

Fisheries, Trade and Sustainable Development Series



Fisheries Aspects of ACP-EU Interim Economic Partnership Agreements: Trade and Sustainable Development Implications



By **Liam Campling**

Department of Development Studies, School of Oriental and African Studies,
University of London.



ICTSD

International Centre for Trade
and Sustainable Development

Issue Paper No. 6

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Published by

International Centre for Trade and Sustainable Development (ICTSD)

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Acknowledgement:

We wish to thank Béatrice Gorez, Eckart Naumann, Chris Noonan, Mark Pearson and one other individual (who preferred to remain anonymous) for their excellent insights on an earlier version of this paper, as well as Moustapha Kamal Gueye at ICTSD for his general inputs and support on this project. All errors and omissions are those of the author.

This project is made possible through the support of the Department of Development Cooperation of the Netherlands (DGIS), the Swedish International Development Cooperation Agency (SIDA), the Commonwealth Secretariat and GTZ.

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ICTSD welcomes feedback and comments on this document. These can be forwarded to Moustapha Kamal Gueye at gkamal@ictsd.ch

Citation: Campling, L. (2008). *Fisheries Aspects of ACP-EU Interim Economic Partnership Agreements: Trade and Sustainable Development Implications*. ICTSD Series on Fisheries, Trade and Sustainable Development. Issue Paper No. 6, International Centre for Trade and Sustainable Development, Geneva, Switzerland.

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The views expressed in this publication are those of the author and do not necessarily reflect the views of ICTSD or the funding institutions.

ISSN 15630544

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ABBREVIATIONS AND ACRONYMS

ACP	African, Caribbean and Pacific
BLNS	Botswana, Lesotho, Namibia and Swaziland
CAFTA	Central America–United States Free Trade Agreement
CARIFORUM	Caribbean Forum
CEMAC	Communauté Économique et Monétaire de l’Afrique Centrale
CFFA	Coalition for Fair Fisheries Arrangements
COMESA	Common Market for Eastern and Southern Africa
CPA	Cotonou Partnership Agreement
CRNM	Caribbean Regional Negotiating Machinery
DG SANCO	Health and Consumer Protection Directorate-General
DWF	distant water fleet
EAC	East African Community
EBA	Everything But Arms initiative
ECA	United Nations Economic Commission for Africa
EDF	European Development Fund
EEZ	exclusive economic zone
EPA	economic partnership agreement
ESA	Eastern and Southern Africa
EU	European Union
FFA	Forum Fisheries Agency
FPA	fisheries partnership agreements
FTA	free trade agreement
FVO	Food and Veterinary Office
GATT	General Agreement on Tariffs and Trade
GSP	generalized system of preferences
HS	harmonized system of tariff classification
ICTSD	International Centre for Trade and Sustainable Development
IEPA	interim economic partnership agreement
IOTC	Indian Ocean Tuna Commission
IUU	illegal, unregulated and unreported
LDC	least developed country
MCS	monitoring, control and surveillance
MFN	most favoured nation
MFPA	multilateral fisheries partnership agreement
NAMA	non-agricultural market access
NTB	non-tariff barrier
OCT	overseas countries and territories of the European Communities
OECD	Organisation for Economic Co-operation and Development
PACP	Pacific states of the ACP
RFMO	regional fisheries management organization
RoO	rules of origin
SADC	Southern Africa Development Community
SFP	Strengthening Fishery Products Health Conditions in ACP/OCT countries
SMEs	small and medium-sized enterprises
SPS	sanitary and phytosanitary
UNCLOS	United Nations Convention on the Law of the Sea
VMS	vessel monitoring system

WCPFC	Western and Central Pacific Fisheries Commission
WTO	World Trade Organization

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FOREWORD

Fisheries are an important source of employment, export revenues and food security in many African, Caribbean and Pacific (ACP) countries. As a growing sector in international trade, the fisheries sector is one of the few areas where the ACP countries have seen their participation in world trade increase. The European Union (EU) accounts for around 75 percent of ACP fishery exports by value, making the European market critically important for ACP exports of fish and fish products.

Fisheries trade relations between the EU and ACP countries are governed by World Trade Organization (WTO) provisions, as well as those of the Cotonou Partnership Agreement (CPA) between the EU and ACP countries. These relations are undergoing a period of change, with the negotiation of new economic partnership agreements (EPAs) that will replace current unilateral trade preferences offered by the EU with reciprocal preferences. The ACP-EU EPA negotiations have given rise to concerns about potential loss of preferences that could result in a significant decrease of export revenues for ACP countries. Other issues of concern for ACP countries relate to tariff escalation and tariff peaks, reforming rules of origin, and the implications of EU regulations on sanitary and phytosanitary (SPS) measures. The inclusion of investment in the negotiations brings a new dimension that warrants careful consideration.

The continuation of uninterrupted market access for fish and fish products was a primary motivation for several ACP countries to agree to initial interim economic partnership agreements (IEPAs) or to agree to full EPAs with the European Community at the end of 2007. In certain cases a specific fisheries chapter was included in a regional IEPA/EPA. This was the case for the East African Community (EAC) and Eastern and Southern Africa (ESA) IEPAs, and similarly for the chapter on agriculture and fisheries in the Caribbean EPA (CARIFORUM). In other cases, fisheries were part of bilateral IEPAs between the EU and certain non-least developed countries (LDCs) in the ACP. This was the case for Côte d'Ivoire and Ghana, as West Africa did not come to an agreement with the European Community on a regional EPA at the end of December 2007.

The process of negotiating EPAs, including negotiations on rules governing trade and market access for fish and fish products, has been complex, challenging and divisive for the ACP groupings. At present, ACP groups yet to finalize their negotiations with the European Community are under pressure to do so. In regions that have already initialled an interim agreement, a number of questions subject to possible renegotiations remain. Overall, there is an urgent need for regions with IEPAs to ensure satisfaction with fisheries provisions already negotiated, and for regions without interim EPAs to learn from others in order to better articulate their positions in the process of negotiating full EPAs.

In response to these concerns, the International Centre for Trade and Sustainable Development (ICTSD) is initiating a process of analytical review of negotiations on fisheries under the EPA negotiations. This effort seeks to provide a better understanding of the substance of the provisions contained in IEPA/EPA agreements and to assess their significance from a trade, livelihood and sustainable development perspective.

As part of this process, this study is intended to be a practical tool for national and regional policymakers and stakeholders. It is meant to contribute to enhancing preparedness for negotiations of full EPAs such that the outcome contributes effectively to improving livelihoods and food security, ensuring meaningful market access, and achieving broad sustainable development objectives in ACP countries.

Liam Campling is currently a PhD candidate in development studies at the School of Oriental and African Studies, University of London. His research examines the global commodity chains in canned tuna (centred on the EU and US), with a focus on their developmental relationship with Fiji and Seychelles.

He has published on development in small island states, the politics of international trade relations and commodity studies in the *Journal of Developing Societies*, the *Journal of Agrarian Change* (with Henry Bernstein), *Sustainable Development* (with Michel Rosalie), *Island Studies Journal* (with Elizabeth Havice) and *Development Policy Review* (with Jesper Nielson and Stefano Ponte). He is on the editorial board of the journal *Historical Materialism* and is reviews editor of the *Journal of Agrarian Change*. Since November 2007 he has been consultant trade policy analyst to the Pacific Islands Forum Fisheries Agency (FFA). He has also worked as a consultant for the Common Market for Eastern and Southern Africa (COMESA), the Commonwealth Secretariat, the Center for the Development of Enterprise (CDE), the governments of Mauritius and Seychelles, the Pacific Islands Forum Secretariat, the Regional Trade Facilitation Programme and United Nations Research Institute for Social Development (UNRISD). He previously taught international politics and history on the University of Manchester Twinning Programme, Seychelles Polytechnic.

This paper is part of ICTSD's project on fisheries, trade and sustainable development, which aims to foster an inclusive and informed process for crafting multilateral, regional and domestic trade rules and policies in the fisheries sector that are supportive of sustainable development.

We hope that you will find this publication a stimulating and useful read.



Ricardo Meléndez-Ortiz
Chief Executive, ICTSD

EXECUTIVE SUMMARY

The continuation of uninterrupted market access for fish and fish products (hereafter, “fish”) was a major motivation behind several countries initialising interim IEPAs at the end of 2007. This study reviews and analyses relevant fisheries-related provisions contained in the IEPAs, specifically through a comparison of fisheries chapters in available IEPA/EPA texts, coverage of rules of origin (RoO), SPS issues, and preference erosion as it relates to marine capture fisheries. The objective of this work is to draw out similarities and differences between the fisheries aspects of IEPAs and to offer a perspective on their implications for the ongoing negotiation of comprehensive EPAs. This publication is thus intended as a practical tool for national and regional policymakers and stakeholders as they negotiate towards the conclusion of formal EPAs.

Specific chapters on fisheries are included only in the EAC and ESA group IEPAs (here, the fisheries chapters are identical), as well as in the chapter on agriculture and fisheries in the Caribbean EPA (CARIFORUM). The elements of these chapters are assessed in detail in the following text, with a particular focus on sustainable development issues.

There are two distinct approaches to the negotiation of fisheries chapters in future comprehensive EPAs. On the one hand, the EAC/ESA fisheries chapter contains a series of commitments between the parties on specific projects for fisheries management and cooperation (including, in some areas, commitments on the part of the European Community to provide assistance). On the other hand, the CARIFORUM chapter offers mainly general language with limited mandatory obligations, but it is also potentially more flexible as requests for European development cooperation can reflect particular needs at specific times.

In the process of negotiating fisheries aspects of comprehensive EPAs, negotiators should look at the original ESA text so that they can assess what ESA wanted compared with what it eventual got. The European Community succeeded in considerably watering down the ESA text so that, to many, it is now toothless. Other regions wanting to negotiate a text on fisheries may find it prudent to ascertain what the specific difficulties were for the ESA negotiators involved in discussions at the time.

Despite long-running tensions between the ACP states and the European Community over onerous **fisheries rules of origin** under the Lomé/Cotonou agreements, the level of ambition in the reform of these rules under IEPAs is very limited (here, they are categorized as “Cotonou+” RoO). There are two core aspects to the European Community’s preferential RoO for fish: the definitions of “wholly obtained” and “sufficiently worked or processed” products.

The definition of wholly obtained marine-capture fish is identical in the RoO protocols in the signed CARIFORUM EPA and in all other interim EPAs that have a protocol (i.e. IEPAs initialled by the EAC, the ESA, the Pacific states of the ACP (PACP) and the Southern African Development Community (SADC). Like the CPA, in these agreements, the definition of “wholly obtained” is still dependent upon 50 percent ownership by nationals or companies of the parties to the agreement, and vessels must still be flagged and registered by one of the parties.

There are four areas of difference, however, between CPA and IEPA definitions of “wholly obtained” fish:

Crew requirements: IEPAs have deleted the CPA requirement that 50 percent of the crew of vessels must be nationals of ACP, EU or overseas countries and territories of the European Communities (OCTs). This change was requested by the EU distant water fleet (DWF) in order to enhance commercial

flexibility in the employment of crew, and by some ACP negotiators (although not by all, given that an estimated 2000 ACP nationals serve as crew in EU vessels). Nonetheless, for those ACP countries with fisheries partnership agreements (FPAs) with the European Community, requirements on the use of nationals as EU DWF crew can be (and are) included here.

Ownership criteria: The second change is a very slight simplification of the criteria on vessel ownership by companies. A company now only has to have “its head office and ... main place of business” in a party to the agreement, rather than the additional component under the CPA that the chairperson and board members must all be nationals. Regardless, 50 percent of ownership must still be held by an entity based in one of the parties to the agreement. The European Community needs to confirm that the RoO text does not prevent a company from having its statutory registered office in one country and its main place of business in another, as long as such countries are either EPA or EU states.

Leasing/chartering of fishing vessels: The conditions under which an ACP party is able to lease or charter vessels (regardless of ownership) have changed: now EU fishing interests must have been offered (and refused) the opportunity to lease or charter vessels before an ACP party is able to do so itself. (Under the CPA, the ACP party first had to offer the European Community the opportunity to negotiate a fisheries access agreement, which it then did not accept.) The extent to which the new conditions are workable remains to be seen, but there is already one identifiable limitation: even if an EPA country were able to lease/charter vessels, the clause limits operations to that country’s exclusive economic zone (EEZ) and thus blocks the targeting of commercially valuable highly migratory or straddling stocks (i.e. ACP leased/chartered vessels would not be able to “follow the fish”). However, a far larger problem is that the Council Regulation establishing EPA RoO (Council Regulation, 2007) is different from the IEPA texts. The conditionality for the allowance of leasing/chartering is the same as it was under the CPA. The reason for this difference is unclear, and, if the difference became important in that an ACP wanted to utilize the leasing/chartering provision, it is not known which of the texts will hold legal sway (i.e. ACP states did not sign the Council Regulation, but for the European Community it is the ultimate legal document).

OCTs: Unlike in the CPA, overseas countries and territories are not included in the text on qualifying vessels; this effectively excludes OCT vessels from being able to supply wholly obtained fish to IEPA countries. In operational terms, this unexpected flaw in IEPA texts is problematic as some EU-owned vessels are registered in OCTs, thereby limiting the overall potential supply of originating fish to processors based in EPA states. For both ACP countries and the European Community, this issue is unlikely to be in their interests and, as such, should be ironed out easily in the negotiations for comprehensive EPAs.

There are two changes to RoO on the definition of “sufficiently worked or processed products” for fish. The first is a new value tolerance (or *de minimis*) provision of 15 percent. In cases where insufficient wholly obtained fish are available, all IEPA texts to date provide a concession of up to 15 percent value tolerance for non-originating inputs of fresh or frozen fish in the manufacture of fish products. This may prove to be less administratively complex than the “value tolerance” provision under the CPA, which allowed the use of up to 15 percent of non-originating fish in the product price, but required the exporter to do so on a single species, single consignment and single consignee basis (a very tricky organizational demand). Only two customs authorities in the EU accepted imports under this CPA rule (the UK and, to a far lesser extent, Italy), and only two canneries managed to actually utilize it.

However, the practical value of the “concession” is actually very limited; it still requires 85 percent of the value of fish to emanate from originating sources and it also remains unclear whether the change offers

any practical significance to exporters. Representatives of the European Community have confirmed that the 15 percent value tolerance can be applied only if 85 percent of the fish in a consignment are wholly obtained; whether or not it has to be on a single species and single consignee basis is not known.

The second, and far more important, change is the European Community's offer of global sourcing RoO to the PACP. Regardless of where the fish is caught or the status of a vessel's flag, registration or ownership, the fish is deemed originating as long as it is transformed from being fresh or frozen (and thus categorized under Chapter 3 of the harmonized system of tariff classification, or "HS") into being a pre-cooked, packaged or canned product (categorized under HS 1604 and 1605). Otherwise known as the "change in tariff heading method", this was a core demand of the PACP in their negotiations with the European Community. In principle, these new RoO are a huge step forward for PACP-based processors (mainly of canned tuna and tuna loins), but in practice the ability of processors to maximize the benefit remains to be seen. The most important limitation is the fact that fish still need to meet mandatory EU SPS measures (vessels must be registered and approved by the local competent authority, which in turn is regulated by the Health and Consumer Protection Directorate, better known as DG SANCO). The supply of fish meeting such criteria is very tight.

Finally, under the CPA the only automatic derogation for fish was a total annual quota for canned tuna and tuna loins. This was distributed among the 77 countries of the ACP group and was fixed at 8000 and 2000 metric tonnes (mt), respectively. A major gain in IEPA negotiations was made by the ESA grouping, which received the same volume of automatic derogation for canned tuna (8000 mt) and tuna loins (2000 mt) as that awarded under the CPA, but with allowance for sole distribution among the ESA signatories only. Similarly, the EAC IEPA contains an automatic derogation for 2000 mt of tuna loins.

