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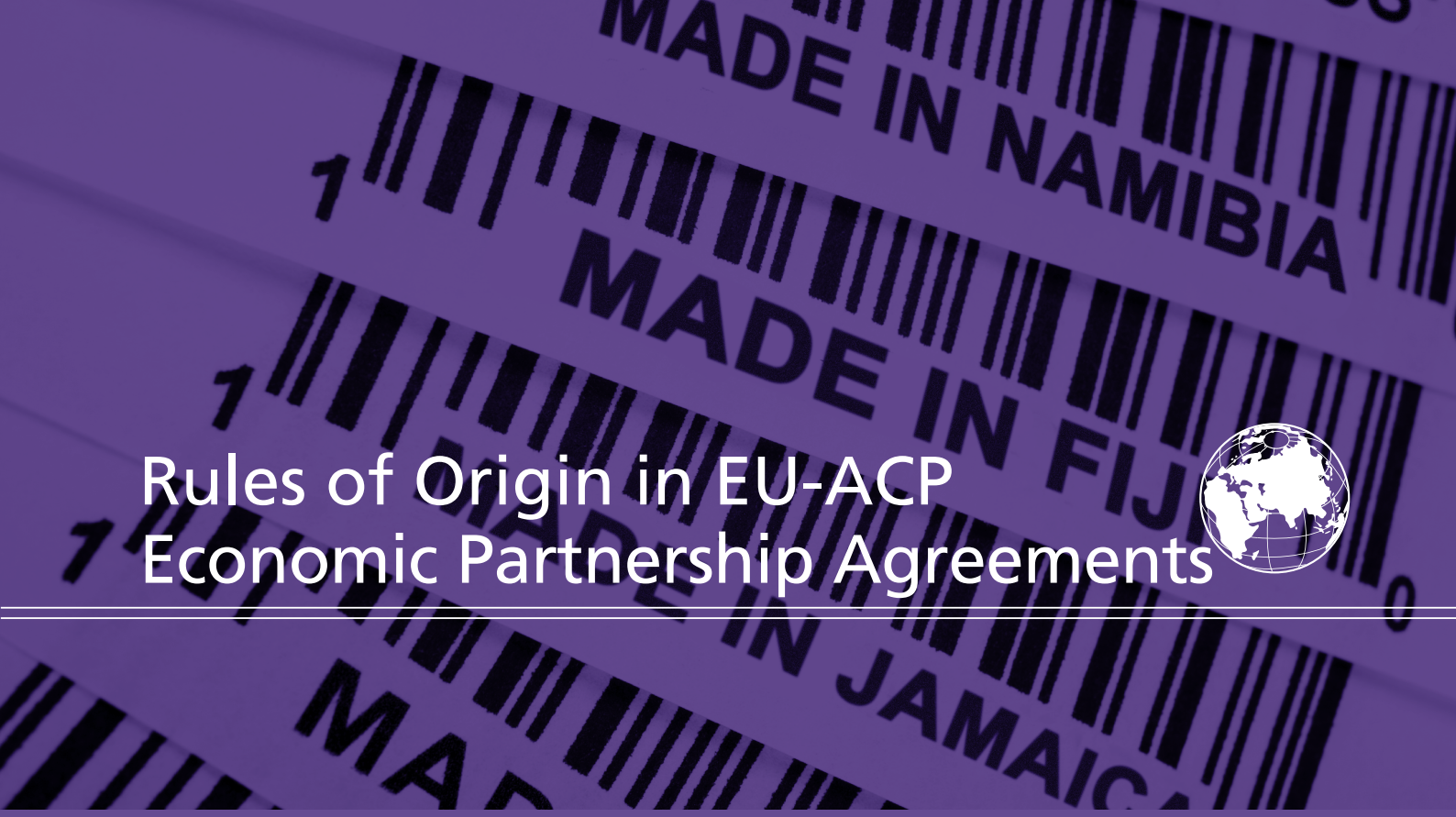

Rules of Origin in EU-ACP Economic Partnership Agreements

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ICTSD
International Centre for Trade and Sustainable Development

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LIST OF ABBREVIATIONS AND ACRONYMS

ACP	African Caribbean and Pacific
AGOA	African Growth and Opportunity Act
COMESA	Common Market for Eastern and Southern African States
CTH	Change in tariff heading
EAC	East African Community
EBA	Everything-but-Arms
ECOWAS	Economic Community of Eastern and Southern African States
EEZ	Exclusive economic zone
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa
EU	European Union
GSP	Generalized System of Preferences
HS	Harmonized System
IEPA	Interim Economic Partnership Agreement
OCTs	Overseas countries and territories
RoO	Rules of Origin
SADC	Southern African Development Community
SP	Specific processing
SPA	Sanitary and phytosanitary
VA	Value added
WTO	World Trade Organization

FOREWORD

Regional trade agreements (RTA) have become a distinctive feature of the international trading landscape. Their number has increased significantly in recent years, as WTO Member countries continue to negotiate new agreements. Some 200-odd agreements have been notified to the WTO, but the real number may be higher, as some are never notified to the multilateral bodies, and many more are under negotiation. As a result, an increasing amount of trade is covered by preferential arrangements, prompting many analysts to suggest that RTAs are becoming the norm rather than the exception.

Many regional pacts contain obligations that go beyond existing multilateral commitments, and others deal with areas not yet covered by the WTO, such as investment and competition policies, as well as with labor and environment issues. Regional and bilateral agreements between countries at different stages of development have become common, as have attempts to form region-wide economic areas by dismantling existing trade and investment barriers, an objective that figures prominently in East Asian countries' trade strategies.

Yet, the effects of RTAs on the multilateral trading system are still unclear. This is also true with respect to their impact on trade and sustainable development. RTAs represent a departure from the basic non-discrimination principle of the WTO and decrease the transparency of global trade rules, as traders are subject to multiple, sometime conflicting, requirements. This is particularly the case in relation to rules of origin, which can be extremely complex and often vary in different agreements concluded by the same country. Also, the case that WTO-plus commitments enhance sustainable development has yet to be proven. Indeed, it is not even clear whether RTAs enhance or hinder trade.

However, developed and developing countries alike continue to engage in RTA negotiations, and this tendency seems to have intensified recently, helped by the slow pace of progress in the multilateral trade negotiations of the Doha Round. Countries feel the pressure of competitive regional liberalization and accelerate their search for new markets. Thus, while most countries continue to formally declare their commitment to the multilateral trading system and to the successful conclusion of the Doha negotiations, for many, bilateral deals have taken precedence. Some countries have concluded so many RTAs that their engagement at the multilateral levels is becoming little more than a theoretical proposition.

Thus, the effort to gain a better understanding of the workings of RTAs and their impact on the multilateral trading system is a key concern of trade analysts and practitioners. Current WTO rules on regional agreements, mainly written in the late 1940s, do not seem well equipped to deal with today's web of RTAs. Economists dispute whether RTAs create trade, and political scientists try to explain the resurgence of RTAs using a mix of economic, political and security considerations. In some cases, the fear of losing existing unilateral non-reciprocal trade preferences provides the rationale for launching RTA negotiations, as in the case of the Economic Partnership Agreements (EPAs) negotiations between the European Union and its former colonies in the group of African, Caribbean and Pacific (ACP) countries. Many worry about the systemic impact of RTAs and question whether they are "building blocks" to a stronger and freer international trading system or in fact are "stumbling blocks" that erode multilateral rules and disciplines.

It is in this context that ICTSD has decided to initiate a research, dialogue and information programme aimed at filling the knowledge gaps and gaining a better understanding of the evolving reality of RTAs and their interaction with the multilateral trading system.

This paper, entitled "Rules of Origin in EU-ACP Economic Partnership Agreements" written by Eckart Naumann, is a contribution to this programme. The paper provides an analysis of different rules of origin that currently apply between the EU and the ACP countries in sectors like textile and clothing, and fisheries.

With the end of the Cotonou agreement and its replacement by the still incomplete EPAs, the rules of origin provisions applicable to exports from different ACP countries became ever more complex, but also less restrictive in some cases. For the ACP countries that were able to initial an Interim EPA, market access to the EU is provided for by an EU Council Regulation that guarantees the continuation of non-reciprocal preferences until the EPAs are implemented; this includes some specific rules of origin as well. For ACP countries that did not sign an Interim EPA, preferential market access to the EU falls within the provisions of the EU's Generalized System of Preferences (GSP) or the Everything but Arm's Initiative'(EAI), with their corresponding, different rules of origin.

Interestingly, as noted in the paper, in the treatment of textiles and clothing, as well as fish, the new rules of origin are less restrictive than was the case under the Cotonou Agreement. In the area of textile and clothing, a sector of great importance to the ACP countries, the new rules of origin require only a single transformation (instead of a two-stage transformation as before) in order for exported goods to qualify for preferential market access, which fulfils a long-standing request by ACP exporters. Also, for fish and fish products, a simplification of ownership and crew requirements linked to the vessel used to harvest fish means that some additional flexibility has been extended to ACP exporters. A far more fundamental change to the rules has been agreed with the Pacific Group, where countries that initialled an Interim EPA can now source fish from other regions and still qualify for preferential market access provided that the fish are landed and processed locally. This was also long sought by many ACP countries.

We expect that this paper, which deals with one of the most difficult and technical complex issues related to RTAs, together with the others in this series on regional trade agreements, will clarify some of the many questions posed by RTAs and help promote a better understanding of the workings of RTAs and how these agreements interact with the multilateral trading system.

Ricardo Meléndez-Ortiz
Chief Executive, ICTSD

EXECUTIVE SUMMARY

Rules of Origin (RoO) are the criteria that determine whether a product can be deemed to come from a particular country for trade purposes. This matters since duties and restrictions will often vary depending on the source of imports.

All governments require goods to have been ´substantially transformed´ in the country in question, however, additional criteria vary from country to country and include things like: percentage of value added, a specified processing operation, or whether the tariff classification changed.

RoO will determine whether imported products receive most-favoured-nation (MFN) treatment or superior terms of access under bilateral, regional, or preferential arrangements. In a globalizing world it has become even more important that a degree of harmonization is achieved in WTO Members' practices.

