



EU MARKET ACCESS FOR FISHERY AND AQUACULTURE PRODUCTS

OFFICIAL PROGRAMME

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This publication should be used as an initial reading to understand the basic requirements for accessing the EU Market. It does not necessarily represent the views of the European Commission or Switzerland Global Enterprise, and has no legally binding force. It is recommended that the reader follows up with the references provided, and research on all the topics that are not covered by this publication.

ABOUT THE AUTHOR

Francisco's experience ranges all across the fisheries sector since the 80s, from a deckhand in small trawlers in Argentina, a crew and fisheries observer, to an MSc in Fisheries Biology and a researcher in Argentina's Fisheries Research and Development Institute. In the 90s, he went back to be a fisherman in the tuna longline fishery in the central southern Pacific and later in New Zealand, where he worked his way up from a crew member to an elected member of the NZ seafood Standards Council. He later joined FAO HQ in Rome as Fishery Officer for two years and then went back to specialist consulting.

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Foreword

The European Union is the world's largest single market with over 500 million consumers and a GDP of 25,000 Euro per capita. It is a good region to do business with. Transparent rules and regulations, a secure legal framework and a trade policy fostering sustainable development offer trading partners an opportunity for economic growth. However, the EU market is also a very challenging place to access, with thousands of enterprises competing for share, on the one hand, and strict market access standards set by a selective consumer base.

The above is especially true with respect to fish and fishery products. On the one hand, the EU is the largest single fish market, with imports amounting to 19.2 billion EURO in 2011. And although it offers generous tariff concessions to developing countries (and tariff freedom to least developed countries), the EU also puts high demanding regulatory requirements on products regarding its legal fishing origin, processing conditions, traceability and sanitary standards. Likewise, Switzerland provides a promising market, although on a much smaller footing: in 2013, each of its 8.2 million inhabitants consumed (only) 9.1 kg of fish products (EU: 24.5 kg in 2011). By definition – Switzerland is a land-locked country – fish products come from abroad, mostly the EU, making Switzerland the 1st market worldwide for EU fish products. So, entering the EU market enables accessing an even wider market, including Switzerland.

It is a general rule that exports constitute an essential source of revenues for all countries. The State Secretariat for Economic Affairs SECO has recognized the key role of trade for developing countries. Among the instruments it deploys within its economic and development cooperation with poorer countries, trade-related cooperation, including social and environmental aspects, takes on a major importance. The overall aim is to boost trade as a trigger for growth and sustainable development.

Specifically, SECO runs programs for promoting imports, including fish, to Switzerland and the EU. In this endeavour, SECO has set up the Swiss Import Promotion Programme (SIPPO) which works directly with enterprises from partner countries, providing them with counseling and market information services and directly fostering their access to markets via trade fairs. The program is implemented by Switzerland Global Enterprise.

The second edition of the publication on EU Market Access for Fishery and Aquaculture Products is another excellent example of SIPPO's interventions aimed at fostering access to the European market through information dissemination. It does provide the reader with tangible and lively advice backed by substantial referencing, which should lead to a better understanding of the regulatory requirements for market access into the European Union. I wish you a pleasant reading!



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OBJECTIVE OF THIS GUIDE

It is the aim of this publication help potential and present exporters understand, on one side the basics of the “technically oriented” market access certifications (IUU-regulation and health) and some key aspects of the “trade related” one (Origin).



The second edition of this publication provides an updated guideline to the regulatory requirements for exporting seafood products to the European Union (EU). It describes the EU system of official assurances, the main regulations, requirements for the Competent Authorities and operators along the value chain with regards to health and “non-IUU” Catch Certification.

Each chapter has a “basics” section at the opening, and then further subsections develop some of the most important topics related to the subject.

Exporting seafood to the EU is not an obligation, and it requires an equal amount of effort by the government authorities and the private sector of the exporting countries. Compliance and understanding of the required system of official assurances is paramount to access the EU market.

This publication should be used as an initial reading to understand the very basics. It is strongly recommended that the reader follow up with the references provided, and research on all the topics that are not covered by this publication.





CAN MY COUNTRY EXPORT FISH AND FISHERY PRODUCT TO THE EU?

Presently there are approximately 98 countries authorised for exports of fish and fishery products from the health side, of which around 55 are authorised for aquaculture products and 13 for live bivalve molluscs.



One of the grounding ideologies of the EU is that of free trade. By the logic of free trade, any product produced under EU regulation in any European country can travel from one country to other without being subject to trade barriers (such as tariffs or non-tariffs barriers to trade: different laws or regulations, subsidies, trade restriction, import quotas, subsidies, etc.). This facilitates trade among countries of the EU. This principle is also extendable to four more countries (Iceland, Norway, Switzerland and Liechtenstein) that form European Free Trade Association (EFTA)¹ who, together with EU countries, constitute the Agreement on the European Economic Area ².

The free trade principle is based on a robust regulatory framework that affects all the EU Member States (MS). Import rules for fish and fisheries products are harmonized, meaning that the same rules apply in all EU countries. For non-EU countries the European Commission is the negotiating partner that defines import conditions and certification requirements. The two main regulations affecting fish and fishery products seek, among other objectives, to protect final consumers' health and close EU markets from products originated from Illegal, Unreported and Unregulated (IUU) fishing activities. Under these regulations all the fishing products have to be captured, manipulated, elaborated, transported and delivered following standards that are established by European legislators, taking into account European realities and addressed to European citizens.

While they are two “technical” regulatory sets (Health and IUU) and a trade one (Origin) that the exporting country needs to comply with, the most complex requirements are with health so it is fair to say that the “main” authorisation requirement is that in place for health certification.

The EU sees aquaculture products from a “farming” perspective, so their importation runs under a “parallel system” as the value chain from the farms to the processors has to comply with the same requirements for that of wild caught fish, but on top of that they need to comply with an “extra” control system in the form of an annual control plan run by the Competent Authority (CA) on heavy metals, contaminants, residues of pesticides and veterinary drugs.

The latest list of countries approved plans is presented as part of Commission Implementing Decision of 11 June 2012 amending Decision 2011/163/EU on the approval of plans submitted by third countries in accordance with Article 29 of Council Directive 96/23/EC ³.

So the fact that your country may be allowed in the list for Fish and Fishery Products, does not imply that is also allowed for aquaculture products.

So you need to check initially if your country is authorised for fish and fishery products, as January 2015 the list ⁴ includes:

1. <http://www.efta.int>

2. <http://www.efta.int/eea/eea-agreement>

3. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2012.152.01.0042.01.ENG

4. https://webgate.ec.europa.eu/sanco/traces/output/non_eu_listsPerActivity_en.htm#

| | | | |
|---------------|-------------------------|----------------------|------------------------|
| Albania | Algeria | Angola | Antigua and Barbuda |
| Argentina | Armenia | Australia | Azerbaijan |
| Bahamas | Bangladesh | Belarus | Belize |
| Benin | Bosnia & Herzegovina | Brazil | Brunei |
| Canada | Cape Verde | Chile | China |
| Congo | Costa Rica | Cote D'Ivoire | Cuba |
| Curacao | Ecuador | Egypt | El Salvador |
| Eritrea | Falkland / Malvinas | Fiji | French Polynesia |
| Gabon | Gambia | Ghana | Grenada |
| Guatemala | Guyana | Honduras | India |
| Indonesia | Iran | Israel | Jamaica |
| Japan | Kazakhstan | Kenya | Korea, Republic Of |
| Madagascar | Malasia | Maldivas | Mauritania |
| Mauritius | Mexico | Moldova, Republic Of | Montenegro |
| Morocco | Mozambique | Myanmar | Namibia |
| New Caledonia | New Zealand | Nicaragua | Nigeria |
| Oman | Pakistan | Panama | Papua New Guinea |
| Perú | Philippines | Russian Federation | Saint Helena, T. Cunha |
| Saudi Arabia | Senegal | Serbia | Seychelles |
| Singapore | Saint Maarten (Dutch) | Solomon Islands | South Africa |
| Sri Lanka | Saint Pierre y Miquelón | Surinam | Taiwán |
| Tanzania | Thailand | Togo | Tunisia |
| Turkey | Uganda | Ukraine | United Arab Emirates |
| United States | Uruguay | Venezuela | Viet Nam |
| Yemen | Zimbabwe | | |