In terms of the implications for the negotiation of improved RoO in discussions with the European Community over comprehensive EPAs, the following points are highlighted:

- At a minimum, automatic derogations to the value of the ESA IEPA should be demanded, for example by Côte d'Ivoire and Ghana.
- Governments need to consult with exporters to carefully assess the practical workability and commercial relevance of the new 15 percent value tolerance provision. If it is found to be wanting (which is highly likely), then evidence-based negotiation positions should be developed for more generous alternatives.
- On the prospects for the extension of PACP global sourcing RoO to other EPAs, the European Community has made it clear that this rule was specific to the Pacific islands because of their unique geographical and economic disadvantages. It is also worth reiterating the structural constraint of the supply of fish compliant with SPS measures. Nonetheless, if an EPA grouping felt that such RoO were practicable and necessary, there is little reason not to push for them.

The fisheries-specific components of EU SPS measures have not been altered in the transition from the CPA to IEPA/EPAs, because they are governed by the overarching SPS framework of the European Community and individual EU member states. European Community SPS relations with third countries (including the ACP) continue to be registered and monitored by DG SANCO and its executive arm, the Food and Veterinary Office (FVO). The EU position on SPS is non-negotiable as the health and safety of EU consumers is asserted as paramount.

In fisheries-specific terms the most important requirement is that the EU requires freezer and factory vessels to be registered and approved by the local competent authority, which is in turn regulated by

DG SANCO (EC Regulation no. 853/2004). As already noted, the corresponding structural constraint in the practical application of PACP global sourcing RoO is the supply of SPS-compliant fish, which is limited globally to the total number of fishing vessels that are registered and approved by DG SANCO.

Two recent studies summarized in this report found that the EU was unevenly applying its SPS measures for fish and fish products. FVO inspectors charged with ensuring that certain ACP competent authorities were effectively enforcing EU SPS requirements were, in practice (albeit probably not intentionally), adopting discriminatory working practices when compared with their application to processors based in Thailand. Such practices are a violation of the principles of the WTO SPS agreement. It is possible that these findings could feed into negotiations for comprehensive EPAs given the implications for the relative competitiveness of fish exports from EPA countries.

The European Community has made very limited commitments to the ACP under IEPAs on the issue of preference erosion for fish and fish products. The EU position on ACP preference erosion is that the maintenance of existing preferences is subject to the process of multilateral tariff liberalization at the WTO under the Doha Round and, as such, is an issue that is beyond the power of the European Community alone. Nonetheless, during the negotiations for comprehensive EPAs, it might be prudent to push for the inclusion of clauses addressing preference erosion (including for fish and fish products) as per the CARIFORUM EPA and EAC/ESA IEPAs. That is, there should be included both a clause on financial and other support to improve the situation of the fishing sector so as to build resilience in the face of a post-preference future, and a clause committing the European Community to support the maintenance of preferences at the WTO and other relevant international fora.

INTRODUCTION

A major, and in some cases dominant, motivation for non-LDCs in the ACP to sign IEPAs was uninterrupted preferential market access for marine fisheries products (in many cases, processed tuna). This was certainly a primary rationale for Papua New Guinea and Seychelles, but it was also a significant motivation, to varying degrees, for Côte d'Ivoire, Fiji, Ghana, Kenya, Madagascar, Mauritius and Namibia, among others.

This study reviews and analyses relevant fisheries-related provisions contained in interim IEPAs. It is intended to be a practical tool/guidance for national and regional policymakers and stakeholders in negotiations towards the conclusion of comprehensive EPAs. The study expressly does not provide analysis or judgement on whether IEPAs or EPAs are an effective (or even a preferable) mechanism for the development of ACP fisheries.¹ In addition, the following analysis does not engage with issues outside of the EPA negotiation framework. The main point here is that EPAs (and associated RoO) are only a ticket for market access: ACP states should continue to look to domestic and regional policy mechanisms for solutions to problems encountered in EPA negotiations with the European Community. Instead, the paper provides an assessment of a far more rigid remit: the comparison of available IEPA/EPA texts in terms of their coverage of rules of origin, SPS measures and preference erosion as they relate to marine capture fisheries. The objective is to draw out similarities and differences between fisheries aspects of these IEPAs and to offer some perspective on their implications for the ongoing negotiation of comprehensive EPAs. The emphasis here is solely on marine capture fisheries; the specifics of inland fisheries and aquaculture are not assessed, although in some cases the issues are similar if not the same (i.e. in the case of preference erosion and SPS), or have limited relevance (i.e. in the case of fisheries RoO). The following text proceeds in five main sections:

Section 1 provides an overview of the fisheries chapters in the EAC/ESA IEPAs (which are identical) and of the chapter on agriculture and fisheries in the CARIFORUM EPA. It then provides a brief comparative analysis of the relative merits of the approaches of these two chapters.

Section 2 provides a detailed assessment of the rules of origin (RoO) for fish and fish products (hereafter, "fish") in IEPAs. Section 2.1 focuses on the definition of "wholly obtained" fish products in IEPAs, which includes an assessment of differences with the CPA, draws out implications for the intra-ACP trade in fish, and examines the role of the exclusive economic zone. Section 2.2 assesses the new definition of "sufficiently worked or processed" fish products, with particular reference to the provisions on value tolerance provisions and so-called "global sourcing" RoO for processed fish in the PACP IEPA. Sections 2.3 and 2.4 provide overviews of automatic derogations for fish and implications for cumulation under IEPAs.

Section 3 looks at the relationship and implications of EU SPS measures for fish and IEPAs. It starts by outlining the problems associated with EU SPS measures for ACP exporters, before addressing issues in obtaining SPS-compliant fish and efforts by the European Community to address this problem within and outside of IEPAs. It then considers the reported uneven application of EU SPS measures and the implications of new European Community regulations on illegal, unregulated and unreported (IUU) fishing for exports under EPAs.

Section 4 looks at the coverage of preference erosion for fish and fish products in IEPAs.

Section 5 draws out the implications of the analysis for the negotiation of comprehensive EPAs. In so doing, it identifies similarities and differences in the coverage of fisheries-specific components between IEPAs.

1. OVERVIEW OF FISHERIES CHAPTERS IN IEPAS

In order to offer some context on the sustainable development aspects of IEPAs, it is useful to provide a brief comparative sketch of the specific fisheries chapters of IEPAs. An identical fisheries chapter is included within the IEPAs of the EAC and ESA configurations and (for fisheries and agriculture) in the CARIFORUM EPA. The rationale for the inclusion of this analysis here is that fisheries-specific sustainable development concerns are not raised in IEPA chapters on SPS measures or in annexed protocols on rules of origin.

After much internal deliberation and external discussion with European Community officials, some EPA groupings decided that the inclusion of a specific fisheries chapter was necessary in order to reflect the importance of fisheries to their economies and to consolidate several cross-cutting fisheries issues in a single section of the legal text.

In light of the profound importance of fisheries to the ESA, the region initially proposed a standalone draft fisheries framework agreement (FFA) to the European Community, which would have mandated minimum terms and conditions of access by the EU DWF as well as fisheries management, financial, trade and development

measures (COMESA, 2004; Pearson, 2005). The European Community rejected this proposal, claiming that DG Trade did not have the mandate to negotiate access² and that fisheries should be included under EPA provisions on market access so as to ensure WTO compatibility under the General Agreement on Tariffs and Trade (GATT) Article 24; the latter position has been highlighted by the Economic Commission for Africa as “wholly without merit and ... textual support in the WTO Agreement” (Mangeni, 2008: 57).

The PACP did not include a fisheries chapter in its IEPA text despite prior attempts to tie EPA negotiations into a separate multilateral fisheries partnership agreement (MFPA).³ The MFPA would have provided the EU DWF with long-term strategic access to the region’s collective EEZs. The European Community disregarded this offer, arguing: (i) that DG Trade did not have the remit to negotiate fisheries access with third countries, but that rather this was the domain of DG Fish within the structure of the European Community (see above); and (ii) that there was a lack of commercial interest among the EU DWF.⁴ Whether intentional or not, the result was to remove the only bargaining chip in the PACP’s hand. Neither SADC nor Côte d’Ivoire and Ghana included a fisheries chapter in their IEPAs.⁵

1.1 EAC/ESA fisheries chapter

To date, the most comprehensive coverage of fisheries in IEPAs is in the specific chapters of the EAC and ESA groupings. These two IEPA fisheries chapters are assessed together because they are identical, which is no doubt a reflection of the fact that the chapters were agreed and drafted (including with European Community inputs) when the majority of the EAC members were part of the ESA grouping. The following outline and analysis will refer to “general provisions” (Articles 25-29) and “marine fisheries” (Articles 30-32). For ease of discussion, reference will be made only to the ESA IEPA, but as this is identical to the EAC equivalent (including in the numbering of articles) the latter is covered fully too. As noted

in the introduction, this report does not address the specifics of inland fisheries and aquaculture development (Articles 33-35 in the EAC and ESA texts).

A stated general provision of fisheries cooperation in the ESA-EC IEPA is to “promote [the] sustainable development and management of fisheries” (Article 26(a)). This type of principled language on (an undefined notion of) “sustainable development” is dotted throughout all of the IEPA texts, but accompanying this legally vague commitment under Article 26(a) are several important concrete obligations between the European Communities and the EAC and ESA

regions, which go towards the objective of the promotion of the “sustainable development and management of fisheries”. Table 1 offers a selection of highlights from the EAC/ESA fisheries chapter. The first column of this table details the specific element of the agreement and the second offers a short discussion and analysis.

Table 1. Selected elements of the EAC/ESA Fisheries Chapter (Articles 25–35)

Key component	Discussion
<p>The “precautionary approach shall be applied in determining levels of sustainable catch, fishing capacity, and other management strategies to avoid or reverse undesirable outcomes such as over-capacity and over-fishing, as well as undesirable impacts on the ecosystems and artisanal fisheries” (Article 32(a)(1))</p>	<p>The precautionary approach is adopted as a mandatory component in determining the core elements of fisheries management. This is a more cautious science- and information-based approach to fisheries management, especially where reliable data are not available. It is already supposed to be applied to the high seas and into EEZs for highly migratory species and straddling stocks under Article 6 of the UN Fish Stocks Agreement (1995). There is some ambiguity as to whether the precautionary approach under this IEPA chapter would apply to other stocks or whether these would fall under the more general norms of Article 5 of the United Nations Convention on the Law of the Sea (1982) (UNCLOS). Despite this, importantly the text does make reference to negative impacts on ecosystems and the artisanal sector (the latter point may prove useful in cases where there is evidence that industrial fisheries, for example, are registering deleterious effects on local fishers’ livelihoods).</p> <p>The problem here is putting the adoption of a precautionary approach into practice when coastal states generally lack the means to do so. This serves to reiterate the importance of sustainable development issues, cooperation and fisheries-related investment in the negotiation of comprehensive EPAs.</p>
<p>“Each ESA State may take appropriate measures, including seasonal and gear restrictions in order to further protect its territorial waters and ensure the sustainability of the artisanal and coastal fishery” (Article 32(a)(2))</p>	<p>Fishing restrictions may be applied unilaterally by the EAC/ESA state, but these are limited to the 12-mile zone. This clause is highly problematic as it contradicts Article 61 of UNCLOS, which stipulates the management responsibility (e.g. seasonal closures, gear restrictions, etc.) of coastal states to the whole EEZ. Moreover, it is illogical to delineate management measures to the 12-mile zone as actual fisheries often transcend this manmade boundary.</p> <p>In addition, this is incoherent with the approach adopted in the EC FPAs approach, wherein the coastal state has to consult with the European Community before applying a new management measure that would affect EU fleets (including within the 12-mile zone).</p>
<p>All “Parties would promote the membership of all the concerned States to IOTC [Indian Ocean Tuna Commission] and other relevant fisheries organizations” (Article 32(a)(3))</p>	<p>This component simply encourages signatories to take part in regional fisheries management organizations (RFMOs), but there is no mandatory requirement.</p>

<p>“[T]he EC Party and the ESA coastal and island States shall ensure compliance by vessels flying their flags with relevant national, regional and sub-regional fisheries management measures and related national laws and regulations” (Article 32(a)(6))</p>	<p>Flag state responsibility is made mandatory here. This may prove important for those countries that maintain open vessel registries (flags of convenience) as the costs of ensuring compliance of flagged vessels will rise.</p> <p>This is also important in terms of EU activities, which has sometimes taken a relaxed approach to its responsibility as flag state. If this clause were applied to EU vessels, then it might assist the European Community in taking greater action against some EU vessels (e.g. for underreporting).</p>
<p>“A Vessel Monitoring System (VMS) will be set up for all ESA coastal and island States, and all ESA states will use a compatible VMS. <i>Those ESA states which do not have a VMS will be assisted by the EC Party to set up a compatible VMS</i>” (Article 32 (b)(2)) (author’s italics)</p>	<p>This element makes the implementation of regionally compatible VMS a mandatory requirement. Importantly, the European Community appears to accept an obligation to provide assistance (presumably technical and financial) to any EAC/ESA state that currently does not comply with this requirement.</p>
<p>“[A]ll ESA coastal and island states, in conjunction with the EC Party, will develop other mechanisms to ensure effective Monitoring, Control and Surveillance (MCS) and <i>the EC Party will support ESA states to put such an agreed system in place and assist in implementation</i>” (Article 32(b)(3)) (author’s italics)</p>	<p>Additional areas of monitoring, control and surveillance (MCS) are asserted here and, as with VMS, the European Community appears to offer a degree of commitment to support EAC/ESA states to set up and implement such mechanisms, although any initiatives here must first be agreed.</p> <p>ACP states should make sure that the scope of these mechanisms remain non-discriminatory (i.e. that it applies equally to EU vessels).</p>
<p>“Both parties <i>shall cooperate</i> to modernise landing or transshipment infrastructure in ports of ESA countries, including development capacity of fish products” (Article 32(b)(6)) (author’s italics)</p>	<p>This clause on the modernization of port infrastructure is too weak, as it provides little legal commitment on the part of the European Community (i.e. “shall cooperate to”), but as with several other elements of the fisheries chapter it does have cross-cutting linkages with other aspects of the IEPA text, in this case with Articles 45-48 on infrastructure.</p>
<p>“All vessels that land or tranship their catches within the ESA Coastal or Island State shall do it in ports or outer-port areas. No transshipment shall be allowed at sea, except on particular condition foreseen by the relevant RFMO under special conditions” (Article 32(b)(6))</p>	<p>This asserts the requirement for landing/transshipment in-port, which is important in terms of the local provision of goods and services to EU vessels. However, it also allows transshipment in “outer-port areas” (e.g. from fishing vessel direct to carrier vessel), which means that the fish may never touch the EAC/ESA state and thus will have far more limited knock-on socioeconomic benefits. The caveat allowing transshipment at sea “on particular condition” refers to the ability of certain long-line operations to do so as provided for by the IOTC.</p> <p>Regardless, vessels will only land fish in an EPA state if it is commercially attractive for it to do so (e.g. high price, sufficient infrastructure, services). There is thus a direct linkage between the practical realization of this and provisions on investment and other forms of cooperation.</p>
<p>“All vessels <i>should endeavour</i> to use the facilities of the ESA countries and undertake to make use of local supplies” (Article 32(b)(7)) (author’s italics)</p>	<p>This clause on the use of local inputs/supplies links to Article 32(b)(6) on the requirement to land/tranship in-port or in outer-port areas in that if the vessel tranships in-port the vessel “should” make use of local goods and services. However, the obligation is very weak, merely committing EU vessels “to endeavour” to do so, and thus contains no legally binding contribution to domestic economic development.</p>

