

Implications of the IUU Regulation for ACP Fisheries Exports

This chapter identifies the implications of the IUU Regulation in terms of trade in fisheries products between the EC and ACP states. Consistent with this report's terms of reference, particular attention is devoted to analysing how the IUU Regulation will impact upon:

- The utilisation of DFQF market access arrangements established by EPAs and IEPAs between the EC and various ACP states;
- The utilisation of trade preferences granted to a number of ACP states by the EC GSP Regulation;
- The application of rules of origin set out in the above arrangements.

9.1 Implications for DFQF market access under EPAs and IEPAs

One of the outcomes of the December 2005 Hong Kong ministerial meeting (a plenary session of the Doha Round) was the adoption of the duty-free and quota-free initiative under which developed countries agreed to extend DFQF treatment to most products imported from least developed countries. The terms of the DFQF initiative allow the exclusion of sensitive products, provided such exclusion does not exceed 3 per cent of imports from the relevant LDCs. The EC has subsequently, with limited exceptions, offered DFQF access to its markets to all states party to EPAs and IEPAs. Such offers have been extended to both LDCs and non-LDCs.

The IUU Regulation does not purport to modify the DFQF access granted pursuant to EPAs and IEPAs, or to amend any specific EC trade regulation as a result of its future adoption.¹⁵⁸ However, the elements of the IUU Regulation discussed above may have indirect implications for the ability of ACP member countries to take advantage of DFQF access. The indirect impediments to DFQF access by these elements are twofold:

- The provisions of the IUU Regulation regarding port state control over third country fishing vessels do not set out clear provisions stipulating the rights of third country fishing vessels during port inspections. The IUU Regulation makes no direct provision for the prevention of unnecessary delays to the fishing vessel inspected, and does not establish a compensation or complaints framework regarding the actions of the port state.¹⁵⁹
- As noted in chapter 8, Chapter III of the IUU Regulation sets out conditions of access of third country fisheries products to EC territories, including provisions regarding

flag state notification, audit and co-operative arrangements on catch certification. These provisions have the effect of making DFQF access for all types of fisheries products conditional on the adoption of complex legal, administrative and technical procedures by EC members, and between EC member states and third countries. This trade-restrictive effect of Chapters II and III is alleviated to some extent by Chapter XI of the IUU Regulation, which requires administrative authorities in EC member states to co-operate with third states in the development of compliance procedures and further requires the adoption of a system of mutual assistance to that end.¹⁶⁰ An important policy issue is the extent to which DFQF beneficiaries will be assisted in meeting the requirements of the IUU Regulation, in addition to the implementation of administrative procedures and co-operation with the EC. This issue is addressed further in chapter 11.

9.2 Implications for GSP, GSP+ and EBA beneficiaries

As noted above, the Generalised System of Preferences is a system of exemption from WTO rules aimed at promoting developing countries' exports by allowing their products preferential access to the markets of developed countries. Although donor countries are under no obligation in international law to give preferences, almost all developed countries operate GSP schemes, but these vary significantly.

All EC GSP arrangements are unilateral EU Council regulations, subject only to the conditions set out in the WTO enabling clause. There is no obligation on the EC to maintain a GSP arrangement and it is at liberty to amend or revoke these arrangements, so long as this does not discriminate between developing countries. The current EC regulation outlining the guidelines for the GSP scheme applies until 31 December 2008. The EC announced in July 2008 that the current GSP regime will be extended for the period from 1 January 2008 to the end of 2011.¹⁶¹

There are three systems of tariff preferences in the EC's GSP Regulation: GSP Standard, GSP-EBA (for least developed countries) and GSP+. Appendix 2 identifies which ACP states are granted access under these schemes.

9.2.1 GSP Standard¹⁶²

GSP Standard is available to developing countries that meet certain vulnerability criteria. The scheme provides the same level of preferential access to EC markets for ACP member states as is granted to other non-ACP developing countries. GSP Standard has higher tariffs than those provided for under an EPA and under previous Cotonou preferences. The scheme provides limited coverage, given that some goods (e.g. sugar, bananas and rice) are not included in GSP and must be exported under MFN conditions.

9.2.2 GSP-EBA¹⁶³

Under the GSP-EBA scheme, unilateral trade preferences are granted by the EC to LDCs. Except for arms, the GSP-EBA window allows all goods from the 49 LDCs to

enter the EC duty and tariff free. Three categories of goods – rice, bananas and sugar – have longer implementation periods. Apart from these three goods, LDCs now have DFQF access to the EC market for all traded items.

