



FFA FISHERIES TRADE BRIEFING

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EU Generalised System of Preferences (GSP)

EU GSP: General Issues

Since mid-2005 there have been three tiers to the EU's GSP regime,² which, according to a recent EC impact assessment are likely to remain substantially unchanged until end-2011:³

1. A 'standard' GSP scheme, which excludes only a handful of developing countries.
2. The Everything But Arms Initiative (EBA) which is only available for states categorised by the UN as Least Developed Countries (LDCs)
3. The 'GSP+' that is available to non-LDCs that meet a set of economic vulnerability criteria and have signed and ratified 27 international conventions on good governance, human rights and the environment.

The margins of preferential market access under these three schemes as well as under the new Interim Economic Partnership Agreement (IEPA) are detailed in Table 1.

Table 1: Simplified EU Tariffs for Tuna Products (all in %)

Product	MFN*	GSP	GSP+/ EBA	Interim EPA
Fresh or frozen tuna	22**	18.5	0	0
Fish fillets fresh/ frozen	15/18	11.5/14.5	0	0
Canned tuna in water or oil	24	20.5	0	0
Tuna loins for canning	24	20.5	0	0

* MFN = Most-Favoured Nation tariff, which is available to almost all countries (bar those under sanctions).

** Fresh or frozen tuna that is to be canned in the EU enters duty free.

Currently, the EU GSP scheme that is of commercial importance for PIC fish exports is the EBA, which is currently utilised by the Solomon Islands for the export of tuna loins and canned tuna products (mainly to Italy). All other PICs that are categorised as LDCs (i.e. Kiribati, Tuvalu and Vanuatu) are able to utilise EBA trade preferences if they meet EU sanitary and phytosanitary (SPS) requirements. Importantly, the EU argues that the GSP+ (which is available to non-LDCs) is not open for applications by new beneficiary countries until 2009; however,

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The Solomon Islands is the only PIC that utilises the EU GSP scheme at present



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the extent to which this 'closed list' is legal under WTO rules is highly questionable.⁴ Nonetheless, non-LDC PICs that have not signed an IEPA might consider applying for the GSP+ as DG Trade expects the final discussion on the new list of eligible countries to take place in the second half of 2008.

Reform of GSP Fisheries Rules of Origin (RoO)

In November 2007, the European Commission circulated a set of proposed reforms of rules of origin under its Generalised System of Preferences (GSP) regime, including for fish and fisheries products.⁵ Current GSP rules of origin (RoO) for fisheries products are much the same as those under the Lomé/Cotonou Agreements – the latter were replaced in January 2008 by new fisheries RoO for the two PICs that signed the Pacific IEPA (i.e. Fiji and PNG).⁶

A central aspect of the proposed GSP RoO is a 'value added' (VA) criteria to grant preferential origin at 30 percent of the ex-works price (i.e. to meet the rules producers must prove that they have increased the value of their product *within* the beneficiary country by 30 percent). However, the VA method is not expected to apply to fish and fishery products and as such will not be discussed here. Instead, a guiding principle of the reform proposed by the EC is that '[s]ome rules concerning fishery products should be simplified'. But the proposed rules do not represent a significant departure from the existing rules (see table 2), the major changes are that:

1. Company ownership requirements are very slightly relaxed with the elimination of the need for a company's managers, chairperson and majority of board members to be EC and/or beneficiary country nationals.
2. It appears that the Master and officers of a vessel no longer need to be EC and/or beneficiary country nationals.
3. The option of applying for derogation appears to have been slightly widened.
4. Responsibility for ensuring compliance through certificates of origin will shift from the Competent Authority of the beneficiary country to the exporting firm itself, thus potentially saving government revenue and personnel hours through a reduction in the number of required checks and inspections.

**DG Trade
expects the
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Table 2: Comparison of Existing and Proposed EU GSP Rules of Origin for Fish and Fisheries Products