<p>“Discards reporting shall be compulsory. Priority should be given to avoid discards through the use of selective fishing methods ... <i>As far as possible</i>, by-catch shall be brought ashore” (Article 32(b)(8)) (author’s italics)</p>	<p>The most important aspect here is the emphasis on the promotion of selective fishing method. In addition, discards/by-catch reporting appears as a mandatory requirement, which is important in improving scientific data for fisheries management, but in terms of the supply of by-catch to local markets for human (or other) consumption, the text is more ambiguous (i.e. this should occur “[a]s far as possible”).</p> <p>However, supplying by-catch to local markets is far from necessarily a positive component in terms of sustainable development. Often, because they are cheap, by-catch landings disrupt local markets. Also, when by-catch are not reported by species (which is the case, for example, with non-commercially valuable by-catch made by EU vessels for landing in ACP countries), the coastal state does not know exactly what has been caught, which affects the quality of data and, at a later stage, management. Finally, by-catch landed for local markets are often very poor quality (they have not been kept well refrigerated because space is prioritized for targeted species and more commercially valuable by-catch), and, where it is not fit for human consumption, there is a “post harvest loss” and waste of protein.</p>
<p>“The Parties agree to cooperate in developing and implementing national/regional training programmes for ESA nationals in order to facilitate their effective participation in the fishing industry” (Article 32(b)(9))</p>	<p>This component on the setting up and running of training programmes identifies an important need in most EAC/ESA states - the lack of suitably qualified local fishers, marine engineers, etc. - but it is merely an “agreement to cooperate” and as such is a weak commitment.</p>
<p>“Fishing vessels involved in IUU fishing should be prosecuted and should not be allowed to fish again in ESA waters” (Article 32(b)(10))</p>	<p>This is an important component on IUU fishing, but given the use of “should” the agreement to prosecute and ban the offending vessel is weakened. It is unclear why this qualifier was included as it is surely in the interests of all parties to take a strict line on IUU fishing.</p>
<p>“The Parties undertake to cooperate in promoting the setting up of joint ventures in fishing operations, fish processing, port services, enhance production capacity, improve competitiveness of fishing and related industries and services, downstream processing, development and improvement of port facilities, diversification of the fishery to include non-tuna species which are under-exploited or not exploited” (Article 32(c))</p>	<p>This coverage of joint ventures and domestic fisheries development is, in effect, a wish list. Unsurprisingly, the European Community has offered a very weak commitment here (i.e. to “undertake to cooperate”), which is probably motivated partly by the fact that Brussels cannot direct EU industry to invest. But, it may also be because of the possibility that if EAC-/ESA-based companies were to fulfil the “wish list”, then they would be competing directly with EU firms. However, Article 38 and the Development Matrix do contain some more tangible commitments by the European Community towards EAC/ESA domestic development (see below).</p>

In addition to the key components of the EAC/ESA fisheries chapter, it is worth noting the fisheries aspects of Article 38, which is part of the General Provisions on Economic and Development Co-operation. Several areas of cooperation relevant to fisheries development are outlined

under Article 38(2), including notably: (a) “Regional cooperation and integration to ensure trans-regional coordination”; (f) “Research and development, innovation and technology transfer”; and (j) “Mainstreaming of environmental issues into trade and development”. The targets

of these areas of cooperation include “Private Sector Development, particularly Industrial Development, Micro-enterprises, Small and Medium Sized Enterprises” (Article 38(3)(a)); and, more specifically, “Fisheries” (Article 38(3)(e)). These elements are simply outlined here as this study does not examine investment-related aspects of IEPAs.

An additional innovation in the ESA IEPA text is the annexing of a development matrix (Annex IV), which includes fisheries, among other productive sectors. This outlines a set of suggested projects for European Community funding that serves to “Promote and ensure sustainable utilization of fishery resources including fish farming development and market technical standards requirements”. Article 52 of the ESA-EC IEPA on “Financial Undertakings” states that:

The EC Party shall put at the disposal of the ESA financial assistance to *contribute to implement* the programmes and projects to be developed under the areas of cooperation identified in this Agreement and relevant chapters and under the detailed Development Matrix [author’s italics].

As pointed out in a study commissioned by the UN Economic Commission for Africa (ECA), Article 52 is not “an unequivocal legal obligation on the EU to provide adequate resources; it is scaled down to an obligation to contribute resources *towards implementation*” (Mangeni, 2008: 33; author’s italics). Despite this, it remains an important obligation in terms of both the general provisions of the agreement (including the development matrix) and the fisheries-specific elements.

The ESA development matrix was not priced at the time of writing (May 2008), as the European Community did not want to tie itself down during the IEPA negotiations. And, perhaps, the EU wanted to hold back bargaining chips for comprehensive EPA negotiations, although a side conference on mobilizing funds for its costing was scheduled for July 2008 in Dar es Salaam. The extent to which this exercise will bear fruit, however, is open to question: it is not known whether the European Community will (or is able to) commit funds other than those available under the European Development Fund (EDF). (EDF financing will flow to ESA - and all other ACP countries - under the terms of the CPA, regardless of whether they sign an EPA.)

1.2 CARIFORUM agriculture and fisheries chapter

Included under the title on trade in goods (Part II, Title I), Chapter 5 of the CARIFORUM EPA focuses on agriculture and fisheries, but it is less prescriptive in scope than the EAC/ESA fisheries chapter. It offers general language with limited mandatory obligations for the European Community to provide technical or financial assistance for fisheries-specific elements. Instead, it is primarily a set of agreements to exchange information and to loosely “cooperate” (Articles 5 and 7). For example, Article 5 contains provisions on the exchange of information and consultation, which simply “agree that dialogue would be particularly useful”. This includes the exchange of information on market developments, on new laws and regulations, on new technology, on possible policy changes to improve development in these areas, and on investment promotion.

Article 7(2) outlines that the parties “agree to cooperate, including by facilitating support” on improvements in the “competitiveness of potentially viable production”, the development of “export marketing capabilities”, “[c]ompliance with and adoption of quality standards” and the “[p]romotion of private investment”. But there are no specific mechanisms outlined here and no language that lays out mandatory legal obligations on the part of the European Community to take project-specific aspects of the agreement forward in concrete terms.

However, the CARIFORUM agriculture and fisheries chapter must be read in conjunction with Part I, Article 7 on development cooperation, which “can take financial and non-financial forms” (Paragraph 1). This lays out clear sources of

European Community financing and recognizes “the respective roles and responsibilities” (Paragraph 3) of the parties to the agreement. It is probably in the context of this reading that a short briefing provided by the Caribbean Regional Negotiating Machinery (CRNM) on the “Treatment of Fisheries” in the CARIFORUM EPA maintains that “specific projects will be drawn up and implemented with EU funding” (CRNM, 2008: 1). As noted above, the only reference to specific fisheries projects is contained under Article 7(2) on cooperation, where “the Parties *agree to cooperate*, including by *facilitating support*” (author’s italics) and then lists a series of areas for consideration. But this list is subjected to the prefix of agreeing to cooperate by facilitating support and does not unreservedly state “will support”. In short, the language employed here does not provide the same level of obligation on the part of the European Community as that used in certain paragraphs of Article 32 of the EAC/ESA fisheries chapter (see Table 1).

One important component that might be considered for inclusion in potential fisheries chapters in the comprehensive EPAs of other sub-regions is a specific provision on CARIFORUM food security, which includes mention of fisheries aspects (Part II, Chapter 5, Article 4). This clause provides an element of emergency protection, including

in relation to domestic food supply emanating from local fishers. The text “acknowledge[s] that the removal of barriers to trade between the Parties ... may pose significant challenges to CARIFORUM producers in the agricultural, food and fisheries sectors and to consumers” (Article 4(1)). Where compliance with the EPA “leads to problems with the availability of, or access to, foodstuffs” and “gives rise or is likely to give rise to major difficulties for such a CARIFORUM State” (Article 4(2)), the given state is permitted to apply specific safeguard measures (i.e. product-specific suspension of import duty reductions, increase in customs duties or imposition of tariff quotes).⁶ This food security measure is subject to the standard procedures applying to the use of specific safeguard measures.⁷ Specific safeguard measures are identical in all of the IEPAs assessed here,⁸ with the major difference that the CARIFORUM EPA explicitly adds threats to food security (include fisheries) to the three other generalized situations in which safeguard measures may be applied.⁹ A similar food security measure is included in the PACP IEPA (Article 46), and the same components covering bilateral safeguard measures are applicable (Article 21). Although the PACP food security clause does not highlight fisheries-specific elements, the practical scope of the text probably has the same effect as the CARIFORUM text.¹⁰

1.3 Comparing CARIFORUM and EAC/ESA fisheries chapters

The fisheries chapters of the CARIFORUM EPA and EAC/ESA IEPAs differ in their approach to the incorporation of project-specific European Community funding. Therefore, if other EPA regions decide to negotiate fisheries chapters, it might be worth assessing further the relative merits of the “general agreement to cooperate” within the CARIFORUM chapter on agriculture and fisheries compared with the specific commitments contained in the EAC/ESA fisheries chapter. Of course, the relative benefit of the CARIFORUM text is that it is potentially more flexible, thereby enabling its requests for European Community development cooperation to reflect specific needs at specific times. On the flipside, its relative weakness is that fisheries-specific

projects may be displaced by other sectors as a result of any number of domestic, regional or external contingencies (including shifts in European Community priorities).

In assessing the rationale behind the willingness of the European Community to provide a limited degree of funding commitments to EAC/ESA under their fisheries chapter, it may be worth noting the fact that the majority of the EU tuna DWF is based in the western Indian Ocean. Given the fact that around 60 percent of the EU DWF global catch of tuna comes from the Indian Ocean (Oceanic Development-Megapesca, 2007: 50), there is an element of self-interest in the scope of certain elements of the financial and technical assistance

provided under the EAC/ESA fisheries chapter, such as those relating to the governance of the sub-region's tuna fisheries (i.e. measures on VMS and other forms of MCS). Moreover, although beyond the scope of this study, in the process of negotiating fisheries aspects of comprehensive EPAs, negotiators should look at the original ESA text so that they can assess what ESA wanted

compared with what it eventually got. The European Community succeeded in considerably watering down the ESA text so that, to many, it is now toothless. Other regions wanting to negotiate a text on fisheries may find it prudent to ascertain an understanding from the ESA negotiators of what the specific difficulties were at the time.

2. COMPARATIVE ANALYSIS OF FISHERIES RULES OF ORIGIN IN IEPAS

One of the primary purposes of this study is to compare fisheries RoO in the interim EPA initialled by PACP parties (at the time of writing, Fiji and Papua New Guinea) with those negotiated by other ACP country groupings in their IEPAs. The Pacific-European Community EPA Protocol 1 “Concerning the Definition of the Concept of ‘Originating Products’ and Methods of Administrative Cooperation” is over 200 pages long and thus cannot be considered in detail here. Subsequently, the focus of this section is a comparative analysis of IEPA RoO protocols on the definition of “wholly obtained” (Article 6) and “sufficiently worked or processed” fish and fisheries products (Article 7), as well as of automatic derogations¹¹ for fish products and provisions for cumulation.¹² Before moving on to this specific analysis, the following text (i) outlines some of the historical tensions associated with Cotonou RoO for fish; (ii) highlights the consequence of the time-sensitive nature of EPA negotiations; and (iii) summarizes RoO provisions in IEPA/EPA chapters on goods. (Basic information on fish and fish products in the sensitive lists of IEPAs is contained in Annex A, and details on the first-tranche liberalization commitments for fish for the Botswana, Lesotho, Namibia and Swaziland (BLNS) countries, Côte d’Ivoire and Seychelles are provided in Annex B.)

The rationale behind preferential RoO is to prevent trade diversion (i.e. a third party benefiting from preferential market access arrangements).¹³ In spite of this logical rationale, EU RoO for fish has long been a source of tension in ACP-EU relations under Lomé/Cotonou because of the onerous nature and the EU’s use of RoO as a tool of commercial policy on behalf of their interests. An assessment by a select committee of the UK Houses of Commons on RoO under Lomé, concluded that the system “seems to bias choices of industrial development and technology transfer in favour of the [then] EEC” (UK Select Committee of the Houses of Commons on Overseas Development; cited in Ravenhill, 1985: 169). Two decades later, the critique was much the same: the report of the UK Commission for Africa stated that EU RoO can be “applied in a deliberately obstructive manner”

and are “taken to ludicrous extremes - to the extent that fish are ruled ineligible if the boat they are caught from is Ghanaian but the master of the vessel is South African” (Commission for Africa, 2005: 55-56).¹⁴ Even DG Trade has recognized this developmental anomaly: “The ROO creates a bias between sources of investment in ACP States, providing an incentive for ACP States to grant EU access to their EEZ over other countries” (DG Trade, 2007c: 10-11).

In this context, the argument by European Community negotiators that important so-called “concessions” have been provided with revised fisheries RoO in IEPAs is in fact a recognition of over 30 years of contradictory EU policy in this area. Therefore, the reforms discussed below might be better perceived as long-needed pro-development adjustments, more in line with official stated European Community development policy, rather than as “concessions”.

Despite this long-running developmental anomaly in fisheries RoO under Lomé/Cotonou, the level of ambition in the reform of these rules under IEPAs is actually rather limited.¹⁵ As such, they are often labelled “Cotonou+” RoO. To be fair, aside from the historical political economy of the mercantilist tendencies of the European Community’s preferential RoO, this limited level of ambition partly reflected the intense time pressures associated with the looming end-2007 deadline for agreed upon comprehensive EPAs. Neither the European Community nor ACP had undertaken sufficient internal work to be able to fully negotiate significantly reformed RoO. For example, internal European Community consultations were far from mature,¹⁶ and some EPA regions submitted their non-papers on proposed RoO to the EU as late as 2007. Given the limited timeframe, a solution agreed at a meeting of ACP RoO experts was to adopt a two-phased approach: “Cotonou+” RoO would initially be agreed in phase one (thereby acknowledging that it would have been almost impossible to negotiate anything more substantial with the European Commission in the time available), and

phase two would be written into the text of EPAs to commit both parties to negotiate at a later date. (See Box 1 for a specific case study on this process in the ESA region.)

Box 1: The development of fisheries rules of origin negotiations in the ESA region

Initially, in 2004, ESA negotiators pushed for significantly reformed RoO in the context of a proposed FFA with the EU (see above). The proposed RoO would confer wholly originating status on fish caught within an ESA state's EEZ (regardless of flag, ownership, etc.), and, for substantial transformation, a change in tariff heading method was aimed for (i.e. from HS Chapter 3 to Chapter 16). When EU negotiators shot down the draft FFA, by 2007 ESA negotiators were pushing for a two-phased approach. In the first phase, in light of the impending deadline to conclude EPA negotiations by end-2007, Cotonou+ RoO would be sought, including increases in the automatic derogation for canned tuna and tuna loins and an increase and simplification of value tolerance rules. In sum, this was an approach to liberalize existing rules so that ESA tuna canneries could use more non-originating fish.¹⁷ A clause would be written into the EPA text to commit parties to a future second phase of RoO negotiations with a view to establishing more significant modifications (Pearson, 2007). In general, this was the actual outcome of the ESA IEPA (see below), although the extent of reform for the "second phase" remains to be seen.

Each of the IEPA/EPAs contains a general agreement on RoO in the chapter on goods, which, for five of the agreements, reference attached protocols on RoO (Table 2). All of the agreements contain review clauses (consistent with the two-phase approach noted above). However, these review clauses are different in each of the agreements and are summarized in Table 2. In all cases, the review clauses specify that future reform should be negotiated towards the "simplification" of RoO and reflect "the development needs" of the EPA state(s), including changes in the "development of technologies,

production processes and all other factors".¹⁸ The PACP text requires that the review process also reflects the need to provide "certainty for investors" (Article 8), which is an important addition given the significant uncertainty voiced by several fish-exporting firms based in ACP countries during the EPA negotiations in 2006 and 2007.¹⁹ Proposed modifications under the review clauses are subject to approval by the joint council, EPA council or trade committee (depending upon the text of the agreement) and include representatives of the European Community and the given EPA party.

Table 2. Summary of RoO provisions in IEPA/EPA chapters on goods

IEPA/EPA	Protocol on RoO agreed?	Review process
CARIFORUM - EPA initialled	Yes, Protocol I	To be reviewed within 5 years.
Communauté Économique et Monétaire de l'Afrique Centrale (CEMAC) (Cameroon) - IEPA initialled	No	Cotonou provisions apply; new RoO shall be negotiated until 31/03/08 and reviewed within 3 years.
Côte d'Ivoire - IEPA initialled	No	Cotonou provisions apply; new RoO shall be negotiated until 31/07/08 and reviewed within 3 years.
EAC - IEPA initialled	Yes, Protocol 1	To be reviewed and redefined with the negotiation of the comprehensive EPA.
ESA - IEPA initialled	Yes, Protocol 1	To be reviewed and redefined with the negotiation of the comprehensive EPA.
Ghana	No	Cotonou provisions apply; new RoO shall be negotiated until 31/03/08 and reviewed within 3 years.
PACP (Fiji and PNG) - IEPA initialled	Yes, Protocol I	To be reviewed after 5 years.
SADC-minus - IEPA initialled	Yes, Protocol I	To be reviewed after 3 years

Source: Adapted from Stevens et al. (2008: 130, 140); see also Mangeni (2008: 42).