RoO form an integral part of preferential trade arrangements. Various methodologies are utilized by the EU-ACP RoO regime to determine substantial transformation in the exporting country, and most of the product-specific rules underlying EU-ACP trade relations have remained relatively unchanged over the past few decades beginning with Lomé 1. With the expiration of the World Trade Organization (WTO) waiver underlying the previous preferential trade regime, negotiations towards a reciprocal agreement reached an important milestone at the end of 2007 when the Cotonou Agreement expired, and new arrangements were put in place for some African, Caribbean and Pacific (ACP) countries.

Since no comprehensive RoO negotiations between the European Union (EU) and ACP countries took place prior to the expriation of the Cotonou Agreement, a slightly revised set of rules were included in interim provisions drawn up by the EU. Market access through a special Council Regulation paved the way for a continuation of non-reciprocal preferences for ACP exporters to the EU until such time that Interim Economic Partnership Agreements (IEPAs) were implemented. From the perspective of ACP countries, this means that different trade regimes with the EU are currently in force: for countries that agreed on an IEPA, export goods may enter the EU under the interim market access provisions, which contain some revised RoO. For countries that failed to conclude an IEPA, preferential market access has reverted to the provisions of the EU's Generalized System of Preferences (GSP)—or Everything but Arms (EBA) initiative—containing less favourable RoO than even under the Cotonou Agreement. As a result of these different configurations, there has also been an impact on intra-ACP cumulation, with GSP beneficiaries now effectively excluded.

The most important changes to the EU RoO for ACP countries concern the treatment of textiles and clothing, as well as fish. Both of these sectors are of great importance to the ACP countries. The changes to the clothing provisions are arguably the most fundamental and represent a significant paradigm shift on the part of the EU. Where previously ACP exporters had to fulfil a (loosely defined) two-stage transformation requirement locally, in effect cutting off exporters' access to key suppliers of competitive inputs contrary to the demands of global value chains, the revised rules require only a single transformation. This brings the requirements in line with preferences available in other major markets and fulfils a long-standing requirement by ACP exporters.

For fish and fish products, far smaller changes were made with respect to the majority of ACP countries. A simplification of ownership and crew requirements, linked to the vessel used to harvest fish, means that some additional flexibility has been extended to ACP exporters. Other changes include a product-specific tolerance for 15 percent non-originating fish across most

categories. A far more fundamental change to the rules has been agreed with the Pacific Group, where countries that initialled an interim agreement now benefit from being able to source non-originating fish provided it is landed and processed locally. This outcome mirrors an outcome long sought by many other ACP countries that have limited access to commercial fishing fleets or where seasonal conditions result in commercially viable fish not being available throughout the year for further processing by local exporters.

Apart from key changes to the RoO for textiles and clothing, and fish and fish products, smaller changes were made to the definition of "insufficient processing" through the addition of a number of processes that on their own do not confer origin irrespective of the product-specific rules listed in the main Chapter. The revised rules also contain a separate Chapter on derogations, which set out alternative origin requirements for certain agriculture and related products. While these are often very specific, they do offer some new flexibility to exporters of these product cateories.

1. RULES OF ORIGIN – THE ECONOMIC AND POLITICAL CONTEXT

1.1 What are RoO? Preference Margins and Trade Deflection

Rules of Origin (RoO) form an integral part of preferential trade arrangements between countries and define the level of processing that must take place locally before a product qualifies for more favourable market access. Therefore, RoO confer an economic nationality on export goods, which differs from a purely geographic nationality under which origin might simply be attributed to the country from which a good is shipped. Instead, RoO ensure that local processing, or local value added, goes beyond merely superficial operations in order to gain preferential trade status.

Rules of Origin can be divided into preferential and non-preferential RoO. The latter generally apply to all goods imported into a country and are used for statistical record keeping; to manage the levying of import duties; special trade measures (anti-dumping, quotas); labelling requirements; and so forth. Preferential RoO, the focus of this paper, relate to the origin requirements that are negotiated between countries as part of a preferential or free-trade area. Preferential RoO are often customized, and aside from the general principles (transparency, positive standards, etc.) do not fall within the ambit of the WTO Agreement on Rules of Origin.

While RoO are clearly used for other purposes, the original objective of preferential RoO is to prevent trade deflection. It could be argued that this is the only legitimate purpose of RoO. Trade deflection takes place when export goods are routed via a third country having more favourable market access to the final export destination, without any substantial processing or value-adding activities taking place there. Trade deflection would seriously undermine any preferential trading arrangement that has been negotiated between countries: the preference-giving country would lose import duties and there would be less incentive for producers and exporters for local value-adding activities when they could source goods and materials from lower-cost suppliers elsewhere (and tranship these to the export country under preference).

Evidence has shown that countries use RoO for purposes other than preventing trade deflection. RoO have emerged as a form of trade policy to regulate trade, and depending on the level of restrictiveness, to protect domestic interests. In non-reciprocal preferential trading regimes, for example the GSP, it remains the prerogative of the preference-giving country to tailor the RoO according to its own policy priorities (or exclude certain products altogether), while in reciprocal preferential trading arrangements, product exclusions or restrictive RoO would be used to effectively reduce the prospects for an expansion of bilateral trade in specific categories.

In the absence of import duties and quantitative restrictions, there would be little need for preferential RoO. The reason for this lies in the fact that the effectiveness of a preferential RoO stands in direct contrast with the margin of preference associated with exports of a particular product. A margin of preference refers to the difference in the treatment of exports when they are shipped under normal tariff relations—for example, subject to most-favoured nation (MFN) duties—compared with the more favourable treatment they receive when exported under preference (subject to compliance with the applicable RoO requirements). The higher the 'normal' duty or restrictiveness of quotas and other trade measures, the greater the incentive for a producer and exporter to comply with the RoO. Compliance with RoO can thus be considered the "cost" against which the "benefit" - trade preferences - must be measured.

In practice, therefore, preferential RoO are of particular relevance in categories where exporters might otherwise face high import duties. Where a preference-giving country has altogether removed import duties and other trade restrictions on a specific product, preferential RoO are no longer of any real consequence.

In the EU tariff regime, a number of product categories have seen MFN import duties reduced or abolished in recent years. However, they remain high in many other product categories, some of which are of great interest and importance to developing countries given their export profile and comparative advantage within these categories. Among these are the textiles and clothing sector, fish and fish products, and certain processed agricultural products. Product-specific RoO issues, especially developments and changes in the context of ACP-EU RoO, are discussed later.

1.2 RoO as a Trade Barrier

One of the key challenges that policymakers face involves designing RoO that offer the 'right' balance between producer flexibility (related to the sourcing of materials and processing obligations) and sufficient incentive for producers to add value locally. Compliant producers benefit through preferential market access. If RoO are overly restrictive (meaning producers have no or little access to third-country inputs), this undermines the respective preferential trade arrangement as exporters in countries with poor availability of competitively priced inputs would simply be unable to be competitive in the export market. Restrictive RoO can also have negative impacts on consumers and retailers through higher prices and a reduction in choice, which in turn is likely to have negative welfare effects. At the same time, if RoO are overly flexible there is a risk that an increase in trade would provide very little real benefit to the exporting country; if commercially astute, exporters would then simply source materials from the most competitive international sources without the obligation for significant local value added.

Where RoO have been drawn up on a line-by-line basis, as in the case of EU RoO, there is far more scope for customized local processing requirements that suit other political or economic objectives rather than simply ensuring that substantial transformation has taken place locally. Political economy aspects are discussed in the next section. The key point of departure in all respects would be what local processing would take place in the absence of any RoO in order to ensure maximum competitiveness in the export market; where RoO impose restrictions that depart substantially from a 'natural' outcome without restrictions, then it becomes necessary to measure any additional processing burden against the margin of preference when complying with the relevant RoO.

Rules of Origin impose compliance costs on exporters and customs authorities both in the exporting and importing country. RoO demand adherence to administrative requirements, including submission of proof to demonstrate compliance. Producers are required to maintain sufficient records of production processes and associated cost structures and undertake exporter registration. Delays associated with these processes represent an additional cost to producers (especially in countries with less developed and resourced customs infrastructures), and can themselves translate into a further trade barrier. Where exporters face different requirements under the respective RoO regimes of different export destinations, this has a further negative impact and acts as a trade barrier. Different RoO undermine the ability for exporters to achieve economies of scale, as different production processes may need to be employed for goods exported to different markets.

Where RoO impose local processing requirements that differ substantially from what would be commercially most feasible for exporters, they can be considered to be a trade barrier. However, this assessment must be made in conjunction with the prevailing import duty or other restrictions that would apply when not complying with the relevant RoO. Therefore, RoO are considered trade barriers when they impose restrictive local processing requirements on producers (that are out of line with commercial realities), in the presence of substantial margins of preference.

1.3 RoO and Political Economy Forces

Although preventing trade deflection remains the underlying objective of RoO, they also can be (and are) used to further national protectionist interests. While WTO commitments have generally led to a reduction in tariff-based trade barriers globally, especially in developed countries, RoO remain a powerful tool through which trade and industrial policies can be leveraged to provide different levels of protection from competition to domestic producers. This is partly facilitated by the fact that WTO law does not readily extend to the substance of preferential RoO and has been perpetuated through a proliferation of bilateral preferential trade arrangements over the past decade.

Where preferential RoO are between non-reciprocating trading partners, the design of RoO are the prerogative of the preference-giving country, which has a near exclusive say over the effective restrictiveness of the applicable origin requirements. In a similar vein, RoO negotiated as part of a preferential trade area between unequal trading partners, for example between developed and developing countries, have a greater likelihood of being tailored to serve domestic interests in the economically more powerful country than might be the case otherwise. Finally, RoO that are negotiated on a line-by-line basis using different methodologies by default remain the most vulnerable to political economy forces.

Political economy elements are impossible to quantify accurately, but they typically entail situations where domestic stakeholder interests directly - or through government policies - exert an undue influence on the outcome of a particular origin requirement than might otherwise be the case if the sole objective was to prevent trade deflection. In the absence of a binding international standard for preferential RoO, the extent to which a RoO outcome differs from one that is delinked from local vested interests is difficult to establish. As any local processing requirements become more restrictive, the burden on producers (exporters) becomes greater since increased local processing costs are likely to result from this. This is based on the assumption that any restrictions placed on processers (which affect their free choice to source) will always have a negative impact on the cost of doing business, and as a result on the competitiveness of the product(s). As a consequence of this producers are likely to lose some competitive advantage over competing producers in the importing country, as well as exporters in other countries with more favourable RoO requirements. This loss in competitive advantage is of course bound by the prevailing tariff and other restrictions imposed on exporters under normal trading conditions, usually represented by the MFN rate (traders may chose to ignore any RoO requirements and ship their goods under a country's normal trade rules). Any resultant loss in competitiveness through restrictive RoO may however be sufficiently large to threaten the viability of any exports. Producers in a country likely to be subjected to increased competition from within the preferential trade area thus have an incentive to lobby for RoO that are more restrictive.