For aquaculture products the following countries are authorised:

| | | | |
|----------|----------------------|-------------|------------|
| Albania | Angola | Australia | Bangladesh |
| Belize | Bosnia & Herzegovina | Brazil | Brunei |
| Canada | Chile | China | Costa Rica |
| Cuba | Ecuador | Gambia | Guatemala |
| Honduras | India | Indonesia | Iran |
| Israel | Japan | South Korea | Madagascar |
| Malaysia | Mauritius | Mayotte | Mexico |

| | | | |
|--------------------|-----------|----------------------|---------------|
| Montenegro | Morocco | Mozambique | New Zealand |
| Nicaragua | Panama | Peru | Philippines |
| Russian Federation | Serbia | Singapore | Sri Lanka |
| Taiwan | Tanzania | Thailand | Tunisia |
| Turkey | Ukraine | United Arab Emirates | United States |
| Uruguay | Venezuela | Viet Nam | Zimbabwe |

And for live bivalves (and/or products thereof)

| | | | |
|-----------|-------------|---------|-------------|
| Australia | Canada | Chile | Jamaica |
| Japan | South Korea | Morocco | New Zealand |
| Peru | Thailand | Tunisia | Turkey |

Viet Nam

Exporting countries have to certify through the correspondent CAs that the products to be exported have followed the pertinent European regulations, and/or national applicable conditions providing official guarantees through the expedition of the health/food safety, Legal Catch Certification and Certification of Origin.

2.1

Can my company export to the EU?

Establishments in a third country intending to export their Fish and Aquaculture Products (FAP) to the EU should be registered by the national CA and appear in the list of approved establishments under their own country (*see footnote 4*).

The registration procedure should be undertaken in accordance with the EU legislation. The registering CA must also be listed, to guarantee that the structure and the execution of food/fish products are controlled at least to standards equivalent to those of the EU.

The same principle rules apply for fishing vessels (i.e. freezer vessel and factory vessel). Ice vessels and small scale crafts have only to be registered and “approved” (but not listed) in regards the EU requirements before they can be used to supply exporting facilities.

These approvals are not a “one off” event, but are dependent on continuous compliance with the national and EU specific requirements.

2.2

Official certifications required for the EU market

While they are two “technical” regulatory sets (Health and IUU) and a trade one (Origin) that the exporting country needs to comply with, the most complex requirements are with health so it is fair safe to say that the “initial” authorisation requirement is that in place for Health Certification.

2.2.1 Health Certification

In 1993 concerns relating to consumer health and safety led to the establishment of hygiene regulations across the EU. These were complemented in 2004 with regulations concerning the importation of food and feed, including fisheries and aquaculture products.

This comprised the “hygiene package” which has evolved over time involving designated CA in EU MS and in third countries, a network of Border Inspection Posts (BIP), and a system of sanitary certification and of rapid alerts (i.e. RASFF).

Under the Health Certification third countries have to guarantee that the exported product accomplish what is established by the EU Members countries regulations (EC) No. 178/2002, (EC) No. 882/2004 and (EC) No. 884/2004, what is commonly known as the “hygiene package”.

The third country CA has to guarantee that all the participants in the production chain, from the producers (fishermen, boats, aquaculture plants, etc.) to the exporting establishments, passing by cool stores, processing establishments, etc. meet the requirements of the EU regulation, identifying all the components of this value chain with a unique identification code.

The exporting country CA needs to assure compliance with three types of obligations:

- a) Obligations of resources: i.e. instruments of production, Hazard Analysis Critical Control Points and prerequisites programme, traceability, etc.*
- b) Obligations of results: i.e. safety levels of the product (e.g. histamine, contaminants), etc.*
- c) Obligations of control: i.e. regulatory verification, data storage and management, legal support, etc.*

Once the equivalence is established the country can export to the EU market as long as the products exported has a Health Certificate issued by the CA of the country of origin.

The EU, through its Food and Veterinary Office (FVO), reviews, checks and makes sure that exporting countries seafood safety regime are equivalent to that of the EU itself. The FVO undertakes inspection missions to third countries to evaluate the CA's performance in order to determine the status of compliance with the EU regulation. After the inspection missions FVO will publish a public report containing what they have found, references and, in case necessary, recommendations to facilitate compliance.

Regulation (EC) No. 854/2004 states what kind of official controls third countries CA have to make in order to assure that production chain components are respecting EU regulation. This regulation establishes that official controls can be carried out by the CA without prior warning, on a regular basis, with a frequency based on risk, the controls can also be done at any stage of production, processing, distribution, exporting, etc.

In other words, establishments have to be prepared to be object of an official control by CA at any moment any time, putting them at risk of being suspended or removed from the list of official approved establishments if they are not able to prove that are accomplishing with the EU “hygiene package” regulation, losing the possibility to export to EU market and/or to provide their product to other establishments officially approved by the CA.

Besides the FVO the EU has other tools to verify the accomplishment of its regulation by third countries. All products entering the EU coming from third countries must do enter via an EC approved BIP, under the authority of an official veterinary. On its arrival third country products are subject to three types of checks:

a) A documentary check: done systematically.

b) An identity check: done systematically.

c) A physical check: done appropriately to the risk profiling of the consignment.

If any non-compliance with the EU legislation is found, the BIP notifies it to the EU MS through the RASFF, facilitating its detection on the European Market through the traceability system that they have to follow. If the product represents a danger to consumers' health (exceeding any regulatory level or containing non-authorized substances) then the exporter may decide if they want to recover it or let it be destroyed.

In synthesis, the EU only permits imports from authorised countries with each country having approved establishments. So your country will need to be in the list first and then your establishment need to be approved and listed by the authorities.

2.2.2 Catch Certification

Taking account of EU consumer concerns regarding the fact that *“Illegal, unreported and unregulated (IUU) fishing constitutes one of the most serious threats to the sustainable exploitation of living aquatic resources and jeopardises the very foundation of the common fisheries policy and international efforts to promote better ocean governance”* (preamble of the EU IUU Regulation), the EU decided to adopt the Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate IUU fishing (EU IUU Regulation). This regulation is accompanied by implementing regulations and other tools.

The EU IUU Regulation prohibits trade with the Community in fishery products stemming from IUU fishing, and states in its preamble *“...to make this prohibition effective and ensure that all traded fishery products imported into or exported from the Community have been harvested in compliance with international conservation and management measures and, where appropriate, other relevant rules applying to the fishing vessel concerned, a certification scheme applying to all trade in fishery products with the Community shall be put in place.”*

The Catch Certification Scheme (CCS) was introduced on 1 January 2010, whereby fisheries products⁵ must be accompanied by Catch Certificate (CC) declaring that the catch was made in accordance with applicable laws, regulations and international conservation and management measures.