2.1 Wholly obtained fish products

2.1.1 Comparing Cotonou and EPA RoO for wholly obtained fish

There is little substantive change in the scope of the definition of “wholly obtained” fish in initialled IEPAs compared with the original text of the CPA. It is still defined by the European Community’s definition of “qualifying vessels”, which details criteria on vessel flag, registration and ownership (the relevant components are systematically compared in Table 3). Inland fisheries and those within the territorial waters (12-mile zone) of an EPA state still automatically qualify as originating. The specific legal language covering the components - detailed in the first three rows of Table 3 - is identical in the texts of the CARIFORUM EPA and ESA, PACP and SADC IEPAs (Protocols 1). The language of the clause on leased or chartered vessels is also identical in the ESA, PACP and SADC IEPAs, but, as noted in Table 3, it contains minor differences in the CARIFORUM EPA. These differences have no legal or operational significance.

The only differences between CPA and IEPA definitions of “wholly obtained” fish are in the requirements on (i) crew nationality, (ii) vessel ownership, (iii) the leasing/chartering of vessels and (iv) the relationship to OCTs.²⁰

Crew requirement: The major change from the CPA is the deletion of the requirement for a vessel’s crew to consist of 50 percent nationals of the parties to the agreement. EU industry has long pushed for this deletion as it would give “the EU fleet greater flexibility without compromising any of the other benefits of the current RoO” (Oceanic Development-Megapesca, 2007: 52). The crew requirement has similarly been dropped in the case of leased or chartered vessels. This reform, however, is not to the benefit of all ACP interests, especially West Africa, as nationals commonly crew EU vessels because they have the skills and expertise and their labour power is cheaper than the EU equivalent. Nonetheless, for those island and coastal ACP countries with FPAs with the EU, requirements for the use of nationals in the crew can be (and are) included here.

Vessel ownership: The definition of a qualifying vessel still requires it to be flagged and registered by one of the parties to the agreement; the only change is a limited degree of simplification to the ownership criteria in relation to companies. The straight 50 percent ownership by nationals of parties to the agreement remains, but for the alternative option of company ownership it now only has to have “its head office and ... main place of business” in a European Community or EPA state (rather than the additional component that the chairperson and board members must all be nationals). Still, 50 percent of ownership must be owned by an entity based in one of the parties to the agreement. Although there has been some degree of simplification, there is a need to clarify or interpret “head office” and “main place of business”. The European Community should be asked to confirm that the RoO text does not prevent a company from having its statutory registered office in one country and its main place of business in another, as long as such countries are either EPA or EU states.

Leasing/chartering of vessels: ACP interests do not have the capital to buy industrial tuna vessels outright, and thus “the most practicable method of exploiting marine resources for many ACP states is to lease fishing vessels” (Ravenhill, 1985: 167). This component is a partial recognition of this reality. However, EPA states are allowed to make use of this arrangement only if EU fishing interests have been offered and refused the opportunity to lease or charter first. This is a significant difference from the CPA rule, which demanded that the EU fleet had to first refuse an offer of an access agreement to the state’s waters before an ACP state could apply to the ACP-European Commission Customs Cooperation Committee to lease or charter a vessel for the purpose of catching “wholly obtained” fish.

The operational significance of this change could turn out to be important, as EU fishing interests may be less willing to engage in leasing or chartering vessels (as opposed to the prior access arrangement under the CPA) in order to (i) gain

access to marine fisheries (i.e. they have to be offered the opportunity and an FPA may not already be in place); and/or (ii) protect commercial interests (i.e. to block an increase in the supply of ACP-caught originating fish). However, complex financial and accounting arrangements in several EU-based fishing conglomerates may allow for “leasing” or “chartering” and thus block this option to a given EPA state. For example, there are instances where EU-owned vessels have dual registration, such as in an ACP state and in an OCT, and there are also chartering arrangements. This is clearly a complicated issue, but the European Community needs to confirm whether or not it is problematic for an EPA state leasing or chartering a vessel as provided for in this clause.

Oddly, the text on this provision in Annex II, Article 3 of the Council Regulation (EC) no. 1528/2007 of 20 December 2007, on RoO is different from that detailed in all of the IEPA texts.²¹ The conditionality for the allowance of leasing or chartering in Council Regulation 1528/2007 is that “the ACP State offered the Community the opportunity to negotiate a fisheries agreement and the Community did not accept this offer”, which mirrors the conditionality applied under the CPA (see Table 3). The reason for this difference is unclear, and, if an ACP country wanted to utilize the leasing/chartering provision, it is unknown which text would hold legal sway (i.e. ACP states did not initial the Council Regulation, but for the European Community it is the ultimate legal document). In fact, Council Regulation 1528/2007 is a bridging mechanism until IEPAs are signed and implemented.

In spite of this, the major practical limitation of the leasing/chartering clause - even if an EPA country were able to apply it - is that it blocks the targeting

of commercially valuable highly migratory or straddling stocks because it limits operations to that country’s EEZ (i.e. ACP leased/chartered vessels would not be able to “follow the fish”). A potential European Community response here is that this limitation encourages responsibility for sustainable fisheries management on the part of the EPA state and limits the geographical spread of increased fishing capacity to individual countries’ jurisdictions. But, if this were the case, then the EU would be compelled to ban the EU DWF from activities in third countries’ EEZs and on the high seas. Instead, an alternative interpretation might stem from the fact that the commercial interest of the majority of the EU DWF operating in and around ACP EEZs is focused precisely on these highly migratory or straddling stocks and, thus, competition from ACP leased/chartered vessels might be unwelcome.

Relationship to OCTs:²² Unlike in the CPA, OCTs are not included in the text on qualifying vessels (see Table 2), thus effectively excluding OCT vessels from being able to supply “wholly obtained” fish to EPA countries. This is an unexpected flaw in EPA/IEPA texts and, in operational terms, it is problematic as some EU-owned vessels are registered in OCTs, which thereby limits the total potential supply of originating fish to exporters/processors based in IEPA countries under current RoO. For example, there are reports that EU-owned vessels registered in Mayotte will not be able to supply tuna-processing firms in ESA EPA states because of this anomaly (i.e. there is no customs cooperation agreement with the OCT concerned).²³ This issue is not in the interests of either the ACP or the EU and, as such, should be ironed out easily in negotiations for comprehensive EPAs.

Table 3. Comparing Cotonou and IEPA definitions of wholly obtained fish products

Rule or procedure	Cotonou	IEPA for CARIFORUM, ESA, PACP and SADC
Origination	The fish must be “wholly obtained”. This applies if fish is caught anywhere by “qualifying vessels”. If caught in “territorial waters” (12-mile zone), origin is automatic, regardless of which vessel caught it.	Same as Cotonou rule.

Qualifying vessels	<p>Vessel must be registered (or recorded) and flagged by an EU, ACP or OCT state.</p> <p>At least 50 percent ownership of vessel by nationals of EU, ACP and/or OCT states, or by a company with its head office in one of these states, of which the chairperson of the board of directors or the supervisory board, and the members of the board, are nationals of these states; and, in the case of partnerships or limited companies, at least 50 percent of the capital belongs to these states or to public bodies or nationals of these states.</p> <p>Fulfil crew requirements.</p>	<p>Vessel must be registered and flagged by an EU or ACP state that has signed a given EPA (“EPA state” for short).</p> <p>At least 50 percent ownership by nationals of an EU or EPA state, or by a company with its head office and main place of business in an EU or EPA state; and at least 50 percent owned by an EU member state or EPA state, public entities or nationals of that state.</p>
Crew requirements	At least 50 percent of crew (including master and officers) are nationals of EU, ACP and/or OCT states.	Not applicable.
Leased or chartered vessels	<p>The European Community shall recognize, 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 its EEZ provided that:</p> <p>(i) the ACP state offered the Community the opportunity to negotiate a fisheries agreement and the Community did not accept this offer;</p> <p>(ii) at least 50 percent of the crew, master and officers included are nationals of states party to the Agreement, or of an OCT;</p> <p>(iii) it has been accepted by the ACP-European Community 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>	<p>The European Community shall recognize, upon request of an EPA state, that vessels chartered or leased by that state be treated as “their vessels” to undertake fisheries activities in its EEZ provided that:</p> <p>(i) the EU has been offered the first right of refusal [presumably to engage in similar arrangements] [“operators of the EC Party” instead of EC as in the CARIFORUM text];</p> <p>(ii) it has been accepted by the Special Committee on Customs Cooperation and Rules of Origin as providing adequate opportunities for developing the capacity of the EPA State to fish on its own account [“developing the fishing capacity of” in the CARIFORUM text] and, in particular, as conferring on the EPA state the responsibility for the nautical and commercial management of the vessel at its disposal for a significant period of time [more simply “conferring ... nautical and commercial responsibility for the chartered or leased vessels” in the CARIFORUM text].</p>

Sources: Cotonou Agreement (Annex 5 and 17); CARIFORUM-EC EPA (Protocol 1, Article 6); ESA-EC IEPA (Protocol 1, Article 6); PACP-EC IEPA (Protocol 1, Article 6); and SADC-EC IEPA (Protocol 1, Article 5).

NB: Although the language contained in Table 3 is often identical to the original texts, it sometimes is not. This was an effort to simplify and streamline for readability. As such, it is advised to consult the original text for precise legal terminology if required.

2.1.2 Intra-ACP trade in wholly obtained fish

In principle, RoO for wholly obtained fish products under IEPAs - which mirror CPA rules - are more onerous due to the reduction in the range of possibilities for vessel registration and ownership by nationals or eligible companies, based on the significant decrease in the number of countries from which wholly obtained fish can potentially be sourced - that is, unless IEPA RoO protocols are identical, thus allowing full cumulation (see Section 2.4). This issue, however, is less relevant in practice; historically, there has been a limited supply of CPA RoO-compliant fish from non-EU and non-OCT (i.e. ACP) sources flowing between sub-regions. This was the result of the following: (i) demand within sub-regions that was (and is) high, and thus the supply of wholly obtained fish would tend to stay within the region; (ii) there was a very limited ACP industrial fleet because of the lack of domestic capital to invest in acquiring them; and (iii) geographical isolation between certain sub-regions (e.g. between PACP and ESA states) led to high freight costs due to both the distances involved and the small size of economies, resulting in insufficient economies of scale on freight routes, thereby making the trade less economically viable. Nonetheless, some trade in fish between ACP sub-regions did take place and, if domestic development of fishing capacity were to materialize in a given EPA sub-region, then it would not be able to supply fish to a different EPA grouping to export duty-free to the EU unless identical RoO and measures for customs cooperation were in place.

2.1.3 The EEZ controversy

For decades, the majority of the ACP - led by different island and coastal countries at varying times - has argued for the European Community to re-categorize its treatment of “wholly obtained” to automatically confer origin onto fish that is caught within their EEZs and landed locally, regardless of vessel registration or ownership. Currently, automatic origin is conferred only where fish are caught within an EPA country’s territorial waters (within 12 nautical miles of

its coast), as defined under Part II, Section II, Article 3 of UNCLOS.²⁴ In response to this ACP demand, the European Community has argued that: (i) extending automatic origination to fish caught within an EEZ would limit incentives for domestic fleet development in the ACP; and (ii) based upon its reading of UNCLOS (which it appears to have never precisely articulated publicly), fish cannot be wholly obtained without a tie to the vessel that caught them because of the quasi-sovereignty associated with UNCLOS definition of EEZs. Instead of providing precise legal arguments here, the European Community has tended to simply assert that the EEZ is simply “*not relevant*” for the purpose of defining European Community rules of origin (European Community, 2005; author’s italics). The ACP retort is that: (i) EEZs do exactly what they say: they provide exclusive economic sovereignty and the only international claim on this sovereignty is the right of passage; (ii) despite the incentive for ACP investment in fleet development, there is currently only a very limited nationally owned industrial fleet in ACP states;²⁵ (iii) the current European Community definition protects the interests of the EU DWF as it limits the supply of originating fish to ACP processing plants, allowing the former to command a price premium;²⁶ and (iv) the current definition structurally limits the achievement of firm-level economies of scale because processors cannot source sufficient fish to expand production.

This controversy has not died down. It is reflected in unilateral declarations by CARIFORUM and Namibia, which are attached to their respective EPAs and IEPAs. The CARIFORUM declaration states that:

following the exercise of their Sovereign Rights over fishery resources in the waters within their national jurisdiction including the [EEZ as defined in UNCLOS], all catches effected in those waters obligatorily landed in the ports of the CARIFORUM states for processing should enjoy originating status.²⁷

This is, in part, complemented by a joint declaration with the European Community that

recognizes the right of coastal CARIFORUM states “to the development and rational exploitation of the fishery resources in all waters within their jurisdiction” and, in light of this recognition “[t]he Parties agree that the existing rules of origin have to be examined in order to determine ... possible changes”.²⁸ The declaration from Namibia attached to the SADC IEPA demands the same treatment. It calls for “all catches effected in those waters [including the EEZ] and obligatory landed in ports of Namibia for processing should enjoy originating status”.²⁹ However, even if these demands were realized in negotiations with the European Community, fishing fleets within a given EPA state would only be able to target stocks based within this sovereign zone, as noted in Section 2.1.1; they would not be able to follow highly migratory and straddling species.

It is important to draw out the qualifier in both CARIFORUM’s and Namibia’s declarations: the fish would be deemed wholly originating only if it was landed locally. This element would

contribute directly to domestic development as it would mean that, when offloading, vessels would purchase local goods and services and that there would be a ready supply of originating fish for export-oriented processing to the EU. The logic behind this position fits neatly with stated European Community development policy on the need for ACP states to integrate further with the world economy and to diversify their economic sectors. The incoherent relationship between EU external policies on trade, development and fisheries have been detailed elsewhere (Bartels *et al.*, 2007), but, in terms of the discussion here, it is worth highlighting an apparent inconsistency with treatment of EEZs in IEPA RoO protocols. The articles on origination only allow automatically qualifying products to be caught in an EPA country’s territorial waters, whereas those on the leasing/chartering of vessels limit operations to that country’s EEZ. The question here is clear: why does the European Community delineate territorial waters as the legitimate area of national jurisdiction in one component of RoO for fish, but the EEZ in another?

2.2 Sufficiently worked or processed fish products

There are two major changes to RoO on the definition of “sufficiently worked or processed products” for fish. The first is a new value tolerance (or *de minimis*) provision of 15 percent, which is identical in all agreements initialled to date. The second is the specific reform offered to the PACP on global sourcing RoO. These will be addressed in turn.

2.2.1 New value tolerance provisions

In cases where insufficient wholly obtained fish

are available, all IEPA/EPA texts to date provide a “concession” of up to 15 percent value tolerance (ex-works) for non-originating inputs of fresh or frozen fish (HS Chapter 3) in the manufacture of fish products (Table 4). For example, a manufacturer of canned fish may use non-originating fish to a maximum value of 15 percent of the total value of the fish that is canned, while applying the post-processing (ex-works) price. All other inputs - such as the can and the packing material (e.g. oil or water) - may be non-originating.

Table 4. Working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status

HS heading no.	Description of product	Working or processing carried out on non-originating materials that confers originating status
ex Chapter 03	Fish and crustaceans, molluscs, and other aquatic invertebrates; except for [the following items]:	All the materials of Chapter 3 used must be wholly obtained
0304	Fish fillets and other fish meat (whether or not minced), fresh, chilled, or frozen	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 percent of the ex-works price of the product
0305	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals, and pellets of fish, fit for human consumption	As above
ex 0306	Crustaceans, whether or not in shell, dried, salted or in brine; crustaceans, in shell, cooked by steaming or by boiling in water, whether or not chilled, frozen, dried, salted or in brine; flours, meals and pellets of crustaceans, fit for human consumption	As above
ex 0307	Molluscs, whether or not in shell, dried, salted or in brine; aquatic invertebrates other than crustaceans and molluscs, dried, salted or in brine; flours, meals and pellets of crustaceans, fit for human consumption	As above
1604 and 1605	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs; crustaceans, molluscs and other aquatic invertebrates, prepared or preserved	As above

Sources: 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).