Rule or Procedure	Previous GSP Fisheries RoO	Proposed GSP Fisheries RoO
Origination	The fish must be 'wholly obtained'. This applies if is caught anywhere by 'qualifying vessels'. If caught in 'territorial waters' (12 mile zone) origin is automatic, regardless of which vessel caught it.	Same as before
Qualifying Vessels	Vessel must be <u>registered</u> in and <u>flagged</u> by beneficiary or EC country. At least 50% <u>ownership</u> of vessel by nationals of beneficiary or EC country, <u>or</u> by a company having head office in a beneficiary or EC country, whose manager(s), Chairman of the board and majority of board members are nationals of beneficiary or EC countries <u>and</u> at least 50% of company capital is held within those countries. Fulfil <u>crew</u> requirements.	Vessel must be <u>registered</u> in and <u>flagged</u> by beneficiary or EC country. At least 50% <u>ownership</u> of vessel by nationals of beneficiary or EC country, <u>or</u> they are owned by companies which have their head office and their main place of business in the beneficiary country or EC country <u>and</u> which are at least 50% owned by the beneficiary country, public entities of that country, nationals of that country or a EC country. Fulfil <u>crew</u> requirements.
Crew Requirements	At least 75% of crew (including Master and officers) are nationals of beneficiary or EC country.	At least 75% of crew are nationals of beneficiary or EC country.
Transformation into canned tuna or tuna loins	Fish must be 'wholly obtained'.	Fish must be 'wholly obtained'.
Derogation*	LDCs may apply for temporary derogation from ROO, subject to quantity limits.	All beneficiaries may apply for temporary derogation where internal or external factors temporarily deprive it of the ability to comply with the rules, <u>or</u> it requires time to prepare itself to comply with the rules. Such derogations are time limited.
Value Tolerance**	Total value of non-originating fish cannot exceed 10% of the ex-works price of the product (on a per consignment basis).	Not mentioned in draft proposal
Proof of Origin	Certificates of origin to be provided by Competent Authority in beneficiary country.	Origin certificated by exporters in beneficiary country (firms must be pre-registered by the Competent Authority).

* Derogation: means that a pre-specified quantity (normally measured in tonnes for canned tuna and tuna loins) of a country's product may qualify as 'originating' despite not fulfilling the standard rules of origin.

** Value Tolerance: means that a given percentage value of the component materials in a shipment of product does not have to be 'originating'.

The reforms provide GSP beneficiaries marginal benefits over existing RoO, despite EU commitments to LDCs to improve such rules as part of the Doha Round



In summary, as far as they apply to fish and fishery products, the reforms appear to provide GSP beneficiaries marginal benefits over existing RoO. This contravenes commitments made in the Doha Round that reforms are supposed to *increase* developing country market access, which was re-iterated at the Hong Kong WTO Ministerial Conference in 2005 as follows: 'Members shall take additional measures to provide effective market access, both at the border and otherwise, including simplified and transparent rules of origin so as to facilitate exports from LDCs'.

Given that the EC intends to come to an agreement on new GSP RoO in the spring of 2008, with a view to their implementation on 1 January 2009, PICs should lobby the EC to relax the rules further so as to provide a clear-cut improvement in preferential market access.

Negotiations on Rules for Fisheries Subsidies at the WTO

On 30 November 2007 the Chair of the Negotiating Group on Rules circulated a draft document (or 'Chairs text') that attempts to reach a consensus among WTO Members on reforms of the Agreement on Subsidies and Countervailing Measures (ASCM) – debates that have been running since before the beginning of the Doha Round in 2001.⁷ This document includes proposals for legal text on new rules for fisheries subsidies in Annex VIII.⁸ Initial responses by Members to Annex VIII were aired in a meeting at the WTO in Geneva on 14 December.

The Chair adopted a 'bottom-up' approach that listed an ambitious number of subsidies that would be banned (instead of a 'top-down' approach that banned all subsidies and listed those that were permitted), which was a positive development for PICs as they had promoted this type of approach. The proposed prohibited list includes subsidies that are currently of commercial importance to PIC DWFN partners and thus might, in turn, negatively impact PICs. However, the Pacific negotiators approach at the outset was to assess the text in terms of its direct impact on PIC governments and domestic fishing and processing operations (including the artisanal/small-scale sector). To this end, the major focus was on the extent and scope of coverage of special and differential treatment (S&DT) for developing countries.⁹

Special and Differential Treatment (S&DT) Concerns for PICs

The Permanent Delegation of the Pacific Islands Forum to the WTO is the focal point for the entire ACP group on fisheries subsidies negotiations.¹⁰ On most issues the Pacific, the ACP and the Small Vulnerable Economics group (SVEs) were allied in their responses to the Chairs Text. The central issues in terms of S&DT were as follows:

PICs should lobby the EC to relax GSP RoO rules further so as to provide a clear-cut improvement in preferential market access.