The IUU regulation applies to all trade of marine fishery products, processed or not, originating from third country fishing vessels and exported to the European Community by any means of transportation. It also applies to any catches originating from EU fishing vessels to be exported to third countries. Transshipments and processing operations are also inside the scope of the IUU certification scheme.

One of the key aspects of this regulation is the full traceability of marine products, which also has a relevant role in the regulation (EC) 178/2002 of the so-called “hygiene package”, as seen in the previous section. The system aims to record the origin of all the marine products arriving to the EU market: this means knowing who captured the fish, where was it caught, how much was caught, when it was caught and how it was caught, and that all those activities took place in compliance with a verifiable regulatory framework.

As well as with the Health Certificate, IUU regulation is based on the responsibility and commitments of third countries. The objectives of the Catch Certification scheme are threefold:

- *ensuring product traceability at all production stages, from catch to marketing, including processing and transport;*

5. The EU IUU regulation defines the fisheries products in its article 2.8. This concept has evolved over the years and currently most of the bivalves molluscs and aquaculture products are excluded from the scope of the EU IUU Regulation.

- *enabling Flag States⁶ to better monitor the fishing activities carried out by its vessels and so support compliance with conservation and management rules; and*
- *providing a legal basis for cooperation between Flag States, countries of processing and of marketing and improving the dissemination of information. (18)”*

As all the products entering the EU market have to be accompanied by this certificate, the EC importer must ensure that the consignment to be imported has a validated certificate provided by the exporter prior to the importation to the EU. Normally the responsible for issuing the CC should be the Fisheries Authority of the flag country of the vessel.

2.2.3 GSP / Rules of Origin / Certification of Origin

The Rules of Origin are the means by which the EU determines where goods originate, i.e. not where they have been shipped from, but where they are deemed to have been produced or manufactured.

On 1 January 2011 the reform of the rules of origin for the EU Generalized System of Preferences (GSP) went into force and introduced four major changes in the rules for determining origin.

- *First, while previously the same rules of origin applied to developing countries and least developed countries (LDCs), the new rules frequently include separate provisions for LDCs to address concerns about their capacity constraints. The origin-determining requirements for developing countries have also been modified.*
- *Second, “the List of Products and Working or Processing Operations which confer Originating Status” has been simplified to some degree, and the product-specific origin requirements contained in the current list differ from those in the previous list.*
- *Third, important changes have been made in the cumulation provisions that expand the possibilities of cumulation.*
- *Fourth, the new procedures will be effective from 1 January 2017, at which time the system of registered exporters and self-certification will be introduced. By then the governments of beneficiary countries are expected to have made necessary preparations, including the installation and management of electronic databases in their customs operations to implement the new procedures.*

The origin-determining criteria are fundamental to the rules of origin. They determine how and when a product can be considered as originating in a GSP beneficiary country. Broadly, there are three type of criteria: change of HS tariff heading, value percentage and specific process.

In any case, the issues surrounding rules of origin will need to be further explored with the authorities of the exporting countries or via national export promotion agencies as most issues are not as technically clear as in the case of the Health and Catch Certifications.

2.3

Relations in between the certifications

The certification regimes are as different as the work scope of a Seafood Safety Inspector, a Compliance Fisheries Officer and a Customs officer. The existence of a Health Certificates is thus not relevant for the purpose of the validation of a Catch Certificate, which relies only on compliance with conservation and management rules. Adversely, the Catch Certificates used in accordance with the IUU Regulation will not be substitutes for Health Certificates and/or Certificates of Origin.

6. The flag state of a vessel is the state under whose laws the vessel is registered or licensed.

The fact that a Health Certificate is issued for supplies from an approved establishment or vessel or, in addition, a Certificate of Origin, does not infer that the fishery products concerned comply with conservation and management rules.

However, it is important to note that the different documents (Catch Certificates, Health Certificates, Certificates of Origin) cannot contain discordant information.

The table below is intended for a comparison and contrast of some of the elements of the two key certifications covered in this guide.

| | Health Certification | Catch Certification |
|---------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nature and extent of the problem | Small but significant number of alerts; small number of cases affecting EU consumer. Alerts published. | Extensive worldwide problem of IUU. No objective assessment of EU MS performance is published. |
| Aim | Protect the health of the European Consumers (and aquatic fauna in the case of live fish). | Avoid the importation of fisheries products obtained from IUU fishing and reduce the demand for such products. |
| Scope | Fish and Fishery Products traded to EU Member countries from “authorised” countries. | All fishing vessels under any flag in all maritime waters, and all processed and unprocessed marine fishery products, traded to or from the EU (and EU nationals operating under any flag). |
| Consistency with international instruments | Consistent with CODEX, WTO SPS Agreement etc. | Consistent with IPOA-IUU, UNFSA, FAOCA, APSM and partly with the voluntary guidelines for Flag State performance. |
| Overall responsible | Authorised Exporting Country. The country must be in the list of “authorised” countries based on legal framework and the “competency” of the CA. | Flag State of the harvesting vessel (and/or a RFMO if the vessel/flag country is participant of a Catch Certification scheme recognised as compliant with the applicable regulation). |
| Applicable EU regulations | Various, most notably Regulations: (EC) No.178/2002, No.852/2004, No.853/2004, No.854/2004, No.2073/2005. In place since 1/1/2006 (prior was a similar system since 1993). | The regulation Reg. (EC) No.1005/2008 establishing a Community system to prevent, deter and eliminate IUU fishing, and various others. |
| Competent Authority EU MS | Coherent set of Border Inspection Points monitored and aided by DG SANTE; national systems within EU MS. | Responsibility on the Fisheries CA of the MS, inconsistent methodology on entry into EU either through designated ports for Fishing Vessels, or through other ports for containers; little complementarity with sanitary controls; no standard methodology applied by DG MARE. |
| Vetting and monitoring of EU MS CA | Not vetted; DG SANTE carries out standard audits and publishes results. | Not vetted; DG MARE carries out undefined audits or visits and does not publish results. |
| Competent Authority in third country | Seafood safety CA varies depending on the country, for example it can be Ministry of Health, Fisheries, Agriculture, or Food Safety Authority. | Generally is the Fisheries Authority of the flag country of the vessel but can be the veterinary services in charge of validating the Health Certificate. |