This new rule appears to be very similar to the value tolerance provision under the CPA. The latter rule also allowed 15 percent of non-originating inputs in the ex-works product price, but was not specific to the fish itself. However, in practice, it required the exporter to apply the rule on a single species, single consignment and single consignee basis. The only EU customs authorities that accepted imports under this CPA rule were the UK and, to a far lesser extent, Italy. The only known processors to have applied it were a firm in Mauritius, which made use of a maximum of 8 percent (rather than the full 15 percent) and, to a much lesser degree, a cannery in Madagascar.³⁰

The actual practical worth of the new value tolerance “concession” under EPAs is probably very limited and may actually allow for less non-originating fish than available under the CPA value tolerance rule.³¹ It requires 85 percent of the value of the fish to emanate from originating sources, which is clearly a very limited flexibility. Moreover, European Community officials have confirmed that the 15 percent value tolerance can be applied only if 85 percent of the fish in a consignment is wholly obtained.³² As such, the rule may actually be more onerous than under the CPA in terms of the value of non-originating fish used. Consider the following stylized example:³³

under the general CPA value tolerance provisions, the following scenario would be compliant:

Cost of processed canned fish including mark up = USD150
 Cost of fish material = USD100
 Packaging, etc. = USD30

Fifteen percent value tolerance means that 22.5 percent non-originating fish could be used, provided that all the other materials (packaging, etc.) are local (which is unlikely as, for example, the metal for cans is imported by all ACP processors).

Under the revised rules, based on the above scenario:

15 percent value tolerance on fish material = USD15
 All packaging, etc., is permitted to be non-originating, so USD15 non-originating fish, + USD30 non-originating packaging = USD45 total non-originating inputs

This translates into a higher non-originating allowance in total, but less non-originating fish is allowed. In other words, under the old regime there was theoretically better access to non-originating fish (it is important to reiterate that this rule was used very rarely by fish processors because of its complexity). In practice this scenario may be defunct, because, as already noted, no ACP fish processor uses 100 percent non-originating packaging, but in principle it serves to highlight the potential weaknesses of the new provision.

2.2.2 “Global sourcing” RoO for processed fish in the PACP IEPA

By far the most significant innovation (and surprise for many) in European Community RoO offers was the “global sourcing” rule provided to the PACP for certain processed fish products. The text of the agreement reads as follows:

[P]rocessed fishery products of headings 1604 and 1605 manufactured in that

State from non-originating materials of Chapter 03 shall be considered as sufficiently worked or processed (Protocol 1, Article 7(6)(a))

In other words, regardless of where the fish was caught or the status of the vessel’s flag, registration or ownership (of course, still subject to European Community regulations on SPS and agreements on IUU fishing), the fish is deemed originating as long as it is transformed from being fresh or frozen (and thus categorized under HS Chapter 3) into a pre-cooked, packaged, canned, etc., product (categorized under HS 1604 and 1605). This is known as the “change in tariff heading method” and was a core demand of the PACP in its negotiations with the European Community.³⁴ The primary commercial objective on the part of the PACP was to support firms producing canned tuna and tuna loins, which have historically been constrained in their ability to source sufficient supplies of wholly obtained fish. There are, however, a number of conditions tied into this new rule:

- A report on the implementation of global sourcing RoO must be submitted to the European Community no later than end-2010 (Protocol 1, Article 7(6)(b)).
- The European Community will then hold consultations on the utilization and impacts of the global sourcing RoO. After “taking into account ... its development effects and the effective conservation and sustainable management of the resources” the rule might be amended if deemed appropriate (Protocol 1, Article 7(6)(c)).
- The article also emphasizes (in Paragraph d) that the rule “shall apply without prejudice” to EU SPS measures, the sustainable management and conservation of fishing resources, and the combating of IUU fishing in the PACP region.

The extent to which this reiteration of the need to comply with EU SPS measures was necessary in the latter paragraph is open to question given the fact that they are already mandatory for *any* firm exporting to the EU, regardless of whether their

trade benefits from preferential arrangements. The usefulness of reiterating the other two components is also called into question, given that PACP tuna fisheries are already regulated by the Western and Central Pacific Fisheries Commission (WCPFC; of which the European Community is a member) and significant efforts are under way to combat IUU fishing in the region.³⁵

It is important to emphasize that, from the perspective of the European Community, global sourcing RoO was seen as “a specific relaxation” for the PACP and “cannot be taken as a precedent in other negotiations” (DG Trade, 2007e). A leaked letter by Trade Commissioner Peter Mandelson to Cook Islands Minister of Foreign Affairs Wilkie Rasmussen reiterates this position. In the letter, Mandelson noted that, in offering global sourcing fisheries RoO, “we did so *specifically and only* for the Pacific, in response to what you [the PACP] said was a decisive issue” (Mandelson, 2008a; author’s italics).³⁶ Core rationales behind this “specific” offer are as follows:

- Without reform along these lines, fisheries RoO were likely to be a deal breaker in PACP-EU negotiations.
- In the words of DG Trade: “The unique situation of the Pacific region has to be taken into account. The region is composed mainly of small island developing countries with few natural resources (except for fish) and characterized by structural development problems, such as small domestic markets, isolation from major markets and geographical dispersion both within and between countries” (DG Trade, 2007c: 15).
- The tuna processing industry in the Pacific has historically been unable to source sufficient supply of originating fish under the Lomé/Cotonou RoO because there is insufficient domestic capital to develop a local industrial fleet (a situation that is common to most of the ACP), but also because the EU DWF is largely inactive in the western and central Pacific Ocean, thereby resulting in underutilization of preferences for fish.
- As applied to the PACP, global sourcing RoO would be a significant investment incentive

and would contribute to employment generation (especially for women in processing plants), thus providing a general impetus to socioeconomic development in these small island economies.

- But at the same time, they “would not have a significant impact on the EU processing industry. Existing capacity constraints in the Pacific will restrain exploitation of the opportunities” (DG Trade, 2007c: 2).

It is probably this last point, combined with the first, that contributed most significantly to the ability of DG Trade to push PACP global sourcing RoO through the Commission (especially by, then, DG Fish).³⁷

On paper the new EU RoO for PACP canned tuna and tuna loins are a huge step forward for locally based processors, but in practice the ability of PACP-based fish processors to maximize the benefit remains to be seen. As a representative of the private sector in Papua New Guinea has pointed out: “The effect of the provisions depends upon their *application* and to date have not been tested” (Golding, 2008: 2; author’s italics). In fact, according to early informal reports from the region, the immediate utilization of global sourcing RoO has been limited primarily due to the fact that sources of potential new supply are often from vessels that do not meet mandatory EU SPS measures. Along these lines, DG Trade correctly made the point that “although [global sourcing RoO] is an important export driving force, this is far from being the only factor, as in reality a number of other important factors ... will finally condition and limit the maximization of the benefits from the relaxation of the RoO” (DG Trade, 2007c: 15). The core imperative for SPS compliant fish contributed directly to the position among certain government officials and industry representatives in the ESA grouping that global sourcing RoO have limited value in practice.³⁸ This argument must be set in the context of the fact that the majority of the EU distant water tuna fleet is based in the western Indian Ocean, thereby enabling a steady supply of originating fish to processing interests in the region, thus allowing the ESA region to (at this stage) adopt a status quo approach in relation to the global sourcing option (see above).

2.3 Automatic derogations for fish in IEPAs

Under the CPA, specific derogations were awarded in situations where the promotion of “the development of existing industries or the creation of new industries justifies them” (CPA, Annex X, Protocol 1, Title V, Article 38(1)). However, specific derogations were based on requests, which was an administratively cumbersome and slow-moving process, often resulting in the award of disappointing quotas by the European Community.³⁹ Under the CPA, the only automatic derogation for fish was a total annual quota for canned tuna and tuna loins allocated to the ACP group as a whole for negotiated distribution among countries, fixed at 8000 mt and 2000 mt, respectively (CPA, Annex V, Protocol 1, Title V, Article 38(8)).

In the context of the EU RoO, the major gain in IEPA negotiations was made by the ESA grouping. This region received the same volume of automatic derogation for canned tuna (8000 mt) and tuna loins (2000 mt) as that awarded under the CPA, but with allowance for distribution only among ESA signatories (in effect, Madagascar, Mauritius and Seychelles, as they are the only ESA countries with tuna processing facilities).⁴⁰ The EAC IEPA contains an automatic derogation of 2000 mt on tuna loins (Council of the EU General Secretariat,

2007a). It is likely that this will be allocated solely to Kenya because of the tuna loining plant based there.

The status of the percentage of the CPA automatic derogation for tuna previously awarded to those IEPA countries that have not yet agreed to a RoO protocol (e.g. Côte d’Ivoire, Ghana) is not known. Presumably these allocations were either carried over (given that CPA RoO applied from 1 January 2008) or were cancelled. The prior automatic derogation awarded to the PACP under CPA no longer applies (and is no longer necessary) given the new global sourcing RoO. There are no derogations for fish listed in the SADC IEPA.

Despite increases in the quantity of automatic derogations available to EAC and ESA countries, the mechanism itself is problematic because it does not provide the stability of market access that existing exporters and potential investors would prefer. The practical problem here is that, when new eligible countries (or new firms within existing eligible countries) start processing canned tuna and tuna loins, there can be tensions deciding over reallocation of quotas between countries and firms.⁴¹

2.4 Cumulation

The European Community position on cumulation was laid out clearly in an information note on RoO circulated to the ACP by DG Trade (2007a). Among other points, it stated that cumulation is subject to:

- identical rules of origin applied by the partners in the cumulation zone;
- a legal framework linking partners allowing for cumulation and administrative cooperation. According to the European Community, this already represents a form of relaxation of the “normal” conditions regulating cumulation among FTA partners.

Therefore, during the process of EPA negotiations, the EU made it clear that, if a given EPA configuration were to negotiate different RoO

from other EPA configurations, then it would not be able to cumulate with other EPA groupings. Beyond the possibility that this was motivated partly by a desire to entertain only one system of RoO so as to reduce the administrative burden on EU customs authorities,⁴² WTO compatibility was the core European Community rationale on the need for harmonized RoO and same tariff treatment on exports in order to enable inter-EPA cumulation. That is, for inter-EPA cumulation, all parties to all agreements have to be covered by legally interlinking free trade agreements (FTAs) and harmonized rules under GATT (1994) Article 24. The effect of this rule is that cumulation within EPA configurations is restricted by the limited signing of IEPAs. For non-signatories, cumulation is not possible as they now fall under market

access governed by the EU generalized system of preferences (GSP) regime (most fall under the Everything But Arms (EBA) initiative) and the GSP does not allow for cumulation (beyond very limited instances).

Cumulation with “neighbouring developing countries belonging to a coherent geographical entity”⁴³ is permitted for African and Caribbean signatories (there are no specified developing countries neighbouring the PACP). However,

this explicitly prohibits such cumulation for all tuna products under HS Chapters 3 and 16, which excludes all major tuna products (Annex II, Article 6 of Council Regulation (EC) No. 1528/2007). This prohibition was also applied under CPA.⁴⁴ In addition, under the same article, there are specific provisions on cumulation with South Africa that includes a long list of fish and fish products for which cumulation is temporarily unavailable (these are detailed in Appendix 8 of Council Regulation (EC) no. 1528/2007).

3. SPS MEASURES AND EPAS: FISHERIES ASPECTS

The fisheries-specific components of EU SPS measures have not been altered in the transition from the CPA to IEPA/EPAs. This is because they are governed by the overarching SPS framework of the European Community and individual EU Member states. European Community SPS relations with third countries (including the ACP) continue to be registered and monitored by DG SANCO and its executive arm, the FVO. The EU position on SPS is non-negotiable as the health and safety of EU consumers is justifiably paramount. However, as pointed out by Bartels *et al.* (2007, p. 72): “the implementation and monitoring costs of increasingly strict SPS measures for fish and fish product exports are very high, especially for poverty-stricken [ACP] states and the small and medium-sized enterprises (SMEs) based there”. In addition, the Organisation for Economic Co-operation and Development (OECD, 2005) has demonstrated that SPS measures can be used to protect high-cost EU producers from low-cost imports and thus act as non-tariff barriers (NTBs).

The vast detail and scope of EU SPS measures cannot be assessed here,⁴⁵ but in fisheries-specific

terms the most important requirement is that the EU requires freezer and factory vessels to be registered and approved by the local competent authority (which, in turn, is regulated by DG SANCO).⁴⁶ A corresponding structural constraint in the practical application of global sourcing RoO is the supply of SPS-compliant fish, which is limited globally to the total number of fishing vessels that are registered and approved by DG SANCO. Table 5 provides an indicative list of industrial fishing vessels (with freezing capacity) that are registered with the European Community and are thus able to supply SPS-compliant fish. Of course, these vessels may not necessarily supply EU markets; they form part of the global potential supply of marine-capture fish to the EU and thus the list does not represent readily available supply to EPA countries (not least as many of these vessels are probably tied in via supply contracts to trading firms and/or directly to non-ACP sites of production). As noted in Section 3.2.2, early reports from PACP industry indicate that it is currently having some difficulty acquiring sources of SPS-compliant fish additional to those available to it under prior CPA RoO.

Table 5. Countries with European Community-registered freezer vessels*

Country	Number of registered vessels	Date of list publication
China	186	02/04/2007
Indonesia	7	14/09/2007
Japan	95	02/10/2007
Mauritius	1	12/06/2007
Namibia	27	20/08/2007
Netherlands Antilles	1	03/10/2007
Panama	20	17/08/2007
Papua New Guinea	28	14/09/2007
Philippines	24	09/08/2007
Russia	159	29/08/2007
Seychelles	13	18/07/2006
Singapore	1	23/04/2007
South Africa	184	15/03/2007
South Korea	44	29/08/2007
Taiwan	135	22/09/2006
United States	88	11/06/2007
Total	1013	

*Note that these data exclude factory vessels, that the European Community list is not comprehensive, and that at least one country known to have accredited vessels (Solomon Islands) is not included.

Source: Adapted from Doherty and Campling (2007: 18). Data sourced from DG SANCO list of approved fishing vessels: http://ec.europa.eu/dgs/health_consumer/index_en.htm/.

In addition to the fact that a supply of SPS-compliant fish cannot be guaranteed, it is also important to stress that failings on the part of the local competent authority can result in preferential market access and improved RoO becoming temporarily worthless. For example, a report from the FVO based on inspections in 2007 found evidence of apparently serious deficiencies with the competent authority and claimed that, due to the latter's lack of ability to provide the necessary guarantees, the export of fish products from Fiji constituted a risk to EU consumers (DG SANCO, 2007).

Recognizing the costs to the ACP of implementing and complying with SPS measures, the EU had already established the Strengthening Fishery Products Health Conditions in ACP/OCT Countries (SFP) programme.⁴⁷ The SFP programme commands a budget of €56.6 million, of which the vast majority is funded out of the eighth EDF. However, ACP officials and industry representatives have criticized the SFP programme because procedures for accessing funds are perceived to be very difficult and applications to the SFP have a slow turnaround speed due to its extremely limited number of staff.⁴⁸ Nonetheless, building upon its recognition of the continued burden on EPA countries of meeting SPS measures for their fish export, the European Community has made various commitments in EPA negotiations to fund improvements in implementation and compliance. For example, under the fisheries chapter and development matrix initialled by EAC/ESA and the CARIFORUM chapter on agriculture and fisheries, there are a number of components addressing the role of the European Community in providing technical and financial assistance towards compliance with and adoption of SPS measures and quality standards (discussed in Section 1).

In the broad context of ACP-EU fisheries trade relations, it is worth highlighting the findings of two recent studies on the uneven application of EU SPS measures for fish and fish products. One study found that FVO inspectors charged with ensuring that ESA competent authorities were effectively enforcing EU SPS requirements in

local tuna processing factories were in practice (albeit, probably not intentionally) adopting discriminatory working practices. The study compared FVO practices in relation to processed tuna exports from Thailand and found that processors based there were able to continue exporting without making sure that identified deficiencies were corrected, whereas FVO inspectors were much more demanding in respect to the rectification of any problem areas in ESA countries. Such practices are a violation of the principles of the WTO SPS Agreement (Campling and Doherty, 2007). A follow-up study found that “strong indications exist” that there was a possibility that tuna processors in Thailand were using fish from non-approved sources, although the unavailability of disaggregated statistics and the limited reliability of information meant that this possibility could not be proven (Doherty and Campling, 2007). It is possible that these findings could feed into negotiations for comprehensive EPAs given the implications for the relative competitiveness of fish exports from EPA countries. For example, SPS measures are not included in the texts of the EAC and ESA IEPAs but rather are highlighted as an area for future negotiation under the rendezvous clause (Chapter V, Article 37 and Chapter V, Article 53).