So are restrictive RoO in anyone's interest? Incumbent competing producers (and their employees) in the importing country may have a vested interest in maintaining restrictive RoO, as additional competition flowing from more flexible RoO within a preferential trade agreement could harm their interests in the domestic market. In turn, they may lobby government and trade negotiators for a RoO position that offers them some form of protection against imports from certain countries. In a similar vein, upstream suppliers of goods and materials - for example fabrics and yarns - have a vested interest in and are directly impacted by the RoO for downstream products (garments, household textiles). In this example, restrictive RoO that compel producers to source a large proportion of their inputs locally will clearly be favourable for local suppliers of inputs, but not for downstream producers.

In a similar vein, a negative impact might also be felt by competing exporters located in third countries, whose trade could be displaced by

more favourable arrangements within a given preferential trade area (although arguably their political clout in influencing RoO in such a trade arrangement would be extremely limited). More realistically, when changes to the RoO or related trade preferences impact on a much broader range of countries, for example, on developing countries more generally or within a defined group, political economy influences might carry greater weight in the design of RoO.

Non-commercial interest groups (trade advocates, consumer groups, and others) also have a vested interest in trade negotiations and particularly in RoO. Restrictive RoO that throttle trade reduce the choices of domestic consumers and may have price-raising impacts. The political clout that these groups have as a collective determines the degree of influence they might yield in RoO negotiations.

To use the EU's RoO as an example, it has not escaped criticism that political economy forces have guided some aspects of its preferential RoO regime, especially in some areas. Here, standout sectors might include textiles and clothing, fish and processed fish products and some agricultural categories, as well as others. Textile and clothing sector rules, as analysed more closely later, have for decades been subject to a restrictive double-transformation requirement, as a result of which exporters in many developing countries were effectively prevented from exporting goods to the EU under preference (be it GSP, ACP or other RoO). For fish and fish products, onerous conditions relating to vessel, crew, and the location of the fishing activity meant that unless countries had a significant locally owned commercial fishing fleet or concluded cooperation or joint-venture agreements with EU operators, they were unable to export to the EU under preference. This provided a valuable level of protection to domestic EU operators, including its fishing fleets and processing facilities.

Not all rules that impose restrictions on the use of non-originating inputs can be attributed to vested interests and other political economy influences though. In some instances, the reason for restrictive origin requirements is a desire to provide incentives to the development of upstream industries and economies of scale. When producers are required to source local inputs this can have - at least in theory - important developmental benefits for a country. Any price premium (or other disadvantage) on local supplies would, however, need to be considered in the context of the prevailing preference margin for each product, which is considered to be the benefit derived from exporting under preference compared with normal trade rules (and subject to normal tariffs, quotas, and other restrictions). This form of development model has not been overly successful, since it throttles trade rather than creating a platform for local processing and vertically integrated industries. In the increasingly competitive and price-conscious international trading environment, trade rules that undermine natural business processes invariably also restrict international trade flows.

2. METHODOLOGICAL ASPECTS OF RULES OF ORIGIN – A FOCUS ON THE EU REGIME

2.1 How is 'Local Origin' Determined?

Given the growth in world trade and increased integration of global production and supply chains, the task of determining origin for international trade has become increasingly important. While a product is automatically considered to originate in a country if it is exclusively produced there, the reality today is that many final products consist of input materials that are sourced both from within and beyond a country's borders.

A product that is considered to automatically originate in a country would be one that is grown, extracted, harvested, raised or completely processed there. This would typically include minerals and metals obtained through mining activities; agricultural products grown and harvested there (or processed agricultural products made from inputs grown and harvested locally); livestock born and raised there; fish caught there or any other processed good that is made up exclusively from local inputs. Many RoO regimes consequently include a list of goods that are automatically considered to be of local origin without any requirements relating to further local processing. EU RoO (including EU-ACP EPAs) consider these products to be "wholly obtained."

Local origin is based on goods being wholly processed locally, or substantially transformed there. Given that many processed goods consist of both local and imported materials, RoO describe how much local processing must take place locally in order to confer local origin. These requirements can be set by means of different methodologies as outlined in the following section. Not all preferential RoO utilize all three of the key methodologies in the determination of origin; the most common permutations are as follows:

- goods must be wholly processed locally; substantial transformation is based on a value-added based test (examples include US GSP, Canadian GSP, and the African Growth and Opportunity Act (AGOA));
- goods must be wholly processed locally; substantial transformation is based on meeting the minimum stipulated criteria of either a value-added based test, or a tariff jump (inputs/output) (examples include Common Market for Eastern and Southern African States (COMESA) and Economic Community of West African States (ECOWAS);
- goods must be wholly processed locally; substantial transformation is based on product-specific rules based on either a value-added, technical or tariff classification jump requirement, or a combination of these three methodologies (example EU-ACP, EU-Chile, EU-South Africa and South African Development Community (SADC)).

2.2 Overview of RoO Methodologies (CTH/VA/SP Tests) as Used in EU RoO

The Europen Union RoO have traditionally followed a line-by-line approach and are based on the wholly obtained/substantial transformation principle, with the test for substantial transformation based on either the value added, tariff classification jump or technical processing principle (or a combination thereof). This approach is followed closely in all EU preferential trade agreements, including the EU GSP and trade agreements with Chile, Mexico, Mediterranean countries, South Africa and so forth. This has allowed a level of consistency in the EU's external trade relations and has eased the burden on its customs authorities tasked with applying normal and preferential tariff treatment on imports.

The value-added (VA) methodology as used in EU RoO is generally applied by specifying

a maximum value of imported content in relation to the ex-works (or factory) price of a product. In certain instances, a sub-minimum (or maximum) is specified for some material inputs. The value-based methodology has many variants (for example, specifying local value added, or local material thresholds based on the total cost of materials rather than the factory selling price) although these are generally not used in EU agreements.

The tariff classification jump refers to a rule under which the requirement for substantial transformation is met when the product can be classified under a different tariff classification to its (non-originating) inputs. This methodology is usually applied at the 4-digit heading level, based on the Harmonized System (HS) nomenclature, but may also use a different level of disaggregation (for example the 2-digit chapter level, or 6-digit sub-heading level). It is commonly known as the "change in tariff heading" (CTH) test.

The technical test, known in EU RoO as "specific processing" (SP), is product-specific and sets out specific local processing activities that are required to confer local origin. This methodology is used widely in EU RoO. By definition RoO based on this methodology must be determined on a line-by-line basis.

Each of these RoO principles is associated with its own strengths and weaknesses. The technical requirement as described above must be customized to product-specific circumstances, which can be considered both a drawback and an advantage. Tailor-made rules lend themselves to the influence of protectionist influences and other considerations, and are often considered to be more likely than any other RoO methodology to disadvantage the "weaker" party in trade negotiations. However, there are many instances where neither a VA nor CTH methodology might be appropriate to express 'substantial transformation' requirements.

The VA-based system is at a superficial level the most straightforward, although its drawbacks are significant depending on how it is applied and the potential impact on producers and traders of various exogenous factors. There are substantial variations in the VA methodology, depending on whether it is based on overall production cost, cost of materials or factory selling price as the denominator, as each methodology carries with it different accounting and general administrative requirements. This methodology is also more prone than others to external impacts beyond the influence of producers and exporters, which may nevertheless impact on the origin status of a product. For example, a depreciation of the local currency makes imported materials relatively more expensive, which in turn increases their relative share of total content (and by extension may push the value of non-originating inputs beyond the permissible threshold in terms of the RoO). Value added is also subject to cyclical fluctuations in commodity prices, price impacts during times of recession and so forth. Improvements in production efficiency (as a result of process or content changes or improved labour efficiency) would lower domestic content in relation to the final selling price, which may also negatively impact on the origin status of a product. Few of these issues can be readily mitigated by producers and exporters yet may from one day to the next impact on the origin status of their products.

The CTH methodology is generally the simplest to implement yet also suffers from significant weaknesses. It is based on the HS nomenclature, which was not developed with RoO in mind. There are various examples where unprocessed and processed goods are classified within the same heading and others where the disaggregation is such that very little if any processing would have to take place to effect a "tariff heading jump." An example of the former might be both rough and worked (processed) diamonds (same HS four-digit heading), and the latter fresh and dried vegetables (different HS four-digit headings).

The absence of a universally accepted RoO methodology or even "best practice" means that the EU has been free to follow a line-by-

line approach on RoO. In non-preferential RoO regimes this clearly remains the prerogative of the preference-giving country, as would be the case in the EU GSP and (previously) the Cotonou Agreement. In reciprocal agreements, it is the economically more powerful country that sets the tone. In EU-ACP EPA negotiations, RoO were kept largely the same as under the previous RoO regime, albeit with some notable changes, which are discussed later. Clauses contained in the different interim EPAs provide for a revision of the RoO underlying the respective agreements within three years.[1] This ostensible "commitment" brings with it an unwelcome level of uncertainty, especially from the perspective of businesses, which after all can be considered one of the primary stakeholders affected by the RoO.

The EU has previously indicated that it is considering substantial changes in its preferential RoO policy. This process began more formally in 2003 with the publication of a Green Paper on the EU's RoO in its preferential trade arrangements and was followed in 2005 by a European Commission Communication as well as a Working Paper.[2] The Communication focused on some of the substantive issues relating to RoO, including issues related to methodology, while the Working Paper presented the first clear indication of the Commission's preference of the VA methodology in the context of a more substantial overhaul of its preferential RoO regime. The Commission has however acknowledged that the VA method may not be the most appropriate for all sectors. While it had intended wide-ranging changes to be implemented as part of the GSP review process, as well as the EPA negotiations, these changes have yet to be implemented.