| | Health Certification | Catch Certification |
|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Vetting and monitoring of third country CAs | Vetted and monitored through published list of FVO missions, published audits and CA responses. | Nominations either accepted or not, unclear on nature of DG MARE audits or visits; results not published. |
| Contents of the certificate | Completed by the CA, and an officer of the CA of the country of processing provides official guarantees that the consignment dealt as per the EU regulations, or equivalent. | Declaration by exporter; validation of transshipment; validation on export by CA; checks on arrival in the EU (authorisation); re-export certificate, transport details, and fishing details (save fishing area does not distinguish between high seas and EEZ, making licence verification difficult). |
| Presentation of the Certificate | On product arrival at the Border Inspection Post. Electronic notification through TRACES before arrival; original on clearance. | By the importer on arrival. In case of direct landings in EU ports 3 days prior notice, with shorter periods for fresh products, air freight, and arrivals by road and train (2 to 4 hours). |
| Status of the operator (processing plant/ fishing vessel) | The operator must appear in a list of establishments (processing plants, vessels) published by DG SANTE, authorised and submitted by an accepted CA in a listed third country. | Vessel must fly the flag of a country whose notification has been listed. No list of approved vessels. Products of vessels in a list of IUU vessels (either by the EU or by RMFOs) are not allowed access. |
| Role of the RMFO | None. | RFMO Catch Documentation Scheme may be approved to substitute the CCS under the EU IUU Regulation. |
| Signatories | The authorised CA signs the certificate. | Notified CA validates Catch Certificate, but unclear who signs transshipment sections 6 & 7 and Processing Statement. |
| Controls on entry | Standard practices at BIPs and guidance to them; electronic record of all Health Certificates. | Varied practices and risk assessment on entry; no record of use of CCs and Processing Statements |
| Action on rejection | Consistent methodology. | Sometimes returned, even though this is not provided for in the EU IUU Regulation. |
| Controls on re-export and split consignments | EU MS issues new Health Certificate. | Re-export certificate completed by EU MS CA, but CC copied for consignment split, thus no control or traceability. No record of issue or use of re-export certificates. |
| Alerts | Comprehensive RASFF system, accessible by public, annual reports issued. | Provided for in the EU IUU Regulation, but not instituted. |
| Single Liaison Office EU MS | Provided for, but not easily accessible. | Publication provided for in EU IUU Regulation, but not done to date; Third Countries do not have access to contacts in EU MS. |
| Traceability | Health Certificate re-issued at each point in the chain; one-up-one-down principle applied. | Copies of CCs permitted; no record of their issue or use; port of landing not indicated; no traceability of product is possible. |
| Controls on vessels | In third countries and in EU MS need constant monitoring and improvement; Controls on distant water fleet are problematic. | Flag State responsibility paramount; coastal and Port State controls bypassed at times. |

| | Health Certification | Catch Certification |
|------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Training and support to third countries | Over 15 years of technical assistance by various bodies inside and outside the EC. Comprehensive long-term support through Better Training for Safer Food; plus other initiatives). | No formal support from DG MARE; some missions carried out but results not published; one initiative from DEVCO has ended. However the EC have promised to co-operate administratively with and/or support third countries in the implementation of this Regulation. |
| Consequences of non-conformity | Product detained. Rapid Alerts Systems entry, report from the Country of Origin CA, product returned or destroyed. | Refusal of Importation. AC of MS may confiscate and destroy, dispose of or sell for charity. If the Flag State refuse/ fail to take corrective measures against the vessel, it could be potentially listed as IUU vessel. Flag State potentially listed as a Non co-operating country. |
| Black lists | No country black list. Countries must be listed. Certain products can be excluded or EC can ask third country CA to suspend an establishment from its list of approved establishments. | There is provision for non-cooperating third States; CAs must be notified and EC accepts notification by publishing list (though this is not legislated). IUU vessel list so far only compilation of RFMO lists. |
| European Community Nationals | Nothing there. | Nationals of the EC shall neither support nor engage in IUU activities and the EC Member State concerned shall cooperate with the relevant third country in order to identify nationals supporting or engaging in IUU activities. |





WHAT DOES THE HEALTH CERTIFICATION IMPLY?

Seafood products that are exported to the EU must be accompanied by a Health Certificate emitted by the CA of the Country of Origin. This certificate is the official document between the exporting country and the EU that provides the official guarantees required.



3.1 The hygiene regulatory package of the EU

The European Commission is a member of the World Trade Organization (WTO) and takes the rules and agreements as binding for the assessment and management of risks associated with food and feeds linked to trade. In respect to food and feed, the WTO Sanitary and Phyto-sanitary (SPS) agreement and the supporting standards, guidelines and recommendations established by the World Organisation for Animal Health (OIE) and Food and Agriculture Organization / World Health Organization (FAO/WHO) Codex Alimentarius Commission are respected and form the basis of EU legislation.

The EU “hygiene package” has been designed to protect the health and safety of consumers, as well as addressing animal welfare, plant health and environmental protection. It follows the principles of the “farm to table” or food chain approach promoted by the WTO. There are five broadly defined areas, which support the international food chain approach:

- 1. The fundamental components of risk analysis, assessment, management and communication;*
- 2. Traceability of the food or feed from primary production, through postharvest handling, processing and distribution to consumers;*
- 3. Harmonisation of all standards for fish safety and quality attributes to support the development of internationally agreed science-based standards;*
- 4. Equivalence in food safety systems in which similar levels of protection are developed against food borne hazards and quality attributes irrespective of the method of control that is applied;*
- 5. An emphasis on risk avoidance and prevention at source within the whole food chain from farm or sea to fork or table. This also covers aquaculture and includes good practices Pre-requisite programmes and safety systems based upon the preventive HACCP concept.*

3.1.1 General principles and requirements of EU food law

Regulation (EC) No. 178/2002⁷ outlining the general principles and requirements of food law, establishing the European Food Safety Authority (EFSA) and laying down procedures in matters of food safety was adopted on 28 January 2002 and established the general principles and requirements of food law. It provided a framework upon which a coherent approach to food and feed safety legislation could be

7. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2002R0178:20090807:EN:PDF>

supported. The regulation also defines the role of EFSA, and includes basic concepts of equivalence and traceability.

Regulation (EC) No.882/2004⁸ defines equivalence as “the capability of different systems or measures to meet the same objectives, and the term equivalent means different systems or measures capable of meeting the same objectives”. It was designed to provide a structure for use by EU MS for areas not covered by specific harmonised rules, as well as where controlling internal markets are carried out by mutual recognition. Food and feed imported for sale in the Community shall comply with the relevant requirements of EU food law or equivalent conditions. The same article also states clearly that all food has been subjected to EU rules or to rules that are equivalent to these (Art. 11).

The structure also supports international trade to maintain standards and mutually accept the requirements within third countries, except where these could undermine the sanitary and safety requirements established within the EU.

The “hygiene package” has three main instruments (Regulations No. 852/2004, No. 853/2004 and No. 854/2004) and it was developed with a focus to delegate responsibility for the production of safe and wholesome food to the producers with support, monitoring and review activities from trade organisations and MS CAs.

Regulation (EC) No. 852/2004⁹ on the hygiene of foodstuffs explains the obligations of the food business operators, including the duty of registering with the CA, and defines the most important terms regarding the food industry. There equivalence means, in respect of different systems, being capable of meeting the same objectives. Furthermore, the specific hygiene requirements and the principles of the preventive Hazard Analysis and Critical Control Point (HACCP) system are explained.

Regulation (EC) No. 853/2004¹⁰, lays down specific hygiene rules on the hygiene of foodstuffs of animal origin, and Regulation. (EC) No. 854/2004¹¹, lays down specific rules for the organisation of official controls on products of animal origin intended for human consumption, and also includes the basic rules for the surveillance of food and the listing system for imports. This system includes special rules for fishing vessels, factory vessel and freezer vessels flying the flag of a third country, in order to be able to control fishery products even when caught by one flag and processed in a different country. Furthermore, the regulation requires a Health Certificate that assures the imported products safety at the BIP. A Certificate is issued by each authority the product passes through, even though its origin in customs terms may be another country. Each MS has to nominate a CA with the responsibility to manage all SPS issues.

Regulation (EC) No.882/2004¹² covers official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules and demonstrates the principles of official controls and what those comprise and who executes control checks. One section states that imported goods should undergo the same controls as those defined for European goods and shows the actions in case the consignment coming from third countries does not fulfil the requirements of safety. It has then either to be re-dispatched or destroyed. The related costs have to be borne by the food operator.

Finally, binding requirements have been established for residue methods under Commission Decision No. 2002/657/EC. This regulation has harmonised the MS approach to validation which has increased the reliability of results.