Finally, regardless of the flexibility of existing and suggested EPA RoO for fish, proposed European Community regulations on IUU fishing are likely to have a negative impact if implemented without due consideration for EPA country capacity constraints.⁴⁹ The proposed set of measures is intended to combat IUU fishing activities in EU waters, on the high seas and in third country EEZs.⁵⁰ A major mechanism to achieve this objective is the enhancement of traceability requirements so that the flow of fish products to EU markets can be tracked from vessel to retail. The proposed regulations will link the legal origin of catch to access to the EU market (e.g. through catch certification requirements). If a firm is found to be taking part in IUU fishing activities or allowing them to occur, then it will be subject to sanctions, which is mirrored in the IUU component in the EAC/ESA IEPAs fisheries

chapter: “Fishing vessels involved in IUU fishing should be prosecuted and should not be allowed to fish again in [EAC or] ESA waters” (Article 32(b)(10)). Additional aspects of the proposed package of measures are stricter port controls, the prohibition of transshipment at sea (also a component of the EAC/ESA IEPA; see Article 32(b)(6)), and the creation of “black lists” of known IUU vessels and non-cooperating states. EU industry is also supporting these measures, but only as applied to non-EU vessels; this position is clearly indefensible in terms of the basic harmonization of regulations and potential discrimination against non-EU vessels.

Although it is unlikely that any EPA country will object to the principle and importance of combating IUU fishing, the proposed European Community regulation may have the effect in practice of acting as a new NTB to fish and fish product exports under EPAs. As the Coalition for Fair Fisheries Arrangements (CFFA) correctly points out, without concrete actions by the European Community to help developing countries meet the proposed new requirements, “[such] trade-related measures ... will definitely constitute new trade barriers for legally-caught fish from developing countries, especially those fish products from the artisanal fishing sector” (Gorez, 2007).

4. EPAS AND PREFERENCE EROSION FOR FISH AND FISH PRODUCTS

As emphasized in the introduction, the objective of uninterrupted preferential market access for fish products was one of the core drivers behind the (generally rushed) initialling of IEPAs by non-LDCs for several ACP countries. (ACP LDCs were able to switch from the market access provisions under the CPA to the Everything But Arms (EBA) initiative under the EU's GSP regime.) European Community tariffs for fish and fish products are among the highest in the developed world. Even after the Uruguay Round, EU most favoured nation (MFN) tariffs (in percent equivalent ad valorem) on imports stood at 11.8 percent for unprocessed fish and 15 percent for semi-processed fish. The equivalent MFN tariffs for Canada were 1.4 and 5.6 percent, for Japan 3.2 and 8.1 percent, and for the USA 0.1 and 6.5 percent (Greenaway and Milner, 1996: 30-31). Imports for fish and fish products into the EU are duty-free from countries qualifying under EPAs (and the CPA before them), the GSP+ and EBA. Therefore, developing countries supplying the EU with fish and fish products under these preferential trading arrangements hold a distinct competitive advantage over those countries that are met with the EU's standard GSP or MFN duties.

The European Community has made very limited commitments to the ACP under IEPAs on the issue of preference erosion.⁵¹ The EU position on ACP preference erosion is that the maintenance of existing preferences is subject to the process of multilateral tariff liberalization at the WTO under the Doha Round and, as such, is an issue that is beyond the power of the European Community alone.⁵² (Annex C puts the importance of these developments into context by providing a likely scenario of preference erosion for canned tuna and tuna loins under non-agricultural market access (NAMA) negotiations at the WTO.) It is probably this firm position by the EU that is reflected in the very limited coverage of preference erosion in IEPA/EPA texts. Surprisingly, though, the issue is covered only in the EAC and ESA IEPAs and the CARIFORUM EPA.

Due to the importance of preferential access for fish to EU markets for several countries in the

EAC and ESA groupings, the general provisions (Title I) of their fisheries chapters (Chapter III) contain identical clauses on preferential access, which reads as follows:

The Parties shall cooperate to ensure that financial and other support will be provided to improve the competitiveness and production capacity of the processing factories, the diversification of the fishing industry and improvement of port facilities (Article 29 in both agreements).

The emphasis here is upon improving the “competitiveness” of ESA exporters, but exactly what this highly loaded and relative term means is open to question. The more concrete commitment to cooperate to “ensure” that support will be provided to improvements in the production capacity of fish processing factories and port facilities, and towards the diversification of the sector is more promising, although the issue of where this “financial and other support” will come from is not specified.

The CARIFORUM chapter 5 on agriculture and fisheries (Part II of the EPA text) includes specific coverage of “traditional” agricultural products (e.g. bananas, rum, rice, sugar). Here, the European Community commits to:

endeavour to maintain significant preferential access within the multilateral trading system for these products originating in the CARIFORUM States for as long as is feasible and to ensure that any unavoidable reduction in preference is phased in over as long a period as possible (Article 6).

Although this is a fairly weak commitment (the EU shall only “endeavour” to pursue these objectives), it serves to highlight the socioeconomic and political importance of the problem and obliges the European Community to at least attempt to limit preference erosion for these products at the WTO, including pursuing strategies to delay tariff liberalization where possible.

It might be prudent during negotiations on comprehensive EPAs to push for the inclusion of similar clauses addressing preference erosion (including for fish and fish products) - that is, both a clause on financial and other support to improve productivity and infrastructure in the fisheries sector so as to build resilience against the impacts of future preference erosion, and a clause committing the European Community to support the maintenance of preferences at the WTO and other relevant fora.

5. IMPLICATIONS OF THE ANALYSIS FOR THE NEGOTIATION OF COMPREHENSIVE EPAS

Before considering the specific benefits of a desired reform, governments might carefully consider the following three questions on a case-by-case basis:

- Is it worth the effort to negotiate some of these outcomes? In other words, what is the relative weight of political effort and potential trade offs compared to expected returns? For example, is the value of obtaining vague European Community commitments on preference erosion worth the effort expended?
- Given limited personnel and financial resources, are EPAs the primary objective relative to other regional and/or multilateral arrangements? For example, given the problem of the global overexploitation of most marine capture fish stocks combined with the rise in global demand, might other market access arrangements be more attractive than with the EU?
- Can fisheries-specific issues be separated from their wider context? For example, might there be alternative options for rules of origin reform that have not yet been raised in the context of ACP-EU trade relations (and as such not discussed in detail here, as this study is not intended to be prescriptive), such as RoO based on the value of local content (as with the RoO under the US FTA with Central America (Central America-United States Free Trade Agreement CARIFORUM Caribbean Forum, CAFTA), which, if set at a suitably low threshold, might serve to fulfil the interests of the fishing industry as well as other sectors?

5.1 General issues

Fisheries chapters: At the outset it is important to emphasize a major weakness in negotiating comprehensive EPAs, neatly summarized by Stevens *et al.* (2008: p. 94): “for those countries that have already committed to an interim trade deal, the market access bargaining-chip has been lost, which may weaken their stance *vis-à-vis* the EU”.

A general analysis of IEPAs commissioned by the UN Economic Commission for Africa highlighted the comparative gains made by the ESA region, where “the EU side has agreed to certain commitments and obligations”, including “a specific undertaking by the European Community and the member states to contribute resources” (Mangeni, 2008: p. 7). This is evident in the fisheries chapter of the EAC and ESA IEPAs. Other EPA regions might look to the text here (discussed in Section 1), in terms of how these elements could be adopted to suit their particular developmental needs. The analysis here confers with that of a study by the ECA, which states explicitly that: “The ESA and EAC chapter on fisheries may provide a useful

starting point for the other African regions” (Mangeni, 2008: p. 9), with the caveat that this is simply a starting point and that it might be possible to negotiate more firm commitments from the European Community on various aspects contained within. However, it may be that the EAC/ESA regions were able to make some very minor concrete gains in these areas because the EU has fishing interests based in the region. This perspective of European Community self-interest in terms of what concrete commitments were obtained is solidified when one considers the fact that the ESA region was not able to negotiate anything like the original package it had envisioned. For some, the text of the agreement was compromised and is, in most respects, as a best endeavour text with very limited elements that are actually binding.

An alternative is provided by the CARIFORUM approach within its chapter on agriculture and fisheries. Although offering mainly general language with limited mandatory obligations, the CARIFORUM chapter is potentially more flexible

because requests for European Community cooperation under the EDF can be made to reflect specific development needs at specific times (rather than being tied in to previously agreed projects).

SPS measures: It is possible that the findings discussed above (see Section 3) on the uneven (possibly discriminatory) application of SPS measures by DG SANCO could, first, feed into negotiations for comprehensive EPAs given their implications for the relative competitiveness of fish exports from EPA countries, and, second, be taken on board in future SPS assessments.

Preference erosion: It might be prudent during negotiations on comprehensive EPAs to push for the inclusion of clauses addressing preference erosion (including for fish and fish products) as per the CARIFORUM EPA and EAC/ESA IEPAs (see Section 4) - that is, both a clause on financial and other support to improve the situation of

the fishing sector so as to build resilience in the face of a post-preference future, and a clause committing the EC to support the maintenance of preferences at the WTO and other relevant international fora. Although the European Community might resist such measures, they are nothing that has not already been included in existing EPA texts.

GSP+ as an alternative to comprehensive EPAs: Countries that have initialled IEPAs are not compelled to sign them. If preferential market access for goods was the core motivation for initialling in the first place (which was the case for fish exports for a number of ACP non-LDCs), then it is technically and legally feasible to decide not to sign an EPA and apply for the EU's GSP+ regime before 31 October 2008. Whether such a move is politically feasible, or whether GSP RoO for fish were commercially more onerous for a given ACP fishery, are important matters that can be addressed only on a case-by-base basis.

5.2 Rules of origin

(Re)negotiating RoO for fish in discussions for comprehensive EPAs and under RoO review clauses: As detailed in Sections 2.1 and 2.2, aside from PACP global sourcing rules, the gains in terms of liberalized RoO for fish are extremely slight. Given the long history of the developmental anomaly of EU preferential RoO for fish (see Section 2) and the fact that IEPA RoO protocols were often rushed through due to the time-sensitive nature of the negotiations, it would seem legitimate and appropriate for ACP countries to push for a renegotiation of these rules where necessary and possible in discussions for comprehensive EPAs.

There are two sets of issues here based upon whether or not a RoO protocol has already been agreed to and the status of the RoO review clause (see Table 2): (i) For those EPA regions that have yet to negotiate a protocol on RoO (Communauté Économique et Monétaire de l'Afrique Centrale (CEMAC): Cameroon, Côte d'Ivoire, Ghana) or those that have agreed to renegotiate RoO as part of comprehensive EPA negotiations (EAC

and ESA), the opportunity to develop relevant improvements in RoO is open to discussion with the European Community; (ii) for those EPA regions that have initialled a RoO protocol that is not up for renegotiation until triggered by the relevant review clause (i.e. CARIFORUM within 5 years, PACP after 5 years, SADC after 3 years), the options may prove to be more limited. This last point is made because the European Community has ruled out renegotiations in formal communications: "To reopen Interim Agreements would send the clear signal this has not happened and sacrifice the hard-won legal security they offer" (DG Trade, 2008b: 2). This sentiment was reiterated by Trade Commissioner Mandelson at an April 2008 seminar on EPAs at the European Parliament, where he stated that "any suggestion of renegotiation of these agreements will bring a renewed threat of legal uncertainty and risk unravelling everything we have achieved" (Mandelson, 2008b). However, this EU position is not (and cannot be) final, not least because, according to the European Parliament's legal service, ACP countries have the right to renegotiate IEPAs (Brunsden,

2008). In addition, the fact that IEPAs are just that - *interim* agreements - means that no EPA sub-region should be tied down to a previously agreed (and invariably rushed) RoO protocol in negotiations for comprehensive EPAs.

Extending global sourcing RoO to other EPAs? According to informal reports, some ESA countries are keen to obtain global sourcing RoO during negotiations for a comprehensive EPA.⁵³ (As already noted, EAC and ESA IEPAs contain a clause for the review and redefining of RoO at this stage.) However, there are concerns among elements within other ESA parties that global sourcing will lead to intra-ESA trade division by attracting offloading from their ports.⁵⁴ The economics of industrial fisheries make the latter eventuality highly unlikely as vessel owners will continue to aim to maximize their returns on their capital investment, which means offloading in a port that is as close to fishing grounds as possible so as to maximize fishing days rather than sailing for additional days simply to offload (especially in an era of very high fuel costs).

Much more problematic in the extension of global sourcing RoO to other EPAs is the position of the European Community on the matter. In the letter by Trade Commissioner Mandelson discussed above, Mandelson emphasizes that in offering global sourcing fisheries RoO, the EU “did so *specifically* and *only* for the Pacific, in response to what [the PACP] said was a decisive issue” (Mandelson, 2008a; author’s italics).⁵⁵ He also noted the difficulties that the Commission had in getting global sourcing RoO past certain EU Member states and representatives of EU-based industry. This last point is certainly true as, in respect to the EU tuna industry, allocation of global sourcing RoO raised firm opposition, including allegations by EU industry that it would lead to the influx of IUU caught fish from PACP-based processing firms (a position that, in light of strict EU SPS measures, is verging on scaremongering).

Limitations of global sourcing RoO: The positive implications of PACP IEPA global sourcing RoO for fish are outlined in detail in Section 2.2.2. A structural constraint in the practical application

of global sourcing RoO is the supply of SPS-compliant fish, which is limited globally to the total number of fishing vessels that are registered and approved by DG SANCO (Section 3).

Inconsistency in European Community treatment of territorial waters/EEZ: The articles on origination only allow automatically qualifying products to be caught in an EPA country’s territorial waters, whereas those on the leasing/chartering of vessels limit operations to that country’s EEZ. The question here is clear: why does the European Community delineate territorial waters as the legitimate area of national jurisdiction in one component of RoO for fish, but the EEZ in another? In addition, the European Community should explain the basis in international law for its position that fish caught in a coastal state’s EEZ (even if it is landed locally) is non-originating.

Limitations to the expansion of automatic origination to the EEZ: Even if demands that fish caught in a country’s EEZ should be wholly originating (regardless of vessel ownership, registration, etc.) were accepted by the European Community, fishing fleets within a given EPA state would only be able to target stocks based within this sovereign zone: they would not be able to follow commercially valuable highly migratory and straddling species (Section 2.1.3).

Limitations on inter-EPA fish trade: Due to non-compatible RoO regimes, trade in wholly obtained fish between EPA configurations is not permitted if the importer wants to meet EU preference arrangements. In addition, even within existing regional integration organizations, cumulation is restricted by the limited signing of IEPAs. For non-signatories no cumulation is possible as they now fall under market access governed by the EU GSP regime, which has only very limited provisions on cumulation. Although it is unlikely in the short to medium term that one EPA region will develop sufficient fishing capacity to supply another with wholly originating fish (such trade between ACP sub-regions was fairly limited under the CPA), the possibility that this might occur still remains. However, whether or not such a development occurs before the erosion of EU trade preferences

under NAMA negotiations or via EU negotiation of FTAs with competing developing countries (Campling 2008) is a contingency that would have to be considered.

What is the possible European Community position in future reviews of RoO for fish? As noted, all of the goods agreements contain a provision to renegotiate RoO at a later date (either within negotiations for a comprehensive EPA or within a period ranging from 3 to 5 years after the initialling of an IEPA). Most ACP negotiators have interpreted this as meaning that market access improvements can be explored through RoO reform. From the perspective of the European Community however, this may be a very different interpretation: one that opens the door for the implementation of the value added method proposed by DG Taxud (2005).⁵⁶ According to a DG Trade note to EU Member states:

The EPA text will establish *that these origin rules are of a transitional nature, pending the general reform of the EU preferential RoO which it is intended should be based on the value added system*. A revision clause shall be negotiated to establish that, within a period of time to be agreed upon, the EPA origin rules will be re-examined with a view to move towards the reformed rules of origin. (DG Trade, 2007d: 2; author's italics).

