originating manufactured fish products. The level is up to 15 per cent of the ex-works price.</p> <p>Automatic derogations from the RoO: Under current EPA and IEPA arrangements, a variety of derogation frameworks now exist.ⁿ</p> <p>Removal of references to OCT and to crew requirements: Cotonou references to the OCTs and to crew requirements are removed.</p> <p>Status of products caught in EEZ: To date, the issue of whether products caught in the EEZ should have automatic originating status has not been resolved in EPAs and IEPAs.^o</p>
Rules of origin in Caribbean EPA^p	<p>Application of tolerance rule: The 15 per cent tolerance rule does not apply to certain prepared or preserved fisheries products (categorised under Harmonised System (HS) tariff codes HS1604 and HS1605).^q</p>
Rules of origin in Post-Cotonou IEPAs^r	<p>Application of tolerance rule: In contrast to the Caribbean EPA, the 15 per cent tolerance rule in African IEPAs also applies to certain prepared or preserved fisheries products.⁵</p> <p>Global sourcing in Pacific IEPA: Compared to the African and Caribbean states, Pacific ACP states have been granted significant freedom to use non-originating material in their processed products. The result is that, regardless of where fish is caught and irrespective of the status of the vessel's flag, registration or ownership, the fish is deemed originating as long as it is transformed from being fresh or frozen (and thus categorised under HS chapter 3) into being a pre-cooked, packaged, canned, etc. product (categorised HS tariff codes HS1604 and HS1605).¹ However, EC regulations on SPS and IUU fishing still apply. This new PACP right is set out in Protocol 1 to the PACP IEPA.</p>
RoO for GSP, GSP+ and GSP EBA beneficiaries^u	<p>Value tolerance rule: Total value of non-originating fish cannot exceed 10 per cent of the ex-works price of the product.</p> <p>Crew requirements: At least 75 per cent of crew (including the master and officers) are nationals of beneficiary or EC country.</p> <p>Ownership requirements: Contrary to the position under Cotonou, IEPA and EPA RoO, ownership of a vessel by another ACP state does not contribute to meeting the 50 per cent ownership threshold.</p> <p>Leased or chartered vessels: Access not granted.</p> <p>Derogations: No provision for automatic derogations. Specific derogations can only be applied for by state beneficiaries.</p>

Notes:

^aFor a detailed outline of relevant RoO, see Liam Campling, Elizabeth Havice and Vina Ram-Bidesi, *Pacific Island Countries, The Global Tuna Industry and the International Trade Regime – A Guidebook*, 2007, pp. 56–70; Liam Campling, *Fisheries Aspects of ACP-EU Interim Economic Partnership Agreements and their Implications for Future Negotiations: Market Access and Sustainable Development Issues*, May 2008, mimeo, pp. 22–39.

^bCampling, 2008, op. cit., p. 38.

^cCPA, Annex V, Protocol 1, Title V, Article 38(8).

^dCPA, Annex X, Protocol 1, Title V, Article 38(1).

^eCampling, 2008, op. cit., p. 7; Oceanic Development/Megapesca, Specific Convention No. 3: Rules of Origin in Preferential Trade Arrangements: New Rules for the Fishery Sector, Final Report, CONTRAT CADRE FISH/2006/20, 27 June 2007, mimeo, p. 3.

^fCouncil Regulation (EC) No. 1528/2007 of 20 December 2007, applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements.

^gEC Regulation 1528/2007, Article 3(1).

^hEC Regulation 1528/2007, Article 3(1)(e)(ii).

ⁱEC Regulation 1528/2007, Article 3(1)(f).

^jEC Regulation 1528/2007, Article 3(1)(g).

^kEC Regulation 1528/2007, Article 3(1)(k).

^lEC Regulation 1528/2007, Article 3(2).

^mEC Regulation 1528/2007.

ⁿFor further details, see Campling, 2008, op. cit., p. 38.

^oSee Declaration of the CARIFORUM States Relating to Protocol I on the Origin of Fishery Products from the Exclusive Economic Zone; Joint Declaration Relating to Protocol I on the Origin of Fishery Products.

^pSee CARIFORUM-EC EPA (Annex II to Protocol 1); ESA-EC IEPA (Annex II to Protocol 1); PACP-EC IEPA (Annex II to Protocol 1) and SADC-EC IEPA (Annex II to Protocol 1). See also Christopher Stevens et al., 'The new EPAs: comparative analysis of their content and the challenges for 2008', Overseas Development Institute, Final report, 31 March 2008, available at http://www.odi.org.uk/IEDG/Projects/0708010_The_new_EPAs.html

^qAnnex II to Protocol I, CARIFORUM-EC EPA, http://www.crn.org/documents/ACP_EU_EPA/epa_agreement/EPA_Text_Protocols_Annexes_Joint_Declarations_060308.pdf

^rSee Stevens et al., 2008.

^sSee ESA-EC IEPA (Annex II to Protocol 1) and SADC-EC IEPA (Annex II to Protocol 1). See also Campling, 2008, op. cit., p. 34.

^tCampling, 2008, op. cit., pp. 35–36

^uLiam Campling, 'Economic Partnership Agreements (EPAs) and Pacific Fisheries', revised paper prepared for the Joint Pacific ACP Trade and Fisheries Officials Meeting (PACPTOM/PACPFOM) and the Joint Pacific ACP Trade and Fisheries Ministers Meeting (PACPTMM/PACPFMM) Port Vila, Vanuatu, 13–14 November 2006, May 2008, mimeo, pp. 10, 12. See also FFA Fisheries Trade Briefing (January) on EC proposed reform of GSP RoO at <http://www.ffa.int/node/1059>