2.3 Insufficient Processing

While the regulations pertaining to processing that must take place locally to confer origin provides a "positive" benchmark, EU RoO also contain a list of processes that on their own, or in combination with each other, are considered insufficient to confer local origin. This list effectively supersedes the list rules, and disqualifies products even if the stipulated rule (for example a jump in tariff heading) has been met by the producer. In effect, these rules are necessitated by the inherent flaws associated with the various RoO methodologies, so as to avoid origin being conferred through processing that adds little or no local value, and thus helps avoid the risk of trade deflection.

'Insufficient processing' rules can also serve to complicate a RoO Protocol and add excessive restrictiveness to the normal conditions attached to meeting local origin requirements. The current list of "insufficient" operations contained in EU trade agreements, particularly the interim EPAs, is fairly lengthy and includes operations to ensure the preservation of goods, simple cleaning operations (dust removal, washing, painting etc.), affixing of labels, changes of packaging and repackaging, simple mixing of products, simple assembly of parts, slaughter of animals, peeling and shelling of fruit and so forth. This list has been extended within the EPA framework and interim agreements have had a number of processes added to the list of "insufficient operations".

2.4 Other Aspects of EU RoO: *De Minimis*, Cumulation and the 'Absorption' Principle

Aside from product-specific rules, a number of other provisions are contained in the RoO and have an important bearing on whether products qualify for preferences.

De minimis: The *de minimis* (also known as value tolerance) provisions allow producers to use non-originating materials up to a certain threshold notwithstanding specific local-processing rules that are in place. For example, where the rules require a that a garment should be made up locally from yarn (in other words, the fabric must be woven locally), then the tolerance provisions would allow producers to source non-originating fabric up to the threshold determined by

the value tolerance rule. Value tolerance provisions are limited to rules that do not already utilize the VA test to confer origin: the general tolerance thus may not be used to undermine the specific thresholds that may be in place for certain products.

In EU RoO this threshold is generally set at either 10 percent or 15 percent, based on the ex-works price of the product. Under the Cotonou Agreement, the level was 15 percent, and this has been continued in the EPA RoO. In contrast, the EU's GSP RoO use a lower (10 percent) value tolerance threshold. A notable change from Cotonou is the exclusion of the textile and clothing sector (goods of chapters 50-63), although this should be seen in the context of the substantially more liberal rules agreed for this sector.

Cumulation: RoO are premised on the fact that any working or processing on non-originating materials takes place in the home country before it is exported under preference. The underlying objective of RoO, as outlined earlier, is to prevent trade deflection that would undermine the preferential trade regime. Given that trade deflection is unlikely within a preferential agreement among a group of countries sharing the same RoO, there is little reason local working and processing requirements could not be fulfilled jointly by the parties to the agreement. Cumulation provisions, therefore, allow goods and materials that originate within a group of countries to be considered as originating in the final exporting country when further processed there. In other words, the parties to a preferential trade agreement may jointly meet the working and processing prescribed by the applicable RoO. Therefore, cumulation reduces the processing burden on individual countries, making it easier to comply with the prescribed local processing requirements, especially in cases where countries have limited local access to certain inputs that may be available from other countries within the preferential trade area.

Under the Cotonou Agreement, full cumulation was permitted between all ACP countries (restrictions applied to cumulation with South Africa), and the countries were in effect considered a single entity for origin purposes. Each ACP country was subject to the same RoO in the EU, and the same import duty requirements. Cotonou also permitted a limited form of cumulation with a predefined list of neighbouring developing countries. In comparison, the EU GSP RoO only feature limited cumulation with neighbouring countries that form part of a predefined group - of little relevance to ACP countries should they chose to trade under the GSP.

The EC Council Regulation of December 2007[3] facilitates a continuation of preferential market access to the EU for those countries that have initialled an IEPA or have already signed a full Economic Partnership Agreement (EPA). Under these interim regulations, only countries listed in Annex 1 - countries that have initialled or signed a new agreement with the EU - are eligible for cumulation. EPAs in contrast revert to full cumulation with (other) ACP countries, the Overseas Countries and Territories (OCTs), certain neighbouring developing countries and the EU as the principle trade partner within this arrangement.

The current situation for the majority of ACP countries, therefore, represents a Cotonou-minus scenario with regard to cumulation. Non-signatories have reverted to GSP market access (no or very limited cumulation), signatories are limited to cumulation with other signatories (this has potential drawbacks for both signatories and non-signatories, especially within regional economic integration areas) while for the small number of ACP countries that have implemented an IEPA or EPA cumulation has been restored to a Cotonou-type arrangement.

Absorption principle: The absorption principle (sometimes also referred to as "roll-up") permits materials and intermediate goods that have gained local 'originating status' through substantial transformation to be treated as local goods and materials in their entirety when used as inputs into other goods. In other words, goods that might

consist of both imported and local materials, but have complied with local processing requirements as a result of which they are considered to be local, should not in any way be distinguished from wholly obtained local goods when further processed into another good. This principle is particularly useful to exporters when applied to goods subject to a local content/value-added rule: An intermediate good that has gained local origin (but utilizes say 30 percent non-originating content) is classified as 100 percent local when undergoing further transformation into another good in accordance with the relevant RoO. The same principle would apply to materials and intermediate goods that are not substantially transformed locally: the entire material or good would then be treated as non-originating and would need to be processed in accordance with the RoO of the final good when exported under preference.

The absorption principle, contained in the section of RoO that defines the basis of 'sufficiently worked or processed goods', forms a part of the EU GSP (and previously the Cotonou RoO) and has been extended to the interim market access provisions contained in the relevant Council Regulation[4] as well as the IEPA[5]/EPA RoO.

3. NEW EPA RULES OF ORIGIN: WHAT IS DIFFERENT FROM CONTONOU?

3.1 Recent Developments in EU RoO Policy – A Brief Overview

The European Commission began a process of revising its preferential RoO, and published a Green Paper on the subject in 2003.[6] The Green Paper, despite its title, dealt less with substantive RoO issues than with mechanisms for control over the allocation of preferences, customs procedures and the like. In 2005, the Commission published a formal Communication on proposals for a revision of the RoO[7], this time dealing not only with control issues, but also focusing on a revision of the RoO methodology and treatment of origin in key sectors. The document expressed a preference for a VA-based approach in determining local economic origin and also focused on a preferred methodological basis on which to base local content calculations. This entailed a proposed switch to a net production cost basis for determining origin, compared with the ex-works price method used where relevant in the current EU preferential trade regime (including Cotonou). The EC also acknowledged that a value-based system[8] may not be appropriate in certain sectors.

A short time after releasing the RoO Communication, the EC published a Working Paper[9] justifying its preference of a RoO system based on the VA methodology. It also sought to dispel some of the criticisms that had been raised at its preferred choice of RoO methodology. The EC also indicated that it would seek to implement RoO changes as part of the revision and renewal of the EU GSP as well as in EPA RoO. There has subsequently been significant opposition to this policy direction, particularly on the technicalities of calculating local content when based on a net production cost basis. This opposition came not only from ACP and other developing countries, but also from within the EU and even divisions within the European Commission. While these policies do not appear to have been formally abandoned at this stage, none of the proposed regime changes have been implemented to date.

Two significant policy changes have, however, taken place with respect to the rules for textile and clothing as well as the fish and fish products sector. These are described in more detail in a later section. For textiles and clothing, EU policy over almost four decades has been to insist on two stages of transformation in the exporting country to confer origin. These rules have been applied fairly consistently across all EU preferential trade agreements. A shift to a single transformation RoO, cutting out the need to use locally made fabric for eligible clothing exports, represents a significant sector-specific shift in policy but is arguably also a response to changing trading conditions and global value chain dynamics within this sector. In the fish sector there has also been a slight policy shift applicable to IEPA signatories, although a more significant policy change pertains to revised rules for the Pacific ACP States and involves global sourcing of fish provided it is landed and further processed locally. Although this change in policy is ostensibly guided by the Pacific's geographic location and the sector's relative importance to the Pacific economies, the EU will continue to find itself under pressure to agree to more flexible rules for fish, especially pertaining to fish caught within a country's exclusive economic zone (EEZ).

Although relatively few changes were made to the EU-ACP RoO overall, most IEPAs contain clauses with respect to a revision of the RoO within a specific timeframe, generally within three years of date of entry into force of the IEPA. The following extract is sourced from the SADC-EC IEPA in Art. 21(2).[10]

> Within the first three years of the entry into force of this Agreement, the Parties shall review the provisions of Protocol 1, with a view to further simplifying the concepts and methods used for the purpose of determining origin. In such review the Parties shall take into account the development of technologies, production processes and all other factors, including on-going reforms of rules of origin, which may require modifications to the provisions of this Protocol. Any such modifications shall be effected by a decision of the Joint Council as defined in Article 93.

3.2 Summary of Overall Changes in EPA RoO Compared with Cotonou

While RoO negotiations officially began a few years prior to the expiry of the Cotonou Agreement, it was only during the year (2007) preceding the expiry of the Cotonou Agreement that some of the product-specific rules were considered more seriously. Ultimately only a relatively small number of changes were renegotiated during that year. In order to avoid disruptions to ACP trade pending the completion of regional EPA negotiations,[11] the revised rules were immediately implemented on the part of the EU through a Council Regulation[12] (note that there are subtle differences between the Council Regulation rules and the IEPA rules). Countries that had initialled an IEPA would fall under the amended rules until such time that the reciprocal IEPA or EPA had been implemented by the respective ACP country. The RoO contained in the Council Regulation applied to all 35 countries listed in Annex 1 of this Regulation.