9.2.3 GSP+¹⁶⁴

The GSP+ scheme establishes a set of unilateral trade preferences granted by the EC to developing states that meet certain economic vulnerability criteria.¹⁶⁵ The GSP+ scheme came into effect on 1 July 2005 and replaces the GSP ‘drugs regime’, which has been repealed. The scheme does not require eligible ACP member states to open their markets to imports from the EC. In order to be eligible for the scheme, beneficiary states must also meet certain political criteria. They must be pursuing sustainable development and good governance as defined by the EC, and must also ratify a number of specifically identified international treaties on labour standards, human rights, good governance and environmental protection.¹⁶⁶

None of the ACP Commonwealth member states were beneficiaries of the GSP+ scheme from 2006–2008. On 9 December 2008, the EC announced the revised GSP+ scheme for 2009–2011.¹⁶⁷ Sixteen developing countries have been deemed eligible for the GSP+ scheme, none of which is an ACP Commonwealth member state.¹⁶⁸ The EC will provide another opportunity to apply for entry into the GSP+ scheme in mid 2010.

9.2.4 Analysis of the impact of the IUU Regulation on GSP, GSP-EBA and GSP+

The IUU Regulation does not directly curtail access to the EC market by the current beneficiaries of the GSP, GSP-EBA and GSP+. However, the additional administrative requirements that may be required to implement the proposed Regulation may have indirect impacts on the ability of GSP, GSP-EBA and GSP+ beneficiaries to attain the basic objective of these market access arrangements, which is to promote economic development and poverty reduction.

Most of the LDCs have very little capacity to enforce fisheries regulations and establish catch certification systems. In the event that such states are listed under the EC list of non-cooperating third countries, the IUU Regulation is clear on the sanctions to be imposed, which include the prohibition of importation or reconsideration of bilateral fisheries access agreements. If applied without proper consultation, such sanctions, particularly the latter, may prove detrimental to the economic development of LDCs. In this respect, it is worth noting that Chapter XI of the IUU Regulation, as described above, to some extent anticipates these challenges by establishing a framework for providing assistance to developing states to meet the requirements of the proposed Regulation. This is clearly a central policy issue for ACP member states and requires a strategic approach. This issue is addressed in chapter 11.

9.3 Impact of the IUU Regulation on rules of origin

This section analyses the impact of the IUU Regulation with particular reference to its potential effect on:

- Utilisation of the 15 per cent value tolerance rule of origin in current EPAs and IEPAs;
- Application of the global sourcing rules of origin in the Pacific IEPA. These rules are described in detail in Table 4.1.

There is no direct link between the IUU Regulation and the utilisation of the new 15 per cent value tolerance rule for the origin of fish and rules for bilateral and regional cumulation, and the proposed catch certification system. However, implementation of the IUU Regulation would impose an indirect additional burden on countries of origin to ensure that all value-added fish of a particular product coming from other countries has not been obtained through IUU means. The following points are particularly relevant:

- Existing EC regulations on RoO¹⁶⁹ only determine where goods originate, not where they have been shipped from. In the case of fisheries products, the current EC rules do not verify whether or not a product has been derived from IUU fishing. Because different derogations apply in current IEPA arrangements, it would be difficult to trace how particular products falling under the derogation may have been obtained through IUU fishing
- Under the IUU Regulation, there are two ways of identifying and publicising IUU offenders. The first is through an IUU vessel list and the second is through an EC list of non-cooperating third countries. In the case of vessels included in the Community IUU vessel list, the importation of fisheries products caught by IUU vessels is to be prohibited and catch certificates accompanying such products will not be accepted or validated. In the case of states included in the list of non-cooperating third countries, the IUU Regulation provides for prohibition of the importation into the EC of fisheries products caught by vessels flying the flag of such states, as well as non-acceptance of catch certificates accompanying such products or affected stock or species. The IUU Regulation does not clarify how RoO are to be applied in the context of these prohibitions. In fact, the existing RoO are insufficient to implement these provisions. The proof of origin, for example (which includes the Certificate of Origin Form A, invoice declaration, movement certificate and declaration by the exporter), only traces the goods back to the exporter's business and not the fishing vessel. These certificates are only used to establish preference products and countries, and not their compliance with fisheries laws and regulations. By contrast, the EU SPS requirements, at least for freezer and factory ships, do provide a link to the fishing vessel.¹⁷⁰
- In the case of the Pacific IEPA, the global sourcing rules of origin for fresh and frozen fish fillets apply in order to provide Pacific Island states exporters with maximum

flexibility in buying fish for value-added processing and export. The implementation of the IUU Regulation would impose the additional burden on the Pacific Island states of ensuring that all value-added fish has not been derived from IUU fishing. Although these rules ‘shall apply without prejudice’ to EC SPS measures and combating IUU fishing in the Pacific Island region, as provided in the PACP IEPA, it is uncertain how such rules will be applied in practice and in a proportionate manner.

The implications of the IUU Regulation on the utilisation of the 15 per cent value tolerance rule in current EPAs and IEPAs, and the application of the global sourcing rules of origin in the Pacific IEPA, have clear parallels with the operation of the EU SPS scheme. The additional specific administrative requirements of the IUU Regulation when set against those of RoO and SPS requirements are provided in the comparative table in Appendix 3.