LDCs are exempt from the proposed fisheries subsidies rules



- LDCs are exempt from the proposed rules and will thus have full flexibility to subsidise their fisheries sectors. In the Pacific context, at present this only applies to the Solomon Islands as it is the only LDC that is a member of the WTO.
- Government-to-government fisheries access payments (such as under EU agreements) and their further transfer (e.g. EU fishing vessels) are permitted where the agreement is to access a developing country EEZ. This is an important outcome for PICs as it provides legal security for subsidised access agreements
- In terms of S&DT for non-LDC fishing operations, subsidies to port infrastructure and other physical facilities, income support for fishers, and price support for fishers products (e.g. in the case of significant price declines) are all permitted.
- However, other non-LDC fishing operations, namely subsidised vessel construction, repairs, acquisition, etc., and subsidies for operating costs (e.g. fuel, bait, insurance, etc) are only allowed for decked vessels that are not greater than 10 metres in length. This is highly problematic for PICs as one of the most important set of subsidies in existence in the region for small-scale vessels (which are often over 10 metres) are those for operating costs. This provision thus represents a huge barrier to PIC fisheries development. The obvious response is to lobby for an extension in the allowable length of decked vessels under this provision, which the ACP and several other countries argued should be extended to 25 metres. However, the Pacific representative recognised that trying to increase policy space through the negotiation of increasing fishing capacity limits using vessel length alone (e.g. to 25 metres) would face firm resistance from those WTO Members that are pushing for strict disciplines. In short, to satisfy the legitimate development-orientated demands of the Pacific while simultaneously not allowing S&DT provisions to serve as a ticket to avoid the rules, an alternative capacity parameter must be sought out.
- In terms of the PIC existing (and potential) semi-industrial and industrial fleets, the only subsidies that are permitted under the Chairs Text are those for subsidised vessel construction, repairs, acquisition, etc. This is only permitted with the additional caveat that such vessels are only active in the EEZ of the subsidising country. This is a serious constraint for PICs for two major reasons. First, the Pacific and the ACP pointed out that these exemptions are currently of relatively limited benefit to most PIC governments because of the high cost of this type of subsidy, which puts them outside of the medium-term scope of government budgets. Instead, PICs need the policy flexibility to be able to subsidise operating costs, which are not only currently a more common form of subsidy but more financially viable and targeted. Second, restrictions on the area of operation to the subsidising states' EEZ exclude existing mutually beneficial regional access arrangements and ignore the commercial reality of 'following the fish' when vessels are targeting highly migratory species such as tuna.

The proposed text provides legal security for subsidised access agreements with developing countries

The proposed text does not satisfy the legitimate needs of PICs in terms of small-scale and industrial fisheries development



Other Concerns for PICs

Aside from the exclusions for LDCs and for subsistence fisheries, all of the other S&DT outlined above is contingent upon non-LDC Members meeting a complex set of fisheries management requirements to ensure the conservation of fish stocks. While the Pacific made clear that the sustainable management of marine resources is deeply rooted in its long-term social and economic interests, it supported the ACP statement that several developing countries have capacity constraints in meeting the demanding fisheries management requirements listed in the Chairs Text. As such, the ACP asked the Chair to simplify the language of this provision.

Other issues raised by the ACP were:

- A call for clarification on the Chair's proposed banning of any subsidies where stocks were 'in an unequivocally overfished condition'. This was because the Pacific negotiators noted that the phrase 'unequivocally overfished' is not in common usage in fisheries management and as such requires legal tightening so as not to be abused.
- The need for technical assistance to developing country Members for the implementation of notification and surveillance requirements (e.g. where Members are supposed to provide the WTO Secretariat with a list of subsidies in use).

Finally, it should be emphasised that any eventual agreement in fisheries subsidies negotiations is dependent upon the completion of the Doha Round as a whole, including the highly contentious negotiations over the Agreement on Agriculture and on industrial goods (i.e. Non-Agricultural Market Access, which includes fish products). Therefore, PICs that are Members of the WTO must be particularly diligent that horse-trading in other areas does not lead to negative outcomes for the Pacific in any future text on fisheries subsidies.

Quality Standards

Media Reports of Illegal Fish in EU Markets

The EU market for illegally caught fish products has been highlighted in stories in the US media in January 2008. The *International Herald Tribune* and *The New York Times* reported that: 'The European Commission estimates that more than €1.1 billion worth, or [US]\$1.6 billion, of illegal seafood enters Europe each year. The World Wildlife Fund says that up to half of [the] fish sold in Europe is illegal'.¹¹ The primary incentive for a rise in the supply of IUU caught fish is the decline in global stocks in the context of increased demand in the EU. The global range of suppliers and the complexity of relationships in supply chains have made the job of the small number of EU inspectors all the more difficult.

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Reports such as these and continued lobbying activities by environment NGOs such as Greenpeace and the World Wide Fund for Nature (WWF) will only fuel existing moves towards new EU regulations on combating IUU, which were reported on in last month's *Briefing*. In addition, increased sensitivity amongst particular groups of EU consumers on environmental sustainability issues mean that some retailers will respond swiftly to suspect suppliers, such as the supermarket group *Norma* (with 1,300 stores in Austria, Czech Republic, France and Germany) when it withdrew canned tuna products alleged to contain illegally caught fish from the shelves of all of its outlets in October 2007.¹² Moreover, in December 2007 the entire Dutch retail sector was united in declaring that from 2011 all wild-caught fish and seafood offered at all food retail outlets in the Netherlands will come from sustainable fisheries and be Marine Stewardship Council (MSC) certified.¹³ The second largest supermarket chain in Switzerland – *Coop* – has made the same commitment.