The revised RoO have left the structure of Cotonou rules intact and hence do not deviate substantially from the general EU preferential RoO model except in those instances where product-specific or administrative changes have been agreed. The substantive changes to the rules are mainly to the definition of the "wholly obtained" principle, an expansion to the list of "insufficient operations" (those processes that on their own are insufficient to confer economic origin, irrespective of otherwise meeting the RoO), the inclusion of a number of alternative requirements or derogations (for certain agricultural products) as well as substantive changes to the treatment of textiles and clothing as well as fish and fish products. These are summarized in the table below:

Table 1. Overview of Key Changes to the RoO for IEPA Signatories (Interim Provisions in EC Market Access Regulation)*

Component	Section in CR*	Key changes
"Wholly obtained" provisions	Article 3	• expands definition to include "products of aquaculture, including mariculture, where fish is born and raised there" • removes requirement that crew of qualifying vessels must be at least 50% local / EU nationality • removes crew requirement from conditions involving charter vessels
General RoO basis for 'sufficiently processed' products	Article 4	• the general 15% value tolerance (de minimis) provision is maintained, but textile and clothing products of Chapters 50-63 are now excluded • introduces special provisions relating to fish from Pacific countries (Note: this section is only contained in the Council Regulation, and in Article 6 of the regional IEPA with the Pacific countries)
Definition of 'insufficient processing'	Article 5	• expands the list of insufficient operations

Table 1. *Continued*

Component	Section in CR*	Key changes
Derogations	Appendix 2A	• alternative / optional RoO for a range of agricultural products • alternative requirements based mainly on the CTH / VA (maximum thresholds stipulated for non-originating materials) methodologies
Textiles and clothing, made up textile articles	Appendix 2, Chapters 50-63	• substantial departure from Cotonou RoO. Changes broad RoO requirement from 'two-stage processing' to 'single-stage processing'
Fish	Appendix 2, Chapter 3 and 16	• slightly simplifies conditions relating to vessels (where fish is caught beyond the 12-mile territorial zone) • permits the use of non-originating fish if further processed locally (derogation applicable only to Pacific countries) • introduces 15% "non-originating" tolerance for parts of Chapter 3 (fish) and 16 (processed fish products)
Cumulation	Article 6; Appendix 7, 8, 9, 10 and 11	• provides for cumulation of production between EU and ACP (same as Cotonou) • limited cumulation: provides for cumulation between ACP States *that have initialled* an IEPA and are listed in Annex 1 (of Council Regulation 1528) • excludes and delays cumulation for certain products, especially with respect to cumulation with South Africa (similar to Cotonou) • provides for cumulation among ACP countries (IEPA / EPA signatories) • amends "cumulation with neighbouring developing countries" with region-specific relevance
Territoriality / outward processing	Article 12	• Unchanged, although the SADC-EC IEPA introduces limited outward processing (up to 10%), but excludes products from Chapter 50-63 (textiles and clothing)

** Article numbers based on EC Council Regulation No 1528 / 2007 (of 20 December 2007). These references may differ slightly in the different IEPAs.*

Changes to the wholly obtained rules: These provisions define what goods and materials are automatically considered to be of local origin, and relate mainly to natural resources, agricultural products and livestock. They also contain the bulk of the requirements linked to fish and fish products (with respect to territoriality and vessels). Fish-specific rules are discussed in more detail in a later section.

The wholly obtained provisions in the IEPA / EPAs are expanded by including products of aquaculture, including mariculture, where fish are born and raised there. The nationality of crew requirement as it relates to qualifying vessels (also with respect to lease agreements) is removed altogether.

Methodological basis for determining local origin: The methodology on which the RoO is based has remained unchanged, with the CTH, SP and VA test (and combinations thereof) in use. Substantial changes are made to the rules relating to textiles and clothing (see detailed discussion in later section), which has presumably led to this sector being excluded from the de minimis / value tolerance provisions

which allow up to 15 percent non-originating content irrespective of the RoO requirement (Note: the value tolerance provisions are not applicable where a VA-based rule is in force).

Definition of insufficient processing: the IEPA provisions relating to insufficient working or processing are expanded significantly with a range of processes added to those that were previously contained in Cotonou. Using the example of EC-ECOWAS IEPA RoO, the following processes are now also included in the list of "insufficient processing":

- ironing or pressing of textiles;
- husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- operations to colour sugar or form sugar lumps; partial or total milling of crystal sugar;
- peeling, stoning and shelling of fruits, nuts and vegetables;
- mixing of sugar with any other material;
- sharpening or simple grinding;
- simple polishing operations;
- disassembly of products into parts.

New list of derogations: The IEPA RoO introduce a range of alternative rules for some products (agriculture and related) of Chapters 1-25. Specific derogations cover products from Chapters 4, 6, 8, 11, 12, 13, 15, 18, 19, 20, 21 and 23. These rules are alternative rules to the old 'list' rules under Cotonou (and the relevant Market Access / IEPA provisions) which have been carried through to the EPAs, and it is up to the producer and exporter to determine whether to fulfil the main rules or to obtain originating status by complying with the alternative rules contained in the list of derogations. These derogations are listed in Appendix IIA.

Although these derogations provide additional flexibility to exporters and are therefore a positive development in principle, the scope and product coverage affected by these changes means that in effect RoO liberalization is relatively limited. The alternative RoO applicable to these categories are based primarily on the CTH and VA (with maximum thresholds for non-originating materials) methodologies. In particular, sensitivities around 'inputs' such as sugar or fish wheat remain in evidence in the derogations, with alternative rules applicable only to product categories with low thresholds. For example, pasta products (under HS 1902) containing less than 20 percent by weight of meat or fish require the wheat ingredients to be originating, while in categories with more than 20 percent meat and fish this too must be wholly obtained in the exporting country. Here, the derogation requires Chapter 11 (wheat flour etc.) to be of local origin, while the standard rule requires the underlying cereals also be of local origin. In other words, producers of pasta must utilize locally milled flour, but the cereals used may have been sourced from elsewhere.

Table 2. Example of Derogations in EPA RoO

Product classification		
HS 1902 Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:		
	Main rule (Annex 2)	**Derogation Annex 2A**
- containing 20% or less by weight of meat, meat offal, fish, crustaceans or molluscs;	manufacture in which all the cereals and derivatives (except durum wheat and its derivatives) used must be wholly obtained;	manufacture in which all the products of Chapter 11 used are originating;
- containing more than 20% by weight of meat, meat offal, fish, crustaceans or molluscs;	manufacture in which: - all cereals and derivatives (except durum wheat and its derivatives) used must be wholly obtained; - all the materials of Chapters 2 and 3 used must be wholly obtained;	manufacture in which: - all the products of Chapter 11 used are originating; - all the materials of Chapters 2 and 3 used are wholly obtained.

Cumulation rules: Cumulation refers to provisions that facilitate two or more parties to a preferential trade agreement jointly meeting the local processing requirements prescribed by the relevant RoO. This in effect reduces the individual burden on manufacturers especially in countries with complementary factors of competitiveness. In its simplest form, bilateral cumulation allows production sharing between host and preference-receiving country (under Cotonou this would be the EU on the one part and the ACP group on the other), while other forms of cumulation permit production sharing on a regional or diagonal level.

The principle of cumulation is carried through into EPAs, although not all countries currently benefit from this facility. When Cotonou expired, the EC's Market Access Regulations (Council Regulation 1528 referred to earlier) facilitated preferential access to the EU market but only for those countries that initialled an IEPA. This meant that a large number of ACP countries no longer benefited from cumulation - being those that reverted to GSP privileges, which have only a very limited cumulation facility (pertaining to specific regional groupings and of no relevance to ACP countries). Cumulation under the EPA is largely restored for those countries that have implemented an agreement: cumulation is possible with ACP countries, with the EU and with the OCTs. Given the delays in implementing the agreements on the part of the ACP, there are many countries that currently face restrictions with respect to cumulation.

3.3 Sector Focus: The Textile and Clothing Sector[13]

For many developing countries, the textile and clothing sector is considered to be of great economic importance and is often a key driver of industrial development. Garment manufacture, in particular, is seen as valuable in the creation of employment and inflows of capital and foreign exchange, as this industry is often export focused.

The sector has changed significantly over the past few decades and particularly since the 1990s. While textile and clothing production was widely distributed in the past, there has been some consolidation in the sector – particularly within the textile (yarns and fabric) segment – which has led to a concentration of production in low-cost locations. The sector is

characterized by intense competition, where global integration and efficient supply chain linkages are key determinants of international competitiveness. Particularly in the clothing manufacturing segment - which is far more widely dispersed than textile production - access to competitively priced inputs is a key condition for export success.

Despite a long history of production in ACP countries, only few textile and clothing exports were shipped to the EU. A small number of countries, like Mauritius and Madagascar, were relatively successful, but this was to a large extent also as a result of the vertically integrated nature of the sector in these countries, ownership linkages with Asian firms and relatively attractive market preferences under the WTO quota regime compared with many low-cost producers in the East. One of the key factors in preventing many ACP countries from realizing EU market preferences was the fact that the RoO in place at the time required mostly two distinct stages of (local) processing to be undertaken locally - for the labour-intensive (and less capital-intensive) garment manufacturing sector this means garments had to be made up from locally made fabric. Very few ACP textile manufacturers were sufficiently competitive to supply the local garment sector; as a result the onerous RoO conditions effectively prevented potential exporters from exporting to the EU. In contrast, new market preferences to other countries, for example the AGOA, contained simplified RoO that resulted in new investment and a surge in exports from countries that were unable to export to the EU.

When the interim market access provisions (EC Council Regulation 1528 of December 2007) came into force, a major paradigm shift with regard to the EU RoO for textiles and apparel in effect took place. These regulations - applicable to ACP countries that had previously initialled an IEPA - represent a significant departure from the EU model that has previously been in place under Cotonou (and continues to be part of all its other preferential trade regimes). Instead of a general "two stage local transformation" policy, the revised rules reduced the local processing burden to a "one stage transformation" requirement. This broadly means that clothing can now be made up from any fabric (local or imported), while fabric can be produced from imported yarn (previously: only the fibre could be imported). This enables producers to satisfy their yarn requirements from anywhere in the world, based on commercial realities, such as logistics costs, quality parameters and availability. The qualifying conditions for yarns have however essentially remained unchanged.

ACP countries that have not initialled an IEPA do not qualify for the revised RoO, and have reverted to GSP market access. GSP and Cotonou RoO in the textile and clothing sector are the same. This entails 'manufacture from yarn' for qualifying clothing exports (clothing made up locally from local fabric) and 'manufacture from fibre' for qualifying fabrics (fabric woven locally from locally spun yarn). As was the case in Cotonou, there remain a number of alternative rules, where (imported) raw fabric can obtain local status through various value-adding activities, such as bleaching, scouring, mercerising, printing and other finishing operations in accordance with a set value threshold (as a percentage of the finished product) for the unprinted fabric.