It would be impossible to have referenced all legislation in one document, as well as all the requirements in one simple list.

There is no way to escape reading regulations, but be aware that they change and get updated.

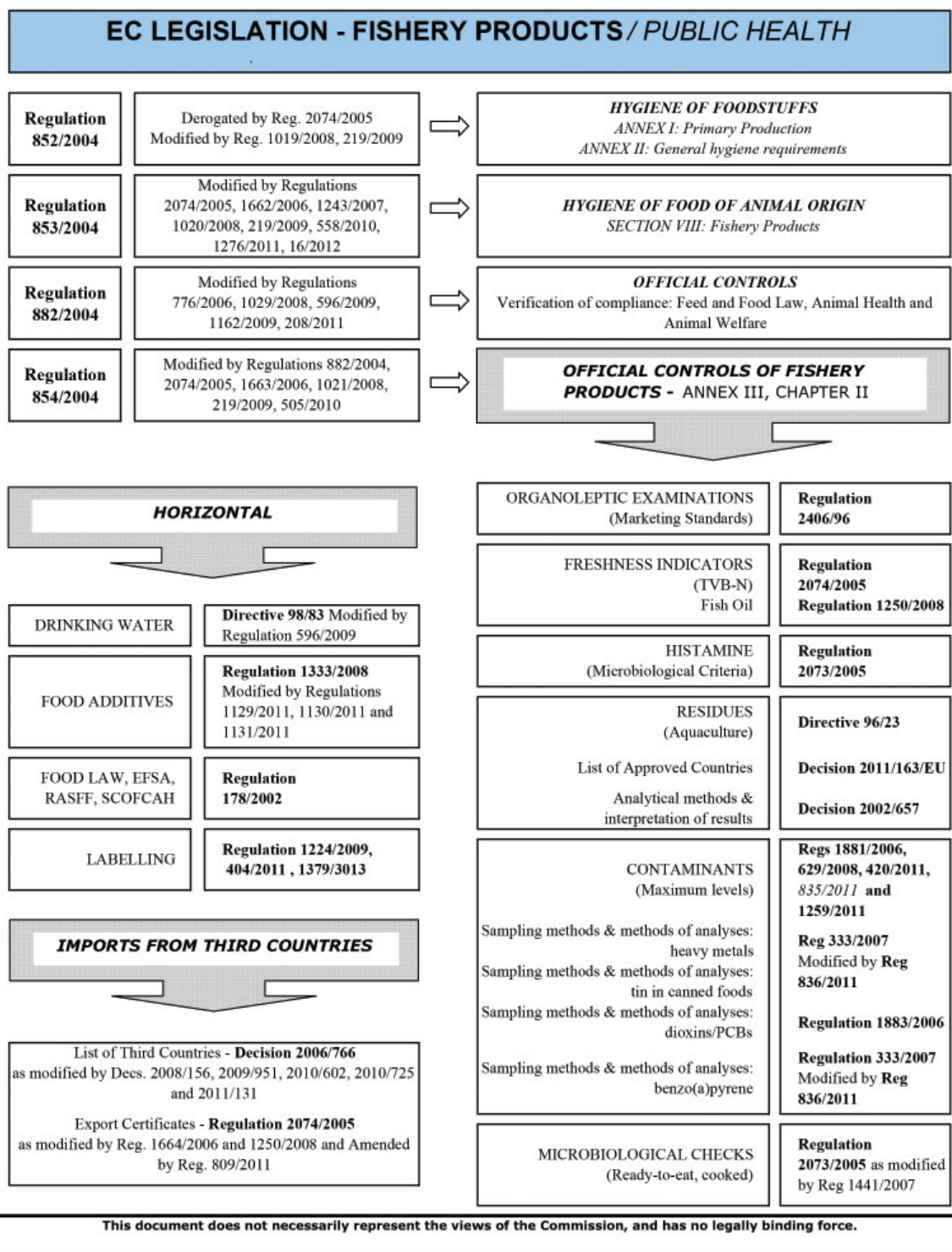
The two graphic representations below outline the key regulatory instruments and their interconnections; therefore can be used as a base to understand the systems and to find the required references.

8. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0882:20060525:EN:PDF>
9. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0852:20090420:EN:PDF>
10. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0853:20100715:EN:PDF>
11. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0854:20100705:EN:PDF>
12. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0882:20090807:EN:PDF>

3.1.1.1 Key Regulations for fish and fishery product



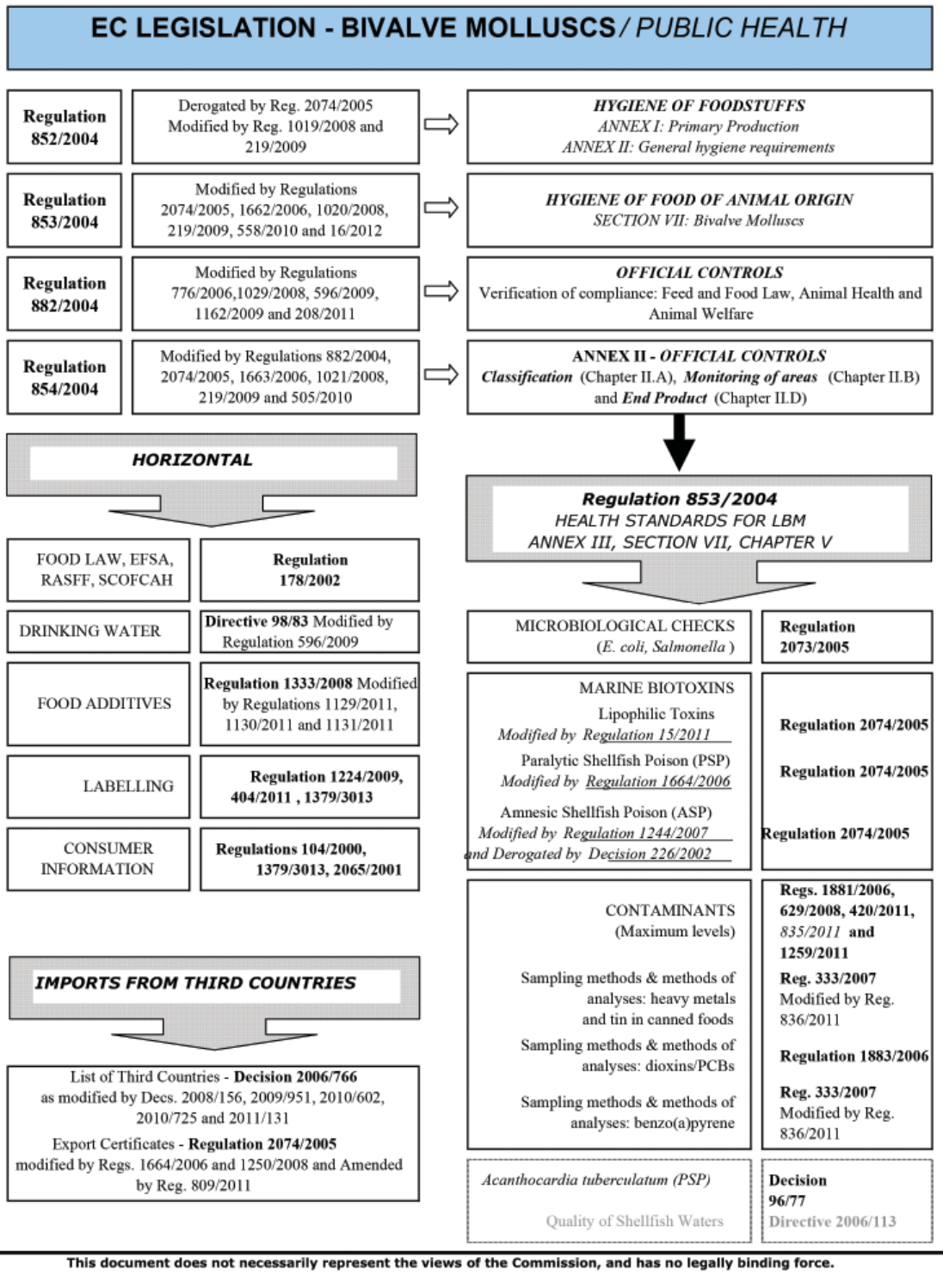
EUROPEAN COMMISSION
HEALTH & CONSUMER DIRECTORATE-GENERAL
Directorate F - Food and Veterinary Office
F3 - Food of animal origin: birds and fish