Similarly, in a letter to EU industry consulting on proposed changes to RoO under EPAs in June 2007, the European Community stated explicitly that EPA RoO should “be designed with all the flexibility required to take account of the economic, social and environmental constraints of the ACP countries concerned and of their capacity to adapt to the new trading environment *while leaving some room for manoeuvre to attract them to the VA [value added] approach later on*” (DG Trade, 2007b; author's italics).

Although the proposal by DG TAXUD (2005) on the value-added method has encountered significant resistance from other DGs and from EU fishing industry (EC Inter-service Group, 2006; ANFACO, 2007), the proposal remains a key element for the reform of EU RoO under its GSP regime and in future FTA negotiations with developing countries. Whatever happens under this reform process, it is highly unlikely that EU GSP RoO for fish will be an improvement on current IEPA rules, and certainly not compared with those available to the PACP for tuna products.

Despite this context and the relatively limited bargaining power of the EPA regions (especially since offers on goods have in most cases already been agreed), Article 37(7) of the Cotonou Agreement stands:

Negotiations of the economic partnership agreements shall aim notably at establishing the timetable for the progressive removal of barriers to trade between the Parties, in accordance with the relevant WTO rules. On the Community side trade liberalization shall build on the *acquis* and shall aim at improving current market access for the ACP countries through *inter alia*, a review of the rules of origin.

In addition to this prior commitment, it is difficult to see how the European Community will be able to push through the value added method during negotiations for a comprehensive EPA (for EAC and ESA) or within the 3- to 5-year deadline for review (for CARIFORUM, the Pacific and SADC) in light of the fact that, unlike Cotonou, EPAs are reciprocal and future reforms will thus have to be agreed between all parties. For example, Article 8 of the PACP IEPA states explicitly that the RoO review process will identify areas for reform “in the light of the development needs of the Pacific States” (the same language is used in the EAC and ESA IEPAs).

ANNEX A: SENSITIVE FISH AND FISH PRODUCT LISTS IN IEPAS

Table 6. Sensitive fish and fish product lists in IEPAs

EPA region/country	Fish product excluded (HS chapter)	Rationale for exclusion
CARIFORUM	Fresh and processed fish products	
Central Africa -Cameroon	Fish (03 and 16)	
EAC	Fish (03 and 16)	Infant industry
ESA - Seychelles	Fish (03 and 16)	Domestic protection
ESA - Zimbabwe	None	
ESA - Mauritius	Fish (16)	Domestic protection
ESA - Comoros	Fish (03 and 16)	
ESA - Madagascar	Fish (03 and 16)	
Pacific - Papua New Guinea	Non-agricultural processed goods	Infant industry; maintenance of fiscal revenues
Pacific - Fiji	Non-agricultural processed goods	Infant industry; maintenance of fiscal revenues
SACU countries and Mozambique	Fish (16)	Infant industries; sensitive products
West Africa - Côte d'Ivoire	Fish (03)	
West Africa - Ghana	Fish (03 and 16)	Existing or infant industry; maintenance of fiscal revenues

Source: Adapted from the South Centre (2008: p. 8-9); additional and revised data from Stevens et al. (2008).

ANNEX B: FIRST-TRANCHE LIBERALIZATION COMMITMENTS FOR FISH AND FISH PRODUCTS IN IEPAS

Table 7. BLNS first-tranche liberalization commitments for fish

NTL code	Fish product	MFN ad valorem (%)	MFN specific
030311	Frozen sockeye salmon [red salmon] (<i>Oncorhynchus nerka</i>)	25	
030322	Frozen Atlantic salmon (<i>Salmo salar</i>) and Danube salmon (<i>Hucho hucho</i>)	25	
160411	Prepared or preserved salmon, whole or in pieces (excluding minced)		6c/kg
16041210	Frozen	25	25% or 200c/kg
16041290	Other		6c/kg
16041310	Sprats (<i>Sprattus sprattus</i>) in oil, in airtight metal containers		2.4c/kg net
16041315	Sardinella (<i>Sardinella</i> spp.), in airtight metal containers		2.4c/kg net
16041380	Other, frozen	25	25% or 200c/kg
16041390	Other		6c/kg
16041410	Frozen	25	25% or 200c/kg
16041490	Other		6c/kg
16041510	Frozen	25	25% or 200c/kg
16041520	In airtight metal containers, not frozen		6c/kg
16041590	Other		6c/kg
160416	Prepared or preserved anchovies, whole or in pieces (excluding minced)	25	
16041920	Horse-mackerel (<i>Trachurus trachurus</i>), in airtight metal containers, not frozen		6c/kg
16041990	Other		6c/kg
16042010	Fish paste	25	16.5c/kg with a maximum of 25%
16042030	Other anchovies	25	
16042040	Other sardines (pilchards) (<i>Sardinops</i> spp.), mackerel and horse-mackerel (<i>Trachurus trachurus</i>), in airtight metal containers		6c/kg
16042090	Other		6c/kg
16043010	Caviar	30	
16043020	Caviar substitutes	27	
16051080	Other, in airtight metal containers		5.5c/kg

16051090	Other		5.5c/kg
16052080	Other, in airtight metal containers		5.5c/kg
16052090	Other		5.5c/kg
16053090	Other	30	
16054080	Other, in airtight metal containers		5.5c/kg
16054090	Other		5.5c/kg
16059020	Other molluscs, in airtight metal containers		5.5c/kg
16059030	Other molluscs		5.5c/kg
16059040	Other aquatic invertebrates, in airtight metal containers		2.75c/kg
16059090	Other		2.25c/kg

NB: BLNS first tranche includes only fish.

Source: Adapted from Stevens et al. (2008: 47-48)

Table 8. Côte d'Ivoire first-tranche liberalization commitments (2008–2012) on fish (all products have a 10 percent tariff)

NTL code	Fish product	Average national imports 2004-06 (USD1000)
0303420000	Frozen yellow-fin tunas (<i>Thunnus albacares</i>)	24 922
0303430000	Frozen skipjack or stripe-bellied bonito (<i>Euthynnus (Katsuwonus) pelamis</i>)	8268
0303490000	Frozen tunas of the genus <i>Thunnus</i> (excluding <i>Thunnus alalunga</i> , <i>Thunnus</i>)	1396
0303500000	Frozen herrings (<i>Clupea harengus</i> , <i>Clupea pallasii</i>)	1123
0303740000	Frozen mackerel (<i>Scomber scombrus</i> , <i>Scomber australasicus</i> , <i>Scomber</i>)	1328
0303790000	Frozen freshwater and saltwater fish (excluding salmonidae, flat fish, tunas)	11 463

Source: Adapted from Stevens et al. (2008: 18)

Table 9. Seychelles first-tranche liberalization commitments (2013) for fish

NTL code	Fish product	Tariff	Average national imports 2004-06 (USD1000)
030222	Fresh or chilled plaice (<i>Pleuronectes platessa</i>)	100	0.2
030223	Fresh or chilled sole (<i>Solea</i> spp.)	100	-
030229	Fresh or chilled flat fish (pleuronectidae, bothidae, cynoglossidae, soleidae)	200	-
030231	Fresh or chilled albacore or longfinned tunas (<i>Thunnus alalunga</i>)	200	-
030232	Fresh or chilled yellowfin tunas (<i>Thunnus albacares</i>)	200	-
030233	Fresh or chilled skipjack or stripe-bellied bonito	200	0.04
030239	Fresh or chilled tunas of the genus <i>Thunnus</i> (excluding <i>Thunnus alalunga</i> , <i>Thunnus</i>)	200	-
030240	Fresh or chilled herrings (<i>Clupea harengus</i> , <i>Clupea pallasii</i>)	200	-
030250	Fresh or chilled cod (<i>Gadus morhua</i> , <i>Gadus ogac</i> , <i>Gadus macrocephalus</i>)	100	-
030261	Fresh or chilled sardines (<i>Sardina pilchardus</i> , <i>Sardinops</i> spp., sardinella)	100	0.02
030262	Fresh or chilled haddock (<i>Melanogrammus aeglefinus</i>)	100	-
030263	Fresh or chilled coalfish (<i>Pollachius virens</i>)	100	-
030266	Fresh or chilled eels (<i>Anguilla</i> spp.)	100	-
030270	Fresh or chilled fish livers and roes	100	-
030321	Frozen trout (<i>Salmo trutta</i> , <i>Oncorhynchus mykiss</i> , <i>Oncorhynchus clarki</i>)	100	-
030322	Frozen Atlantic salmon (<i>Salmo salar</i>) and Danube salmon (<i>Hucho hucho</i>)	100	5
030331	Frozen lesser or Greenland halibut (<i>Reinhardtius hippoglossoides</i>), Atlantic halibut	100	-
030332	Frozen plaice (<i>Pleuronectes platessa</i>)	100	-
030333	Frozen sole (<i>Solea</i> spp.)	100	-
030339	Frozen flat fish (pleuronectidae, bothidae, cynoglossidae, soleidae,)	200	-
030341	Frozen albacore or longfinned tunas (<i>Thunnus alalunga</i>)	200	-
030342	Frozen yellowfin tunas (<i>Thunnus albacares</i>)	200	-

030343	Frozen skipjack or stripe-bellied bonito (<i>Euthynnus (Katsuwonus) pelamis</i>)	200	-
030349	Frozen tunas of the genus <i>Thunnus</i> (excluding <i>Thunnus alalunga</i> , <i>Thunnus albacares</i> .)	200	70 303
030360	Frozen cod (<i>Gadus morhua</i> , <i>Gadus ogac</i> and <i>Gadus macrocephalus</i>)	100	0.01
030371	Frozen sardines (<i>Sardina pilchardus</i> , <i>Sardinops</i> spp.), sardinella (<i>Sardinella</i> spp.)	100	-
030372	Frozen haddock (<i>Melanogrammus aeglefinus</i>)	100	-
030373	Frozen coalfish (<i>Pollachius virens</i>)	100	-
030376	Frozen eels (<i>Anguilla</i> spp.)	100	-
030377	Frozen sea bass (<i>Dicentrarchus labrax</i> , <i>Dicentrarchus punctatus</i>)	100	-
030378	Frozen hake (<i>Merluccius</i> spp., <i>Urophycis</i> spp.)	100	-
030380	Frozen fish livers and roes	100	0.4
030551	Dried cod (<i>Gadus morhua</i> , <i>Gadus ogac</i> , <i>Gadus macrocephalus</i>), whether or not	50	-
030559	Dried fish, salted, not smoked (excluding cod and other fillets)	50	-
030561	Herrings (<i>Clupea harengus</i> , <i>Clupea pallasii</i>), salted or in brine only (excluding fillets)	50	0.1
030562	Cod (<i>Gadus morhua</i> , <i>Gadus ogac</i> , <i>Gadus macrocephalus</i>), salted or in brine only	50	-
030563	Anchovies (<i>Engraulis</i> spp.), salted or in brine only (excluding fillets)	25	0.3
030613	Frozen shrimps and prawns, whether in shell or not, including shrimps and prawns	100	25
030619	Frozen crustaceans, fit for human consumption, whether or not in shell	50	1
030623	Shrimps and prawns, whether in shell or not, live, dried, salted, or in brine,	100	-
030751	Live, fresh or chilled octopus “octopus spp.”, with or without shell	25	-

Source: Adapted from Stevens et al. (2008: 37-38)

ANNEX C: POTENTIAL ACP PREFERENCE EROSION FOR FISH AND FISH PRODUCTS UNDER THE DOHA ROUND

The European Community has submitted a list of sensitive products to the negotiating group on NAMA for consideration for additional flexibilities. This is provided in Annex II to the draft chair's text in February 2008 (see TN/MA/W/103). The fish and fish products requested by the European Community are shown in Table 10.

Table 10. Fish and fishery products in EC submission of sensitive products

Tariff line	Indicative product description
0302.32.90	Yellowfin tunas (<i>Thunnus albacares</i>), fresh or chilled, other than for the industrial manufacture of products of heading 16.04
0302.69.99	Other fish, fresh or chilled, excluding livers and roes
0303.79.98	Other frozen fish
0304.10.38	Other fish fillets and other fish meat, fresh or chilled
0304.20.19	Frozen fillets, of other freshwater fish
0304.20.94	Other frozen fillets
0306.13.50	Shrimps of the genus <i>Penaeus</i>
0306.13.80	Other shrimps and prawns
0307.49.18	Other cuttle fish (<i>Sepia officinalis</i> , <i>Rossia macrosoma</i> , <i>Sepiola</i> spp.), frozen
0307.59.10	Other octopus (<i>Octopus</i> spp.), frozen
1604.14.11	Tunas and skipjack, in vegetable oil
1604.14.16	Tunas and skipjack, fillets known as "loins"
1604.14.18	Other preserved or prepared tunas and skipjack

However, the additional "flexibility" afforded here is simply an additional 2 years on top of the current 5-year phase-out for developed country tariffs. Table 11 provides an overview of projected outcomes using the example of canned tuna and tuna loins where the EU bound rate is 25 percent (the applied rate is 24 percent). It applies the likely range of the Swiss Formula as detailed in the draft chair's text.

Table 11. EU import tariffs on processed tuna post-NAMA

	Starting duty 25%	Starting duty 25%	Starting duty 25%	Starting duty 25%
Formula coefficient	8		9	
Year 1	21.22	22.30	21.32	22.37
Year 2	17.44	19.60	17.64	19.74
Year 3	13.66	16.90	13.96	17.11
Year 4	9.88	14.20	10.28	14.49
Year 5	6.10	11.50	6.60	11.86
Year 6		8.80		9.23
Year 7		6.10		6.60
Final EU tariff rate	6.10	6.10	6.60	6.60
Annual reductions	3.78	2.70	3.68	2.63
% cut overall	76%		74%	

Source: Campling, Havice and Primack (2007). The coefficient range remains unchanged in the revised draft of the NAMA chair's text (TN/MA/W/103, 8 February 2008).

NOTES

1. For an important political analysis of the rigidity and (arguably) cynical nature of European Community negotiation tactics, see Stevens (2008).
2. With the 1957 Treaty of Rome, DG Trade was granted full competence to negotiate the vast majority of the EU's external trade policy. The major exceptions to this rule are issues such as public procurement, which are a combination of EU and national competence (Woolcock, 2005: 379). DG Fish has been solely authorized to negotiate all EU third-party access agreements since 1976 (Lequesne, 2005: 372). In short, no other EU body (including national governments) has the mandate to negotiate access agreements. It is precisely this division of administrative and political labour that led DG Trade to argue that it could not negotiate a fisheries framework agreement with ESA or a multilateral fisheries partnership agreement with the PACP.
3. For background and analysis of the proposed MFPA, see Cartwright (2004) and Braxton (2006).
4. It is worth noting that the European Community itself had proposed a similar multilateral access agreement in 1997-98, but the PACP refused. For an excellent overview of interests and dynamics here, see Tarte (2002).
5. Although beyond the scope of this paper, it is important to note that the network of European Community access agreements with ACP states (known as fisheries partnership agreements) play an important role in the (in)ability of ACP fishing interests to maximize their potential catch and, thus, export of fish to EU (and other) markets.
6. The CARIFORUM EPA lays out the specific safeguard measures under Part II, Chapter 2, Article 3(2), which are identical to the other IEPAs considered here: "Those safeguard measures of the importing Party may only consist of one or more of the following: (a) suspension of the further reduction of the rate of import duty for the product concerned, as provided for under this Agreement; (b) increase in the customs duty on the product concerned up to a level which does not exceed the customs duty applied to other WTO Members, and (c) introduction of tariff quotas on the product concerned."
7. For the CARIFORUM EPA, these fall under Chapter 2, Article 3, Paragraphs 7(b-d), which may be applied for a maximum period of 200 days (Paragraph 8) and are subject to prescribed reporting requirements (Paragraph 9).
8. As an aside, it is worth noting the firm argument by Bernal and Hampton (2008: 9-10) on the logic behind asymmetrical safeguard mechanisms in EPAs: "It is important that the EPA safeguard mechanism is asymmetrical meaning that only the ACP can invoke the measure against the EU. This is justified by the difference in the productive sectors of the EU and the ACP. Moreover, it is unlikely that EU imports from the ACP may harm the EU's agriculture sector whereas the likelihood of ACP countries' agriculture being affected by EU's imports is real ... [T]he WTO rules as they stand today, do not prevent such flexibilities from being granted to the ACP in the context of the EPAs".
9. For example, Article 21(2) of the PACP IEPA lays out the triggers for the legal implementation of specific safeguard measures as (the other IEPAs are similar if not identical): (a) "serious injury to ... domestic industry"; (b) "disturbances in a sector or industry ... which could bring about serious deterioration in the economic situation"; and (c) "disturbances in the markets of agricultural ... products."
10. In addition, according to the EC, the infant industry provision in the PACP "safeguard is more flexible than in other agreements to take account of the specific development interests of these countries" (Council of the EU General Secretariat, 2007c).