Table 3. Simplified Overview of Old vs. New RoO for Textiles and Clothing

	Old Rules (Cotonou / GSP)	New EPA rules
Yarn	- made from unprocessed natural fibre / chemical materials or textile pulp;	*Unchanged*
Fabric	- made from local yarn; - made from unprinted fabric (comprising max 47.5% of total value), with at least 2 value adding activities undertaken locally;	- made from local *or imported* yarn; - made from unprinted fabric (comprising max 47.5% of total value), with at least 2 value adding activities undertaken locally;
Clothing	- made from local fabric;	- made from local *or imported* fabric.

A more detailed comparative overview between the old (Cotonou and GSP) RoO and the revised (EC Council Regulation, IEPA and EPA) RoO, using various sample product categories, is provided in Annex 1 to this study.

In addition to changes to the primary 'list rules' on working and processing to confer origin, there also been a change to the definition of "sufficiently worked or processed products," which contains the *de minimis* (or value tolerance) provisions, outlined earlier. Under Cotonou, a 15 percent tolerance rule (EU GSP: 10 percent) applied to all products, including textiles and clothing. Under EPAs (as already introduced alongside the new RoO in the Council Regulation) textiles and clothing of Chapter 50-63 are now specifically excluded. While the value tolerance provisions were not applicable where a specific VA-based rule was already in place (in other words, the provisions may not undermine a specific value-based threshold), the textile and clothing rules are mainly based on a specific technical requirement and, therefore, tolerance rules were potentially useful to exporters. The loss in "tolerance" is however far outweighed by the additional flexibility offered under the main rules for this sector.

Table 4. Illustrative Example - Textiles and Apparel

Illustrative Example - Textiles and Apparel
A manufacturer of clothing located in Lesotho wanting to export to the EU under the Cotonou Agreement was required to undertake the manufacturing process of the garment locally (cutting, assembly and trimming), using fabric that was woven in Lesotho (or another ACP country). The fabric in turn had to be made from local or imported yarns. This means that the manufacturer was bound to use fabrics that might be available only at a higher cost or lesser quality, and was prevented from sourcing fabric from the most the most cost-competitive locations. *In the clothing sector, value chain dynamics are such that manufacturers often simply fulfil production orders on behalf of international retailers and brand owners. It is common for brand owners, for example in the jeanswear segment, to certify a number of fabric suppliers (for their ability to produce a certain type/quality/style fabric or yarn) globally who then act as licensed suppliers to downstream manufacturers. Under the Cotonou RoO, a manufacturer based in Lesotho was not able to comply with any request from such buyers, unless they forfeited Cotonou preferences and exported under MFN tariffs. In highly price-driven sectors, such as textiles and clothing, this effectively prevents a clothing exporter from remaining price-competitive and within the product specifications set by the buyer.*

Table 4. *Continued*

Illustrative Example - Textiles and Apparel
However, the same Lesotho-based manufacturer was able to access other international markets, notably the United States of America, under the preferences of the AGOA, whose RoO permitted sourcing of fabric and other inputs from third countries. *Under the revised EU-Lesotho RoO under EPAs, a Lesotho-based clothing exporter is now allowed to source fabric from any third country and still able to export duty and quota free to the EU. This follows the broad relaxation of the RoO for clothing of Chapter 61 from "manufacture from yarn" to "manufacture from fabric" (of any source). Producers are thus able to tie in more readily with buyer demands and tap into global supply chains. Producers in Lesotho, and potential investors in this sector, will now also more readily be able to achieve economies of scale in the export market with the RoO for the US and EU markets far more closely aligned.* Example 1 *Lesotho-based manufacturer producing jeanswear for major global brand must source denim fabric of a certain specification from accredited suppliers. No local denim mill is able to supply correct specification denim fabric and is hence not certified by buyer. Accredited mills (price/quality/specification) are based in China and India. Fabric is imported to Lesotho, where it is cut to size, made up into a finished garment, dyed, ironed and packaged for export.* - *Cotonou RoO: Not considered originating as only local, ACP or EU fabric may be utilized. It would however qualify for US preferences under AGOA.* - *EU Market Access regulations / IEPA RoO: Considered originating, as revised rule specifies that garment must be made up locally from (any) fabric, including imported fabric.* Example 2 *Lesotho-based manufacturer fabric mill specializes in weaving of certain types of fabric. It sources some of its yarn requirements from China for local processing. To remain viable it needs to increase production and wishes to export to international markets.* - *Cotonou RoO: Not eligible if fabric woven from yarn sourced from non-ACP suppliers; rules generally required local processing of yarn and fabric (fibre may be imported)* - *EU Market Access regulations / IEPA RoO: Originating, as rules changed to permit use of non-originating yarns as inputs*

3.4 Sector Focus: Fish and Fish Products[14]

The fishing sector - not unlike the textile and clothing manufacturing sector - represents an important economic sector for many ACP countries. This is not necessarily reflected in their exports to the EU, not least because EU RoO are considered very strict for products from this sector. Many ACP countries are also disadvantaged by strict European sanitary and phytosanitary (SPS) standards, which are often at odds with and certainly far stricter than local norms. For many years Namibia has been the leading exporter of fish and fish products to the EU, owing to strong linkages between domestic and European operators, which assists it in ensuring compliance with the relevant RoO requirements.

With respect to EPAs, apart from changes to the origin requirements for textiles and clothing, the bulk of the sector-specific RoO changes were undertaken in the fish sector. The rules

pertaining to this sector are contained mainly in the "wholly obtained" provisions, the conditions relating to "sufficiently worked or processed products" as well as the product-specific list rules. As discussed in more detail further down, the main changes entail removal of the (local) crew requirement for vessels, simplification of ownership, a specific non-originating (fish) material allowance, expansion of the "wholly obtained" principle with respect to mariculture, changes to the leasing provisions as well as a specific derogation pertaining to non-originating fish for Pacific countries. There derogation for canned tuna and tuna loins previously contained in the Cotonou Agreement has also been curtailed, with similar provisions at this stage only confirmed to be in the East African Community (EAC) and Eastern and Southern Africa (ESA) EPA texts (and indirectly in the revised Pacific RoO).

Fish and the 'wholly obtained' provisions: The 'wholly obtained' rules contain product categories that are automatically considered to be a product of the exporting country without further processing having taken place there. With respect to fish and fish products, this includes:

(1) products obtained by hunting or fishing *there;*

(2) products of aquaculture, including mariculture, where the fish are born and raised there [emphasis added];

(3) products of sea fishing and other products taken from the sea outside the territorial waters by *their* vessels [emphasis added];

(4) products made aboard their *factory ships* [emphasis added] exclusively from products covered by (the previous point above).

Point (2) above is a new addition to the rules and was not contained in the Cotonou Agreement. To further clarify the above rules, it should be noted that unless specified, these conditions refer to fish caught in inland waters (lakes and rivers) as well as within a country's territorial waters. These are considered to extend 12 miles out to sea in line with international maritime law.

The terms "*their vessels*" and "*factory ships*" are further defined within the same Section, and encompass some of the changes that were made to the rules. These rules require (in the context of the 'wholly obtained' provisions) that vessels be:

(1) registered in an EC Member State or in an (ACP) EPA State;[15]

(2) sail under the flag of an EC Member State or of an (ACP) EPA State;

(3) meet one of the following conditions:

(a) be at least 50 percent owned by nationals of an EC Member State or of an (ACP) EPA State;

or

(b) be owned by companies that have their head offices and their main places of business in an EC Member State or in a (ACP) EPA State; and which are at least 50 percent owned by an EC Member State or by an (ACP) EPA State, public entities or nationals.

Changes to the 'crew' requirement: One of the changes to the RoO under EPAs involves the removal of the conditions relating to the crew of the vessel. This means that EPA RoO no longer link the origin of fish to the nationality of the crew. Previously under Cotonou, (at least) 50 percent of the crew, master and officers included, were required to be nationals of States party to the Agreement, or of an OCT. The vessel ownership conditions are also slightly simplified. Previously, additional conditions required - in the case of companies owning fishing vessels - the Chairman of the Board of Directors or Supervisory Board and the majority of members of such boards, had to be nationals of States that were party to the Agreement.

Changes to the 'leasing provisions': With EU RoO for this sector in effect applicable to all fish and marine products caught beyond a country's 12-mile territorial zone (fish caught in inland waters and within the 12 mile zone automatically qualify in terms of the RoO), the issue of chartering and leasing foreign vessels is of relevance. The Cotonou RoO and EU RoO define "vessels" and " factory ships," and require these to be majority-owned by locals or EU nationals when the fishing activity takes place outside the territorial zone; where this is not the case, the possibility exists for countries to lease vessels from other countries. However, this is subject to very strict conditions, and is linked *inter alia* to having to extend to the EU certain options first. This area has, however, undergone some change from Cotonou, through the Council Regulation for IEPA signatories, and finally to the IEPA/EPA provisions once implemented by the ACP party. While still onerous, the requirements in this regard have become slightly less restrictive for ACP operators.

The interim leasing arrangements differ from Cotonou only as far as the crew requirement is concerned. As is the case in the general provisions, this requirement has now been removed, and crew specifications no longer contribute to the origin of fish. In the IEPA RoO, further changes were made: the European Community shall recognize a leasing arrangement concluded by the ACP party (and thus accept any such vessels as "their vessels for purposes of fulfilling the origin requirements) for use within the ACP's EEZ, provided the Community has been offered the right of first refusal of entering into a similar charter or lease agreement with the ACP State(s) concerned.

The limitation expressed through the leasing provisions that such vessels may not fish beyond the EEZ may have practical implications in that it prevents leased fishing vessels from "following the fish" beyond the EEZ, especially by vessels that target the highly migratory species that invariably also tend to be commercially valuable (for example, some species of tuna). This issue would be of particular relevance for ACP countries whose EEZ is not richly endowed with fish resources (hence forcing vessels to seek fish further out), those targeting tuna in particular, and those where a geographical expansion of the fishing effort may be required in the future owing to dwindling fish stocks.

Changes to the list rules for fish:[16] The 'list rules' are the main body of the RoO framework, which details the product-specific working and processing that must be undertaken to non-originating materials in order to confer origin. Under Cotonou and other EU preferential trade regimes, a single chapter rule was applicable. This specified that any materials of Chapter 3 (fish and crustaceans, molluscs and other aquatic invertebrates) and Chapter 16 (preparations of fish or of crustaceans, molluscs or other aquatic invertebrates) had to be wholly obtained. The wholly obtained provisions as outlined earlier relate to the location where fish are caught, vessel ownership and flag, leasing and so forth.