3.1.1.2 Key regulations for bivalve molluscs



EUROPEAN COMMISSION
HEALTH & CONSUMER DIRECTORATE-GENERAL
Directorate F - Food and Veterinary Office
F3 - Food of animal origin: birds and fish



3.2

The role of DG SANTE and the Food and Veterinary Office

DG SANTE is the Directorate of the EC in charge of protecting and improving public health and ensuring that Europe's food is safe and wholesome. It is also responsible for protecting the health and welfare of farm animals.

Regulation No. 882/2004 provides a basis for Food and Veterinary Office's (FVO) activities.

The FVO is an inspection service that oversees national audits, both within the EU MS and in third countries. In its function as the eyes and ears of the Commission, the FVO verifies on site that applicable requirements in the areas of food safety, animal health and welfare and plant health are properly implemented and enforced by MS and by third countries. By contributing to the improvement of national control systems, the effective enforcement of requirements in the EU and third countries is enhanced.

The FVO checks the performance of important stakeholders (e.g. CA, establishments handling FAPs or related vessels in MS). As the responsibilities have been delegated to the CAs and consecutive to the related industries there are only a limited number of controls carried out directly in the establishments. The audits comprise checks on legislation, and structure and activities of CAs. The audit in MS assess the compliance of the MS rules with the relevant legislation and its enforcement, while the audits in third countries check whether the national surveillance structure complies with EU regulations.

Third countries, which are considered as compliant or equivalent with EU rules, will have the possibility to import FAPs into the EU. The reports of the FVO can be found in the web site of the Food and Veterinary Office.

The FVO prepares an annual audit programme of premises and CAs in MS and third countries, based upon data collated from previous inspections and information on notifications. Audit priorities are identified under careful consideration of a number of factors such as risk, legal requirements, trade and policy considerations, with risk being the main factor, and fully involving all relevant stakeholders in DG SANTE, while the MS are equally consulted. The audit programme may be altered as the year progresses when emergencies, other urgent issues and unforeseen circumstances arise. Audits in response to emergencies can only be made by cancelling or postponing other activities. In addition, the completion of certain audits will depend on the timely availability of resources.

Following the on spot audit the FVO prepares an audit report containing recommendations. The CA comments on this and prepares an action plan in response to the non-compliances identified. All outcomes are made public and can be reviewed on the FVO website.

3.2.1 Certification, listing of countries and approval of establishments and vessels

Imports of animals and animal products into the EU must, as a general rule, be accompanied by the Health Certification laid down in EU legislation. This sets out the conditions that must be satisfied and the checks that must have been undertaken if imports are to be allowed.

The rules for certification are laid down in Council Directive 96/93/EC on the certification of animals and animal products. According to the Directive the certification must be signed by an official veterinarian or official inspector (as indicated in the relevant certificate). Strict rules apply to the production, signing and issuing of certificates as they confirm compliance with EU rules. The original version of the certificate must accompany consignments on entry into the Community. Rules and principles applied by third country certifying officers should offer guarantees at least equivalent to those laid down in the Council Directive 96/93/EC.

The listing of countries, establishments and fishing vessels, including processing vessels and freezing vessels, helps the inspectors at the BIP to check the incoming goods because fishery products coming from listed countries, establishments, vessels will be checked mainly on the documentation. This reflects the EU principle for imported food intended for human consumption which gives the main responsibility to the authorities in the exporting countries. These have to guarantee that the establishments or vessels are in conformity with EU standards.

Establishments in a third country intending to export their FAP to the EU should be registered by the national CA. The registration procedure should be done in accordance with the EU legislation. The registering CA must also be listed, to guarantee that the structure and the execution of food/fish products are controlled at least to standards equivalent to those of the EU. The same principle rules fishing vessels (i.e. freezer vessel and factory vessel). Ice vessels and small scale crafts also have to be registered and approved (but not listed) in regards the EU requirements before they can be used to supply exporting establishments.

3.3

The Health Certificate and its contents

Fishery and Aquaculture products that are exported to the EU must be accompanied by a Health Certificate emitted by the CA of the country of origin.¹³

This certificate is the official document between the exporting country and the EU that provides the official guarantees required.

As the format and content of the certificate are to be respected, its Public Health Attestation is a great tool to understand the requirements.

“I, the undersigned, declare that I am aware of the relevant provisions of Regulations (EC) No. 178/2002, (EC) No. 852/2004, (EC) No. 853/2004 and (EC) No. 854/2004 and certify that the fishery products described above were produced in accordance with those requirements, in particular that they:

- come from (an) establishment(s) implementing a programme based on the HACCP principles in accordance with Regulations (EC) No. 852/2004,*
- have been caught and handled on board vessels, landed, handled and where appropriate prepared, processed, frozen and thawed hygienically in compliance with the requirements laid down in Section VIII, Chapters I to IV of Annex III to Regulation (EC) No. 853/2004,*
- satisfy the health standards laid down in Section VIII, Chapter V of Annex III to Regulation (EC) No. 853/2004 and the criteria laid down in Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs,*
- have been packaged, stored and transported in compliance with Section VIII, Chapters VI to VIII of Annex III to Regulation (EC) No. 853/2004,*
- have been marked in accordance with Section I of Annex II to Regulation (EC) No. 853/2004,*
- the guarantees covering live animals and products thereof, if from aquaculture origin, provided by the residue plans submitted in accordance with Directive 96/23/EC, and in particular Article 29 thereof, are fulfilled, and*
- have satisfactorily undergone the official controls laid down in Annex III to Regulation (EC) No. 854/2004.”*

¹³. Reg (EC) No. 1250/2008 of 12 December 2008.
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008R1250:en:NOT>

The first part of the attestation implies the need of a certifier whose duty relies on the body responsible for official guarantees, which as previously mentioned, is the role of the CA.

Hence, seafood can be exported to the EU only from:

- *Authorised countries*
- *Approved vessels and establishments (e.g. processing plants, freezer or factory vessels, cold stores – generally called Food Business Operators)*
- *Approved Aquaculture establishments and Approved Areas*

3.3.1 Requirements for the food business operators

Assuming that the country is on the list of approved countries, then the CA is responsible to approve Food Business Operators (FBOs) to export to the EU.

As exporting to the EU is not compulsory, it is the establishment's decision to seek "approval" in terms of the EU requirements that may be beyond applicable domestic standards.

The CA's assessment of the FBOs compliance with the EU standards defines the approval (or not) by assigning them a unique identification code.