**More than
US\$1.6 billion
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Coming in the next issue (February 2008, Vol. 1: Issue 3)

- Update on fisheries subsidies negotiations at the WTO
- Update on Preference Erosion and Non-Agricultural Market Access (NAMA) Negotiations at the WTO (Note that this was scheduled to be included in this month's issue, but due to limited developments in this area to date it is being held over to February)
- Update on status of Interim Pacific EPA and what to expect in 2008



References

(Endnotes)

¹ Liam Campling is Consultant Fisheries Trade Analyst, FFA. The contents of this briefing (including all analysis and opinions) are solely the responsibility of the author and do not necessarily reflect the positions or thinking of the FFA Secretariat or its Members. The author would like to thank two individuals for their invaluable input on an earlier draft of this briefing.

² For background and a more detailed overview of the EU's GSP regime, see Part I, Chapter 5 of Liam Campling, Elizabeth Havice and Vina Ram-Bidesi (2007), *Pacific Island Countries, the Global Tuna Industry and the International Trade Regime*.

Available at: <http://www.ffa.int/node/891>

³ Commission Staff Working Document, Accompanying document to the Council Regulation applying a scheme of generalised tariff preferences for the years 2009-2011 – Impact Assessment Report, COM(2007) 857 final, SEC(2007) 1727, Brussels, 21 December 2007.

⁴ Lorand Bartels (November 2007) 'The EU's GSP+ arrangement as an alternative to the EPA process'. Available at: <http://tinyurl.com/yovo9q>. For more detail see: Lorand Bartels (2007) 'The WTO Legality of the EU's GSP+ Arrangement', *Journal of International Economic Law*, 100, pp. 869-886

⁵ EC TAXUD 2046/2007 'Draft Commission Regulation (EC) No ../.. of [...] amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code'

Available at: <http://tinyurl.com/yvg5wu>. For a short summary see DG Taxud Communication 'New developments – The future of rules of origin' Available at:

<http://tinyurl.com/2jvluc>

⁶ In fact, EU GSP RoO were slightly stricter than those under Lomé/Cotonou. For details see Part I, Chapter 6 (especially Table 6.1) of Campling et al (2007), *Pacific Island Countries, the Global Tuna Industry and the International Trade Regime*.

Available at: <http://www.ffa.int/node/891>. For a detailed study on proposed EU reform of fisheries RoO see Oceanic Development-Megapesca (2007) *Rules of Origin in Preferential Trade Arrangements: New Rules For The Fishery Sector* (Draft Final Report—Contrat Cadre FISH/2006/20). Available at: <http://tinyurl.com/2d89kv>

⁷ For background and a detailed overview of Fisheries Subsidies issues, see Part II, Chapters 11 (on general issues), 12 (on subsidies and access agreements) and 13 (on artisanal/ small-scale fisheries) of Campling, Havice and Ram-Bidesi (2007), *Pacific Island Countries, the Global Tuna Industry and the International Trade Regime*. Available at: <http://www.ffa.int/node/891>

⁸ The full Chairs Text is available at the following link (including Annex VIII on Fisheries Subsidies, which is located at the end of the document): <http://tinyurl.com/2lnp75>

⁹ For a clear and concise general overview see ICTSD (2007) 'Fisheries Subsidies Text Provides a Good Starting Point, Delegates Say', *Bridges Trade BioRes*, Vol. 7 No. 22, 18 December 2007. Available at: <http://www.ictsd.org/biores/07-12-18/story4.htm>

¹⁰ For an excellent summary of the issues by the Permanent Representative of the Pacific Islands Forum to the WTO see: Robert Sisilo (2008) 'Fisheries: Access fees get the nod in WTO Chair's text, But concerns abound on exemptions for developing countries', *Islands Business*, January. Available at: <http://tinyurl.com/ywby6x>

¹¹ Elisabeth Rosenthal 'Something's fishy as Europe dines', *International Herald Tribune*, 14 January 2008; see also Elisabeth Rosenthal 'Europe's Appetite for Seafood Propels Illegal Trade', *The New York Times*, 14 January 2008.

¹² Webwire, 'European retail chain removes Pacific 'stolen fish' from supermarkets – Greenpeace reaction', 8 October 2007.

¹³ 'Dutch retailers give 100% backing to MSC standard', *Fishupdate.com*, 13 December, 2007