The Market Access Regulation and IEPA change the list rules by including a 15 percent non-originating tolerance with respect to Chapter 3 (fish) inputs. This applies only to certain processed product categories - HS0304 - HS0306 and HS1604 - HS1605. The rule does not apply to other categories listed under HS0301 (live fish); 0302 (fresh or chilled fish, excluding fillets of heading 0304); 0303 (frozen fish, excluding fillets of 0304) and 0307 (molluscs, aquatic invertebrates, and flours/meals/pellets of aquatic invertebrates). Whether these changes represent a meaningful improvement to the rules for producers and exporters or is even commercially relevant should be considered alongside the general value tolerance provisions already in place, namely that non-originating materials may be used provided that they do not exceed 15 percent of the export price of the products and that any of the specific percentages given in the product specific rules (i.e. the list rules of Appendix 2, and derogations under Appendix 2A) are not exceeded. The general

value tolerance only excludes textiles and clothing of Chapters 50-63, while fish already qualifies as it also did previously. With the fish-specific rule change in place, the general tolerance now falls away.

Tuna derogations: Under the Cotonou Agreement, a special derogation concerning the use of non-originating tuna was available for ACP States. This quota was managed by the ACP Secretariat in Brussels, and comprised an annual quota of 8,000 tons of canned tuna and 2,000 ton of tuna loins. It enabled ACP States to use non-originating tuna sourced from third countries or in any other way not complying with the standard RoO requirements relating to vessels, crew and so forth. The derogation was outlined in Article 38 of Annex V of the (Cotonou) Protocol on RoO; however, no such derogation was carried through to EPAs with the exception of a similar waiver contained in the EAC and ESA IEPAs as follows:

- the EAC EPA Group has been granted a RoO derogation for 2,000 tons of tuna loins in the IEPA.[17] This becomes applicable when the agreement enters into force on the part of the EAC. In the meantime, Kenya obtained a temporary RoO derogation in November 2008 for 2,000 tons of tuna loins. Kenya's country-specific derogation is in effect of the same magnitude as what has been provided to the EAC group in the IEPA;

- the ESA EPA Group was granted a derogation for 8,000 tons of canned tuna and 2,000 tons of tuna loins. This is equal to the aggregate derogation previously allocated the whole ACP Group. In effect, this will be shared between Mauritius,[18] Madagascar[19] and the Seychelles[20] as these countries have tuna processing facilities. A temporary derogation was also granted to each of the three countries during 2008, but has since expired;

- while provision is made in the draft EC-Ghana and EC-Cote d'Ivoire RoO Protocols for a similar tuna derogation, no details are available on the actual quantities involved. No such derogation is contained in the draft EC-West Africa RoO Protocol (all versions dated 29/2/2008), nor in the SADC, Cariforum, Central Africa or Pacific EPA texts. The derogation would probably be of little relevance to the Pacific as the group already has unique provisions relating to non-originating fish.

Special provisions for Pacific countries and Namibia's declaration with regard to territoriality and the EEZ: The issues involving fish caught within a country's EEZ has remained particularly contentious during the RoO negotiations. At issue is many countries' contention that fish caught within their EEZs - to which after all a country has exclusive economic rights (including its fisheries resources) - should be considered local fish without some of the current restrictions in place regarding a vessel's flag and ownership. These calls are strengthened when considered together with obligatory local landing and processing rules. The issue became a stumbling block during the IEPA negotiations, particularly for the Pacific countries, and eventually resulted in special provisions for that group. Another country, Namibia, had a special Declaration concerning its position on the EEZ added to the IEPA text.

> "Namibia reaffirm the point of view it expressed throughout the negotiations on the rules of origin in respect of fishery products and consequently maintain that following the exercise of their sovereign rights over fishery resources in the waters within their national jurisdiction, including the exclusive economic zone, as defined in the United Nations Convention on the Law of the Sea, all catches effected in those waters and obligatory landed in ports of Namibia for processing should enjoy originating status.
>
> In so far as the European Free Trade Area (EFTA) States acknowledge Namibia's EEZ for the purposes of Rules of Origin, as embodied in Annex IV to the Free Trade Agreement

between SACU and EFTA relating to Fish and Marine Products, Namibia maintains that all catches effected in her waters as defined above and obligatorily landed in all ports of Namibia for processing, should enjoy originating status".

With this Declaration, Namibia maintains the position that fish caught beyond the 12-mile territorial zone, but within its 200 mile EEZ, should not be subject to the vessel ownership requirements listed in Article 5 (being the 'wholly obtained' provisions) and Annex 2 of the EC-SADC IEPA RoO Protocol, when such fish is obligatorily landed in a Namibian port (and by extension and where applicable further processed there). This Declaration is similar in substance to what has been granted to the Pacific ACP group during the EPA negotiations[21] (see further down). Namibia is not alone in formally noting its views with respect to the EEZ and by extension the treatment of fish for RoO purposes caught within this zone. The Cariforum EPA group has attached a similar Declaration to its EPA with the EU, stating that:[22]

"The CARIFORUM States reaffirm the point of view they expressed throughout the negotiations on rules of origin in respect of fishery products and consequently maintain that following the exercise of their sovereign rights over fishery resources in the waters within their national jurisdiction, including the Exclusive Economic Zone, as defined in the United Nations Convention on the Law of the Sea, all catches effected in those waters obligatorily landed in the ports of the CARIFORUM states for processing should enjoy originating status".

The EC-Cariforum EPA also contains a joint Declaration relating to the RoO on fish:*

"The EC Party acknowledges the right of the coastal CARIFORUM States to the development and rational exploitation of the fishery resources in all waters within their jurisdiction

The Parties agree that the existing rules of origin have to be examined in order to determine what possible changes may have to be made in the light of the first paragraph

Conscious of their respective concerns and interests, the CARIFORUM States and the EC Party agree to continue examining the problem posed by the entry, onto EC Party markets, of the fishery products from catches made in zones within the national jurisdiction of the CARIFORUM states, with a view to arriving at a solution satisfactory to both sides. This examination shall take place in the Special Committee on Customs Cooperation and Trade Facilitation".

*Source: Final Act, EC-Cariforum EPA

The Pacific group negotiated a special derogation to the RoO for processed fish products of Chapter 16. This allows operators there to source non-originating fish (in other words, fish that either does not fully comply with the vessel requirements or is simply sourced from third countries for further processing locally into prepared or preserved fish (for example, canned tuna). Fish products represent one of the most important export industries for the Pacific ACP States and the countries' distance to the European market makes the area less attractive to Europe's distant water fleet - presumably a key underlying reason this derogation was agreed. The specific terms of the rules change - as summarized below - make compliance less straightforward than would initially appear to be the case.

- Processed fishery products (of headings 1604[23] and 1605[24]) that are processed or manufactured in on-land premises in a Pacific EPA State from non-originating fish (materials of headings 0302[25] or 0303[26]) that have been landed in a port of a Pacific EPA State will be considered as sufficiently worked or processed for the purposes of local originating status.

- These provisions are subject to a range of administrative requirements: they become valid only after notification to the European Commission regarding the development benefits to the fisheries sector in that State include information on the species concerned, products to be manufactured and an indication of the respective quantities. Within three years of the notification the respective Pacific ACP must report back to the European Community on the extent to which this derogation is being utilized.

- EU SPS measures continue to be applicable with respect to the above, as well as other obligations (such as obligations to support the combating of illegal, unreported and unregulated (IUU) fishing activities in the region.

Table 5. Illustrative Example - Fish and Fish Products

Illustrative Example - Fish and Fish Products
A Kenyan fishing company sources fish from its own vessels operating on Lake Victoria, as well as off the Kenyan Coast. It is active in the export market and focuses on tilapia (inland waters), tuna and hake. Persons of various nationalities are employed by the company as crew and captain(s).
Most of its vessels are registered in Kenya, although some are registered in a non-ACP State through a 50:50 joint venture subsidiary with a non-European company (a Pacific scenario is used in Example 5).
In terms of the EU RoO, not all fish caught or processed by this exporter is eligible for preferential treatment in the EU market.
Example 1
Tilapia fish caught in Kenyan waters in Lake Victoria by a Kenyan fishing company.
- Cotonou RoO: considered originating. Compliant with the EU RoO as they consider any fish caught in inland waters and within the coastal territorial area (extending 12 miles out to sea) as automatically originating.
- EU Market Access regulations / IEPA RoO: Considered originating for same reasons as above.
Example 2
Tuna caught outside the territorial waters with crew and captain of different nationalities (<50% are Nationals of an ACP country or the EU). The vessel is owned exclusively by the Kenyan company, is registered locally and flies the Kenyan flag. All fish caught is landed locally and further processed locally into canned tuna.
- Cotonou RoO: generally not considered originating (crew requirement not met). May have qualified under the Cotonou derogation (tuna loins / canned tuna) if Kenya had received an allocation thereunder.
- EU Market Access regulations / IEPA RoO: Qualifies irrespective of the further processing done locally, as the crew requirement has been removed from the revised RoO.
Example 3
Hake caught outside Kenya's territorial waters by vessel registered in a non-ACP country but owned 50% by local company and used exclusively in Kenyan waters, with relevant local fishing license in place. Fish is landed locally for further processing.

Table 5. *Continued*

Illustrative Example - Fish and Fish Products
- Cotonou RoO: Not considered originating - fails to meet ownership (>50%) requirement, registration requirement. *- EU Market Access regulations / IEPA RoO: Not considered originating - fails to meet ownership (>50%) requirement, registration requirement.* Example 4 *Hake caught outside Kenya's EEZ with locally registered and owned vessel with 55% non-ACP / non-EU crew component and landed and processed in Kenya.* *- Cotonou RoO: Not considered originating - fails to meet crew requirement.* *- EU Market Access regulations / IEPA RoO: Considered originating (crew requirement no longer applicable, local landing and processing of no consequence).* Example 5 *A fishing company in Papua New Guinea owns fish processing facilities and specializes in canned tuna. Some of its fish is caught by local fishing fleets, although during part of the fishing season much of it is raw fish is sourced from foreign operators fishing on the high seas.* *- Cotonou RoO: Not qualifying; canned fish products must contain fish that complies with the local origin requirements (with respect to vessel, crew, ownership).* *- EU Market Access regulations / IEPA RoO: Qualifying subject to conditions. A special provision was included in the revised RoO which permit countries forming part of the Pacific EPA Group to source non-originating fish to be used in further processed fish products (of heading 1604 and 1605) subject to it being landed locally, subject to compliance with EU SPS measures and a report by the Pacific State to the EU within three years on developmental aspects of this provision.*

ENDNOTES

1 See for example European Union (2009). *Council Decision on the signature and provisional application of the interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the SADC EPA States, of the other part*. 14062/08.