3.3.1.1 Approved establishments

All establishments in the capture or aquaculture production chain (hatcheries, farms, vessels, plants, cool stores, etc.) must be approved by the CA in regard to the EU requirements for the product that they handle to be considered "eligible" for the EU.

The list of approved establishments in the progression from "raw material to product" is maintained by the CA and represents all the FBOs in the production chain that are allowed to provide to companies that export directly to the EU.

The establishments at the end of the chain (those that export directly to the EU) are to be included on a list of establishments authorised to receive a Health Certificate for their products. This list can include vessels, plants or cool stores as long as they export directly to the EU (or to another third country for further processing and then to the EU).

These establishments are given a unique identification code, usually known as the "EU number".

The CA sends to the EC a "list" of authorised establishments¹⁴, with the guarantee that they have been inspected and deemed to comply with the specific hygiene rules that correspond to the type of product processed.

Therefore any changes or updates in this list need to be communicated to the EC immediately. The approval and listing is not a "one off" event, it is based upon continuous compliance by the establishments. If the level of compliance becomes so low that the CA is unable to provide the required official guarantees, then the establishment can be suspended or taken out of the list.

When this happens, the establishment loses the right to export to the EU and or provide raw materials and products to "listed" establishments.

14. For the list of establishments at each of the authorised countries see:
https://webgate.ec.europa.eu/sanco/traces/output/non_eu_listsPerActivity_en.htm

3.3.1.2 Requirements for the establishments

As discussed, the CA certifies compliance to a series of requirements that are listed in the public health attestation of the certificate. The first one is:

- “come from (an) establishment(s) implementing a programme based on the HACCP principles in accordance with Regulation (EC) No. 852/2004,”

HACCP is not a new concept and there is a wide range of information on the subject worldwide. It is therefore not explored in detail in this publication. No food exporter should be processing food if they have not got a fully functional current HACCP plan.

3.3.2 Conditions of operators along the production chain

As mentioned, the whole value chain needs to be under the control of the CA with full compliance by the operators concerned. These requirements are evident from the following statement.

- “have been caught and handled on board vessels, landed, handled and where appropriate prepared, processed, frozen and thawed, hygienically in compliance with the requirements laid down in Section VIII, Chapters I to IV of Annex III to Regulation (EC) No. 853/2004,”

Most importantly, this provides the specific set of references in the legislation that are of direct application by the operators, namely Section VIII, Chapters I to IV of Annex III to Regulation (EC) No. 853/2004.

The sections quoted above, are the ones defining the key requirements in terms of hygiene standards. In reality, these are no more difficult to comply with, than any other type of requirements such as those directly based on Codex Alimentarius¹⁵.

3.3.3 Requirements for all fishery products

The particular requirements for products are to be found in the following statements:

- “satisfy the health standards laid down in Section VIII, Chapter V of Annex III to Regulation (EC) No. 853/2004 and the criteria laid down in Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs”

This particular paragraph refers to the health standards for most fishery products and includes organoleptic assessment, histamine, parasites, toxins as well as the microbiological standards, which are quite minimal, applying to ready-to-eat products.

- “have been packaged, stored and transported in compliance with Section VIII, Chapters VI to VIII of Annex III to Regulation (EC) No. 853/2004,”

This refers to some very simple principles in terms of packaging and storage, to avoid them becoming a source of contamination, and temperature controls (towards melting ice for fresh, -18°C for frozen products and -9°C for brine frozen fish to be canned), and how these same principles need to be maintained during transport.

- “have been marked in accordance with Section I of Annex II to Regulation (EC) No. 853/2004,”

The identification-marking requirements are very basic and refer mostly to type of product and establishment of origin identification.

15. See “Code of Practice for Fish and Fishery Products” 2010.
http://www.codexalimentarius.net/download/standards/10273/CXP_052e.pdf

3.3.4 Specific requirements for aquaculture products

In addition to all the requirements listed so far, the following statement applies specifically to products originated from aquaculture practices:

- “the guarantees covering live animals and products thereof, if from aquaculture origin, provided by the residue plans submitted in accordance with Directive 96/23/EC, and in particular Article 29 thereof, are fulfilled.”

Countries, wishing to export aquaculture products to the EU, need a particular approval, which is given upon compliance with Veterinary residue monitoring requirements as outlined in Articles 29 and 30 of Council Directive 96/23/EC.

The EU sees these product as originating from a “farming” perspective and not from a fishery one, hence an annual control plan run by the CA is required for heavy metals, contaminants, residues of pesticides and veterinary drugs must be in place to verify compliance with EU requirements.

The Directive outlines the need for submitting a plan setting out the guarantees which it offers as regards the monitoring of the groups of residues and substances referred to in Annex I of Council Directive 96/23/EC.

The residue-monitoring programme is submitted by the CA of the country of origin to the EC for initial approval and needs to be presented annually for evaluation and renewal.

It should be noted that a favourable evaluation is based on the guarantees received on paper. If a subsequent inspection carried out by the FVO to assess the implementation of residues and veterinary medicines controls demonstrates that the paper guarantees cannot be relied upon, the status of the third country on the list could be revised.

The latest list of countries approved plans is presented as part of Commission Implementing Decision of 11 June 2012 amending Decision 2011/163/EU on the approval of plans submitted by third countries in accordance with Article 29 of Council Directive 96/23/EC¹⁶.

Note

Animal Health issues¹⁷

From August 2008 Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals is in place.

This directive establishes the need for a recognised CA that should perform their functions and duties in accordance with the general principles laid down for food safety, but in terms of the animal health of aquaculture species and management of aquatic animal notifiable diseases in its territory, as listed by the World Organisation for Animal Health (OIE).

This directive requires third countries to demonstrate capacity for control over several requirements, such as zoning in terms of disease status, registry of establishments, accreditation of laboratories, etc.

The requirements apply to: live fish, their eggs and gametes intended for aquaculture, and for raw materials or products intended for further processing in the EU. They do, however, not apply aquaculture products intended for retail.

It is important to understand that that responsibility for these requirements may or may not fall under the scope of the CA for official controls in terms of food safety and traceability.

http://ec.europa.eu/food/animal/liveanimals/aquaculture/index_en.htm

16. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2012.152.01.0042.01.ENG

17. Animal health for aquaculture animals exceeds the scope of this publication, but should not be ignored.

3.3.5 Official controls

Official controls are required under the following statement:

- *“have satisfactorily undergone the official controls laid down in Annex III Regulation (EC) No. 854/2004.”*

However, under this last paragraph, the initial focus should first be on the official controls put in place by the CA as per EC 854/2004¹⁸.

Some of these key requirements (but not the only ones) are that Official Control activities are carried out:

- *On a regular basis and with a frequency based on risk*
- *Without prior warning (as a general rule)*
- *At any stage of production, processing and distribution*
- *To include imports/exports.*

Official Control activities on the production and placing on the market of fishery products are aimed at assessing compliance by the processing establishments, in particular:

- A regular check on the hygiene conditions of landing sites and the point of first sale;*
- Inspections at regular intervals of vessels and establishments on land, including fish auctions and wholesale markets, to check, in particular:*
 - where appropriate, whether the conditions for approval are still fulfilled*
 - whether the fishery products are handled correctly*
 - compliance with hygiene and temperature requirements*
 - the cleanliness of establishments, including vessels, and their facilities and equipment, and staff hygiene*
 - checks on storage and transport conditions*

In more practical terms, this implies that the establishments along the value chain would be “inspected” or “verified” by the CA against, for example, the requirements detailed below¹⁹.