11. In the context of this discussion of RoO, a derogation is a pre-specified value or quantity of a country's product that may qualify as "originating" despite not fulfilling the standard rules of origin.
12. Again in the context of this discussion, cumulation is where a preference receiving country is permitted to use materials from other specified countries, which will then be considered as locally sourced when establishing the "originating" status of the final product.
13. For a detailed overview of fisheries RoO, including an explanation of key terminology and PACP concerns during the process of negotiating EPAs, see Campling *et al.* (2007: Chapter 6).
14. For a range of other critiques of EU RoO for fish, see Block and Grynberg (2005), Campling, Havice and Ram-Bidesi. (2007:56-70) and Rampa (2004).
15. As pointed out by Eckart Naumann (2008: 7): "the relevant [RoO] provisions are, by and large, similar to those in Cotonou"; however, "a few changes have been made to the text and affect mainly the fishing industry".
16. A major study commissioned by the EC assessing the relative merits of applying the value added method to all EU preferential trade agreements - as initially proposed by DG TAXUD (2005) - only emerged for consultation among the EC Inter-service group in mid-2006 (Cadot *et al.*, 2006). The subsequent assessment of the implications of the value added method for fish products commissioned by DG FISH was released in June 2007 (Oceanic Development-Megapesca, 2007), which was critical of the arrangement in relation to fisheries. As an aside, the value added method (favoured by DG TAXUD) was far from universally accepted by EU fishing interests. For example, the EUROTHON lobby group declared that the value added method was against their interests. It is likely that their commercial concern is three-fold: (i) that it will limit the competitiveness of EUROTHON member-owned factories in five African states; (ii) that loins imported from Spanish- and Italian-owned (or part-owned) facilities in GSP+ countries in Latin America (i.e. Columbia, Ecuador, etc.) will not qualify for the 24 percent margin of preference if they are required to add 40 percent to the value of the product; and (iii) the approach is likely to prove administratively burdensome (e.g. in terms of accounting techniques and personnel hours) (Campling, 2006).
17. It is also worth noting that during this stage of discussions, different innovative proposals were discussed. A paper commissioned by the Kenyan Ministry of Trade and Industry asserted sovereignty over all fish caught in its EEZ, which should therefore be considered as wholly originating (the EEZ controversy is discussed in Section 2.1.3). The paper went on to argue for greater benefits to the ACP from the crewing and ownership criteria and, on the latter, discussed "toughening the 50 percent rule" (Keplotrade, 2007). At the same time, Seychelles put forward an informal draft proposal for an annual derogation at 15 percent of the country's exports to EU in the previous year (to replace the value tolerance and automatic derogation under Cotonou), which would thus automatically move upwards with annual increases in production. The major benefits of such an approach are that the proposed derogation system would: (i) be permanently allocated to each EPA state (unlike the Cotonou automatic derogation which was re-allocated annually by the ACP); (ii) not require the complex requirements, high bureaucratic/administrative costs and inflexibility of the Cotonou value tolerance rule; (iii) be applicable to all EU27 states, and not only those states that accept goods under the latter rule (i.e. the UK); and (iv) be a more a flexible measure (not like static automatic derogation) and thus allow for annual growth in production. However, if the procedures within the Cotonou value tolerance rule were substantially liberalized and the Cotonou automatic derogation doubled, as proposed by Mauritius and promoted by ESA negotiators (Pearson, 2007), then a similar outcome to the Seychelles proposal would be likely for all parties.

18. The text cited here is from the ESA IEPA, Chapter II, Article 13.
19. Personal communications, ACP industry representatives, 2006 and 2007.
20. An additional change is in the new reference to aquaculture, but the specifics of this aspect are beyond the scope of this study. Simply to note that Paragraph (e) is expanded by adding the following sub-condition not present in Cotonou: “products of aquaculture, including mariculture, where the fish is born and raised there” (Naumann, 2008: 7).
21. This point was picked up from Naumann (2008: 12).
22. According to ANNEX IX to Protocol 1 of the ESA IEPA, OCTs include Greenland, New Caledonia and Dependencies, French Polynesia, French Southern and Antarctic Territories, Wallis and Futuna Islands, Mayotte, Saint Pierre and Miquelon, Aruba, Netherlands Antilles, Anguilla, Cayman Islands, Falkland Islands, South Georgia and South Sandwich Islands, Montserrat, Pitcairn, Saint Helena, Ascension Island, Tristan da Cunha, British Antarctic Territory, British Indian Ocean Territory, Turks and Caicos Islands, and British Virgin Islands.
23. Personal communications, ESA government officials, 2008.
24. Papua New Guinea developed a proactive response to this limitation through a redefinition of its archipelagic waters. It obtained a redefinition of Papua New Guinea’s “territorial sea” to incorporate the territorial sea surrounding Papua New Guinea’s entire archipelago. In order to apply this redefinition, Papua New Guinea utilized standard procedures under UNCLOS to declare its archipelagic waters sovereign territory. To receive this status, a country declares the waters sovereign and submits the claim to the Division of Oceans and Law of the Sea at the UN (a collection house for declarations). If there is no dispute, the declaration becomes law. Before PNG’s application, no other state had made use of it in relation to EU RoO. According to one legal specialist from the UN Food and Agriculture Organization (FAO) : “It’s simply putting forward a clear argument, Fiji could do the same” (personal communication, 2006). The major problem with this otherwise simple process is that it can be complicated by different legal interpretations (adapted from Campling, Havice and Ram-Bidesi., 2007:23-35).
25. In addition, the incentive for fleet development resulted in the formation of several state-owned and operated ACP fleets, which were generally (but not always) financial failures and became a drain on already fiscally-squeezed governments. See, for example, Schurman (1998). But, at the same time, the vessel ownership requirements also encouraged foreign investors to transfer ownership (at 50 percent or above) local entrepreneurs. For example, it is speculated that this was the rationale for Taiyo Gyogyo’s provision of 51 percent ownership of Solomon Taiyo to the government (Grynberg, 1995: 82).
26. Multiple interviews in 2006 and 2007 with representatives of tuna processing firms in the ESA and Pacific regions report that they pay a price premium on “originating fish” from the EU DWF. This is because boat owners know that ACP canneries need originating fish in order to utilize the Cotonou preference, thereby allowing them to capture a share of the value of the preference through higher fish prices. Contrary to this being a particularly controversial point, the US International Trade Commission explicitly recommended EU-style RoO for canned tuna exports under the Andean Trade Preferences Act (ATPA), stating that such a “restriction would be *similar* to one that has long been in place in the EU version of ATPA, which has *provided benefits mainly to the Spanish tuna industry*” (USITC, 2002: 10; author’s italics). The bargaining power of the EU DWF is relatively strong because they are also able to sell their catch at a premium to other regions requiring EU RoO compliant tuna. However, this point should not be overstated as the EU DWF also benefits from quick assured sales to these ESA canneries so bargaining is not uneven (adapted from Campling and Doherty, 2007: 11).

27. CARIFORUM-EC EPA, “Declaration of the CARIFORUM States Relating to Protocol I on the Origin of Fishery Products from the Exclusive Economic Zone”.
28. CARIFORUM-EC EPA, “Joint Declaration Relating to Protocol I on the Origin of Fishery Products”. See also CRNM (2008).
29. SADC-EC IEPA, “Declaration from Namibia on the origin of fisheries products”. This declaration differed from a previous SADC non-paper on EPA RoO, which defined wholly obtained fish as “products of sea fishing and other products taken from the sea outside the territorial waters of a Party by a vessel flying the flag of an EC EPA Party or of a SADC EPA Party” (SADC, 2007: Article 4). This approach does away with reference to the location of catch and confers origin through the vessel, in this case using the more problematic mechanism of vessel flag alone.
30. The outline of the practical application of this rule is based upon personal communications with ACP, EU and Thai industry representatives and ESA government officials, 2006 and 2007.
31. See also Naumann (2008: 13)
32. In this case, it allows a processor to mix originating and non-originating fish (which would still have to be compliant with EU SPS measures) and thus offers a minor concession in situations where RoO compliant fish are in shorter supply (e.g. it might be of use during periods of known seasonal fluctuation and decline in, for example, EU-caught fish). But this scenario assumes that there is sufficient supply of originating fish to meet the 85 percent value requirement in the first place, that the processor has enough (or any) cold storage to keep sufficient stocks of originating fish, and that it had enough previous supply to accumulate such stocks.
33. The following is based upon correspondence with Eckart Naumann. I am very grateful for his insights here.
34. Interestingly, initial European Community documents summarizing the global sourcing offer to the PACP limited the scope to fish caught within PACP EEZs thus recognizing the EEZ as a legal territory. Of course, this was merely a draft internal document and as such cannot be used to represent “European Community” thinking, but it does serve to highlight the tensions within the EC (between directorates?) on the distinction between territorial waters and EEZ in preferential RoO touched upon in Section 2.1.3.
35. For example, “there are already several mechanisms in place to address IUU fishing activity in the WCPO, including the WCPFC measure prohibiting Commission members from licensing vessels flagged to non-Commission members and Cooperating non-Members, the regionally agreed harmonized minimum Terms and Conditions of Access, and the FFA’s Vessel Monitoring System. There are additional steps being taken in the WCPFC, such as the vessel catch documentation system” (Campling, 2007: 4-5). Similar points were highlighted by DG Trade itself: “With regard to the conservation of fish stocks in the Pacific area, a relaxation of the rules of origin for increasing processing within the PACP (instead of Pacific fish currently being processed in third countries) will have very likely no impact on the fishing activity and thus on the stocks. Moreover, the overall catch in the region is subject to limits through the regional conservation and management arrangements. As for the illegal unregulated and unreported (IUU) fishing, specific measures in the framework of the PACP-EPA financed by EDF will support conservation of fish stocks and the fight against illegal fishing” (DG Trade, 2007c: 14).
36. See also the report on the exchange of letters posted on www.bilaterals.org: “Pacific trade ministers slam EU Trade Commissioner Mandelson”, 18 April 2008.

37. On 29 March 2008 the Directorate-General for Fish (DG FISH) was renamed the Directorate-General for Maritime Affairs and Fisheries (DG MARE).
38. Personal communications, ESA government officials and industry representatives, 2007.
39. An application was lodged through the ACP. For fish products, DG FISH is consulted. The Directorate-General for Taxation and Customs Union (DG TAXUD) then examined the conditions on such criteria as a 45 percent minimum value added and no serious injury to an economic sector in the EU. A delegation from the European Community would make a proposal to the Council of Ministers, which was mandated to make the final decision. The ACP-EU Customs Cooperation Committee then decided. The European Community was given 75 days to process the request: if it failed to reach a decision by then, the product is accepted automatically (Cotonou Agreement, Annex V, Protocol 1, Title V, Article 38: 9; personal communication, EC official, 2006; Cosgrove Twitchett, 1981: 48; Wallace, 2005: 52).
40. ESA-EC IEPA, Protocol 1, Article 42. See also Council of the EU General Secretariat (2007b).
41. Personal communications, ACP and European Community officials, 2006 and 2007.
42. Personal communication, European Community official, 2006.
43. The neighbouring developing countries for Africa are: Algeria, Egypt, Libya, Morocco and Tunisia; and for the Caribbean: Colombia, Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Panama, and Venezuela (Annex II of Council Regulation (EC) no. 1528/2007, Appendix 9). The CARIFORUM-EC EPA on cumulation incorporates a redrafting of CPA provisions to expand the list of “neighbouring countries” to include Mexico (DG Trade, 2008a: 19).
44. The CPA coverage of cumulation between neighbouring developing countries contained the specific caveat that it “shall not apply to tuna products classified under Harmonized System Chapters 3 or 16” (Cotonou Agreement, Annex V, Protocol I, Article 6.11).
45. For analysis of the application of EU SPS measures to the ACP fisheries sector (with specific reference to tuna processing in the ESA region), see Campling and Doherty (2007) and Doherty and Campling (2007). For an overview of these measures in relation in inland fisheries in the ACP, see Doherty (2007).
46. Regulation 853/2004 on Specific Hygiene Rules for Food of Animal Origin [2004] OJ L226/22.
47. SFP (Strengthening Fishery Products Health Conditions in ACP/OCT Countries) is a 5-year programme financed by the European Development Fund on behalf of the ACP countries and the OCT: competent authorities, test laboratories, the fish industry and small-scale fisheries. The aim of the programme is to improve the sanitary conditions for fishery products as food for human consumption so as to increase the income of those countries by developing trade and optimal use of available resources. Details on the SFP programme are obtained from www.sfp-ACP.eu.
48. Interviews with African and Pacific fisheries officials and industry and European Community officials, 2006 and 2007.
49. The following draws upon Campling (2007a: 4-5)
50. For details on the EU’s new proposal, see DG Fish “Illegal Fishing - A New Strategy”. <http://ec.europa.eu>

51. For a detailed analysis of various forms of preference erosion for the ACP tuna sector, see Campling (2008).
52. Complement ACP lobbying of the European Community over preference erosion are EU-based fishing and fish processing firms, which are often organized into lobby groups such as EUROTHON for the tuna sector and ANFACO for the Spanish seafood processing sector. On certain issues, especially erosion of EU tariffs for fish, their interests align with those of the ACP, whereas on others, such as liberalization of RoO for fish, they do not. See, for example, ANFACO (2007) and EUROTHON (2006, 2007a, 2007b).
53. Personal communications, ESA government officials, 2008.
54. Personal communication, ESA government official, 2008.
55. See also the report on the exchange of letters posted on www.bilaterals.org: “Pacific trade ministers slam EU Trade Commissioner Mandelson”, 18 April 2008.
56. The initial DG TAXUD proposal was that an item would require 40 percent value to be added within the contracting country for it to qualify for preferential access. The approach is calculated on the basis of net production costs (i.e. the 40 percent excludes the profit mark-up, marketing and telecommunications costs, etc.). However, if the fish were “wholly originating” as per the existing (or partly relaxed) RoO, the cost of the fish would count towards the “value added”, thus continuing to provide an incentive to processors to purchase EU DWF caught fish. For overviews and critiques of European Community proposals on the value added method see Campling, Havice and Ram-Bidesi . (2007: Chapter 6), Naumann (2005), Oceanic Development-Megapesca (2007), Oxfam (2006) and Stevens (2006).

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- Fisheries Access Agreements: Trade and Development Issues.
By Stephen Mbithi Mwikya, 2006.
- Market Access and Trade Liberalisation in Fisheries.
By Mahfuz Ahmed, forthcoming.
- The Use of Trade - and Market-Related Instruments to Promote Sustainable Fishing Practices.
By Cathy Roheim and Jon G. Sutinen, forthcoming.
- Aquaculture and Trade: Issues and Opportunities.
By Frank Asche and Fahmida Khatun, forthcoming.
- Fisheries, International Trade and Sustainable Development: A Policy Paper.
By ICTSD, forthcoming.

For further information, visit http://www.trade-environment.org/page/ictsd/projects/fish_desc.htm

ABOUT ICTSD

Founded in 1996, the International Centre for Trade and Sustainable Development (ICTSD) is an independent non-profit and non-governmental organisation based in Geneva. By empowering stakeholders in trade policy through information, networking, dialogue, well-targeted research and capacity building, the Centre aims to influence the international trade system such that it advances the goal of sustainable development.