2 See European Commission (2003), *Green Paper on the future of Rules of Origin in preferential trade arrangements* – COM(2003)787 final; European Commission (2005). *The rules of origin in preferential trade arrangements: Orientations for the future*. Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, COM(2005) 100 final; European Commission (2005). *Justification of the choice of a value-added method for the determination of the origin of processed products*. Working Paper TAXUD/1121/05 Rev.1 – EN.

3 European Commission 2007. Council Regulation (EC) No. 1528/2007 of 20 December 2007.

4 European Commission 2007. Council Regulation (EC) No. 1528/2007 of 20 December 2007.

5 European Commission 2009. Protocol 1. *Concerning the Definition of "Originating Products" and Methods of Administrative Cooperation*.

6 European Commission 2003. Green Paper on the Future of Rules of Origin in Preferential Trade Arrangements – COM(2003)787 final.

7 European Commission 2005. The Rules of Origin in Preferential Trade Arrangements: Orientations for the future. Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, COM(2005) 100 final.

8 'Value-based system' is used here loosely to describe a RoO methodology that is based on setting minimum thresholds for local content (or maximum thresholds on non-originating content).

9 European Commission 2005. *Justification of the Choice of a Value Added Method for the Determination of the Origin of Processed Products*. Working Paper TAXUD/1121/05 Rev.1 – EN.

10 Council of the European Union (2009) 14062/08.

11 Countries that did not initial an IEPA (or signed an EPA) reverted to GSP market access from 1 January 2008, with different RoO.

12 Council Regulation (EC) No 1528/2007 (of 20 December 2007).

13 The RoO provisions relating to textiles and clothing are contained primarily in Appendix II of the relevant IEPA Agreements and EC Market Access Regulations. Further specific references to textiles and clothing are also contained in Annex II (Title II, Art. 4).

14 The RoO provisions relating to fish and fish products are contained in Appendix II (Chapters 3 and 16) as well as in Annex II (Title II, Art. 3 and 4) of the EC Market Access Regulations and relevant IEPA Agreements.

15 In the case of regions that are negotiating an EPA, each regional ACP country is included in this definition (being those that initialled an IEPA, or signed a full EPA). With respect to the interim provisions, which remain in force for ACP countries that have initialled an IEPA but have not concluded IEPA negotiations and signature, the term "ACP countries" refers only to those countries that have initialled an IEPA and are thus listed in Annex 1 of the Council Regulation.

16 Appendix II (Chapters 3 and 16) of the EC Market Access Regulations and relevant IEPA Agreements.

17 Commission Decision of 12 November 2008 (2008/886/EC): 2,000 tons tuna loins of HS 1604. This derogation expired on 31 December 2008 (Kenya had applied for derogation of 2,000 tons).

18 Commission Decision of 17 July 2008 (2008/603/EC): 3,000 tons canned tuna and 600 tons tuna loins of HS 1604. Derogation expires 31 December 2008 (country had applied for derogation of 5,000 / 2,000 tons respectively).

19 Commission Decision of 18 September 2008 (2008/751/EC): 2,000 tons canned tuna and 500 tons tuna loins of HS 1604. Derogation expires 31 December 2008. Full quantities were granted to Madagascar as per the country's application.

20 Commission Decision of 14 August 2008 (2008/691/EC): 3,000 tons canned tuna. Derogation expires 31 December 2008 (Seychelles had applied for derogation of 4,000 tons canned tuna).

21 As contained in Council Regulation 1528 /2007 of 20 December 2007.

22 Declaration of the Cariforum States relating to Protocol 1 on the origin of fishery products from the exclusive economic zone.

23 HS1604: *Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs.*

24 HS 1605: *Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved.*

25 HS 0302: *Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304.*

26 HS 0303: *Fish, frozen, excluding fish fillets and other fish meat of heading 0304.*

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ANNEX 1: COMPARATIVE OVERVIEW OF RULES OF ORIGIN IN SELECT TEXTILE AND CLOTHING CATEGORIES

Old (Cotonou / GSP) vs. new (IEPA, Council Regulation) rules

Product	Old rule (Cotonou)	New rule (Council Regulation / IEPA / EPA)
HS 5204 to 5207: Yarn and thread of cotton	Manufacture from: - raw silk or silk waste carded or combed or otherwise prepared for spinning, - natural fibres not carded or combed or otherwise prepared for spinning, - chemical materials or textile pulp, or - paper-making materials	Rule remains unchanged
HS 5208 – 5212: Woven fabrics of cotton	If incorporating rubber thread: Manufacture from yarn; Others: Manufacture from - coir yarn, - natural fibres, - man-made staple fibres not carded or combed or otherwise prepared for spinning, - chemical materials or textile pulp, or - paper Or Printing accompanied by at least two preparatory or finishing operations (as listed), provided the value of the unprinted fabric used does not exceed 47.5% of the ex-works price of the product	Manufacture from yarn Or Printing accompanied by at least two preparatory or finishing operations (as listed), provided the value of the unprinted fabric used does not exceed 47.5% of the ex-works price of the product
Chapter 60: Knitted or crocheted fabrics	Manufacture from: - natural fibres, - man-made staple fibres not carded or combed or otherwise processed for spinning, or - chemical materials or textile pulp	Manufacture from yarn

Product	Old rule (Cotonou)	New rule (Council Regulation / IEPA / EPA)
Chapter 61: Articles of apparel and clothing accessories, knitted or crocheted: - Obtained by sewing together or otherwise assembling, two or more pieces of knitted or crocheted fabric which have been either cut to form or obtained directly to form	Manufacture from yarn	Manufacture from yarn
HS 6202: Articles of apparel and clothing accessories, not knitted or crocheted;	Manufacture from yarn Or Manufacture from unembroidered fabric provided the value of the unembroidered fabric used does not exceed 40% of the ex-works price of the product	Manufacture from fabric

ANNEX 2: COMPARATIVE OVERVIEW OF RULES OF ORIGIN IN FISH CATEGORIES

Old (Cotonou) vs. New (Council Regulation / IEPA / EPA) Rules

Product	*Working or processing carried out on non-originating materials that confers originating status*		
	EU RoO (Cotonou)	**EU RoO - Interim Provisions (Council Regulation)**	**IEPA / EPA RoO**
Ex Chapter 03. *Fish and crustaceans, molluscs, invertebrates except for:*	Chapter rule: Manufacture in which all the materials of Chapter 3 used must be wholly obtained.	All the materials of Chapter 3 used must be wholly obtained.	All the materials of Chapter 3 used must be wholly obtained.
HS 0304. *Fish fillets.*	Falls under Chapter rule.	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 % of the ex-works price of the product.	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 % of the ex-works price of the product.
HS 0305. *Fish dried, salted or in brine, smoked, flours, meals, fish pellets.*	Falls under Chapter rule.	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 % of the ex-works price of the product.	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 % of the ex-works price of the product.
HS 0306. *Crustaceans, whether in shell or not, salted or in brine, flours, meals and pellets of crustaceans.*	Falls under Chapter rule.	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 % of the ex-works price of the product.	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 % of the ex-works price of the product.
HS 1604. *Prepared or preserved fish.*	Manufacture in which all the materials of Chapter 3 used must be wholly obtained.	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 % of the ex-works price of the product.	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 % of the ex-works price of the product.
HS 1605. *Prepared or preserved crustaceans, molluscs.*	Manufacture in which all the materials of Chapter 3 used must be wholly obtained.	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 % of the ex-works price of the product.	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 % of the ex-works price of the product.

Product	*Working or processing carried out on non-originating materials that confers originating status*		
	EU RoO (Cotonou)	**EU RoO - Interim Provisions (Council Regulation)**	**IEPA / EPA RoO**
Definition of wholly obtained (EU) / wholly produced (intra-SADC) in relation to fish.	(1) Products obtained by hunting or fishing conducted there (implies inland and territorial waters). (2) Products of sea fishing and other products taken from the sea outside the territorial waters by their vessels, and products made on board their factory ships exclusively from these products. Qualifying criteria vessels: Be registered or recorded in and sail under the flag of EC, ACP, OCT Member State. Ownership: Owned by 50% of nationals of these States, or by company (head office in Member State) with majority chairman and board of directors from Member State and at least 50% of the crew, master and officers included, of EC / ACP / OCT. Leasing: Must first offer EC opportunity to negotiate fisheries partnership agreement and EC did not accept this offer; at least 50% of crew must be nationals of EC / ACP / OCT lease must be approved by ACP-EC Customs Cooperation Committee.	(1) Same as Cotonou. (2) Same as Cotonou. (3) Products of products of aquaculture, including mariculture, where the fish are born and raised there. Qualifying criteria vessels: Be registered or recorded in...and sail under the flag of EC or ACP Member State. Ownership: At least 50% owned by nationals of ACP or EC or by company with head office and main place of business in ACP / EC and ownership of company at least 50% of ACP / EC. Leasing: Must offer EC opportunity to negotiate fisheries agreement and EC did not accept this offer; lease contract must be accepted by EC; applicable only to fishing in EEZ. Requirements can be met jointly by different SADC EPA States; can use vessels owned by nationals/companies of different EPA Group, products originating in country that contributes highest share to ownership requirements.	1) Same as Cotonou. (2) Same as Cotonou. (3) Products of products of aquaculture, including mariculture, where the fish are born and raised there. Qualifying criteria vessels: Be registered or recorded in and sail under the flag of EC or ACP EPA Member State. Ownership: At least 50% owned by nationals of ACP or EC or by company with head office and main place of business in ACP / EC and ownership of company at least 50% of ACP / EC. Leasing: Must offer EC right of first refusal for any charter agreement; Contract accepted by Special Committee on Customs; applicable only to fishing in EEZ. Requirements can be met jointly by different ACP EPA States; can use vessels owned by nationals/ companies of different EPA Group, products originating in country that contributes highest share to ownership requirements.

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