In terms of documentation:

- *General description of the company, facilities, products and processes*
- *The description of operations followed*
- *The documented pre-requisite programmes.*
- *The HACCP plan*
- *The system to provide guarantees for the product traceability*
- *The documented and formalised withdrawal recalls procedures*

In terms of physical settings, operational conditions, control strategies concerning the entire production process and the application of all pre-requisite programmes by the operator:

¹⁸. Official controls of production and placing on the market (Chapter I),
Official controls of fishery products (Chapter II), Decisions after controls (Chapter III).
¹⁹. This list is an illustrative one and it is far from exhaustive.

- *The general hygiene conditions of building and surroundings.*
- *The water supply and water quality management system, detailing the internal distribution network, treatment if any, quality monitoring plan and related data filing.*
- *Ice production, internal distribution and quality monitoring.*
- *The absence of cross contamination/air current risks (lay-out and infrastructure considerations).*
- *Personnel health and hygiene control (including training).*
- *Sanitary filtering of personnel arrangements, toilets and dressing facilities.*
- *Facilities and equipment cleaning and sanitation plans (methods, schedules, chemicals used and approvals).*
- *Raw materials' acceptance criteria and controls (freshness, temperature, transport, lot identification).*
- *Specifications for other inputs as ingredients, additives or packaging.*
- *Waste disposal system.*
- *Labelling system and lot codes, providing effective traceability.*
- *Pest control plan: Control of insects, rodents and other undesirable animals.*
- *Equipment and facilities preventive maintenance plan.*

In terms of **characteristics of the products**, the official controls are to include at least the following regulatory elements as described in the EC Directives:

- *Random organoleptic checks must be carried out at all stages of production, processing and distribution.*
- *When the organoleptic examination reveals any doubt as to the freshness of the fishery products, samples may be subjected to laboratory tests to determine the levels of total volatile basic nitrogen (TVB-N) and trimethylamine nitrogen (TMA-N).*
- *Random testing for histamine is to be carried out to verify compliance with the permitted levels lay down under Community legislation.*
- *Monitoring arrangements are to be set up to control the levels of residues and contaminants in accordance with Community legislation.*
- *Where necessary, microbiological checks are to be performed in accordance with the relevant rules and criteria lay down under Community legislation.*
- *Random testing is to take place to verify compliance with Community legislation on parasites.*

- Checks are to take place to ensure that the following fishery products are not placed on the market:

- Poisonous fish of the following families: *Tetraodontidae*, *Molidae*, *Diodontidae* and *Canthigasteridae*;

- Fishery products containing biotoxins such as *Ciguatera* or other toxins dangerous to human health²⁰.

3.4

Signing the Certificate

When the CA signs a Health Certificate, it becomes official evidence that the establishments, operators, raw materials and products in the value chain comply with the requirements as listed in the public health attestations.

Therefore, the Health Certificate must provide an accurate description of the identity of the approved processor of the goods, the type of fish being shipped, the quantity of product being shipped, and the final destination of the goods.

3.4.1 Certification and eligibility

A very important criterion not really obvious on the certificate per se, but as a consequence of official controls over the production chain and traceability is the issue of *eligibility of products and raw materials*. The nature of the official controls implies that all elements in the production chain²¹ need to be approved for purpose by the CA.

This critical issue has important ramifications, as the different stages of production may be under different central or regional authorities.

In any case, the various “sub CAs”, and/or the “Central” CA need to act as one in terms of the offering of official guarantees to the EU. If a country has four different authorities dealing with the fisheries production chain, this cannot be used as an excuse for non-compliance, as mechanisms should be enacted for coordinated official controls.

Good coordination is fundamental in order for certification to be meaningful as the certification process should be centralised, although the fishery operators and the CA’s inspection activities may be geographically fragmented.

Good IT practices are increasingly the norm in terms of proving traceability, inspection results and certification of food products. In particular, the design and maintenance of proper database structures enhancing the information sharing and integration between the CAs can be very important to provide consistency in the certification process.

Whoever signs the certificate, needs to have the capacity to assure that the product certified has been under officially controlled conditions in officially controlled establishments from origin to export.

If the raw materials harvest or any production stages were performed in a non-compliant or non-verified²² establishment, then that raw material or product is not eligible for export to the EU, hence it cannot receive a certificate.

The fact that a product has been processed at an establishment with an “EU number” does not guarantee – by itself – its eligibility to the EU market.

20. However, fishery products from bivalve molluscs, equinoderms, tunicates, and marine gastropods, can be commercialized if they have been produced in conformity with section VII of annex III, and bullet 2 of chapter V of the same section of Regulation CE No. 853/2004.

21. Vessels, landing sites, transporters, cold stores, processors, etc for Fishery Products / Feed producers, hatcheries, farms, transporters, processors, etc for Aquaculture Products.

22. Against EU standards or officially equivalent ones.

3.5 Separation and identification of non-EU eligible product

If a company listed with the EU holds products that are not eligible by origin (i.e. a non approved vessel) or conditions (approved but in non compliance) then the operator must ensure the physical separation of EU-eligible from ineligible seafood product.

Where any assumed EU-eligible seafood products cannot be distinguished between ineligible seafood products then the former are deemed to be ineligible and must be dealt with accordingly.

3.6 Products with imported raw materials

Based on the principle of official controls, EU Health Certificates for seafood products exported to the EU which are derived wholly or partly from raw materials products must:

- *Have originated from a third country eligible to export the animal product to the EU;*
- *Have been derived from foreign premises eligible to export to the EU, (including vessels); and*
- *Be eligible to be exported to the European Community;*

A copy of the import certificate, or original export certificate, must be available on request by the CA.

3.7 Laboratories to be used for official controls

For an analytical result to have “official” validity, it must come from a laboratory accredited to ISO/IEC 17025 for those parameters to be analysed²³.

The standard specifies the general requirements for the competence to carry out tests and/or calibrations. It covers management and technical issues with the key objective being to assure the accuracy and quality of the results.

The accreditation is what allows the CA to “trust” the impartiality and accuracy of the results and as a result “approve” the laboratory for its testing results to be considered “official”. As a consequence the status of “approved” can only be maintained as long as the laboratory holds the accreditation.

These requirements apply equally to government and private laboratories. In fact private sector laboratories are increasingly becoming more used worldwide for regulatory purposes.

It should be emphasized that the EU does not require analysis of end product, i.e. laboratory results for each exported batch are not a requirement of the EU.

The AC of the exporting country that decides how does it provide the necessary official guarantees to the EU over the exported products. Most countries establish monitoring programs maintained throughout the production chain and does not requires analysis of the final product as a condition of certification, but as verification of the effectiveness of the HACCP plan.

23. Regulation (CE) 882/2004 art. 12

3.8

Border Inspection Posts

Imports of seafood from non-EU countries must enter the EU via an EC approved Border Inspection Post under the authority of an official veterinarian.

At the BIP the consignments are subject to three types of checks:

- *A documentary check: this is done systematically and involves checking the export certificate accompanying the seafood consignments;*
- *An identity check: this is also done systematically and involves checking that the data on the export certificate is consistent with the product which is being imported;*
- *A physical check: this is done as appropriate to the circumstances of the consignment and involves examining the product, its packaging, the information on the label and the storage conditions;*

The frequency and type of physical checks are determined for each category of product on the basis of the intrinsic risk and results of checks carried out previously on the same product of the same origin. This can include taking samples for laboratory testing on a random basis or on the basis of past records. If the consignment is found to be in non-compliance with the EU legislation, for any reason, then the BIP notifies the non-compliance to the EU through the internal notification system of the EU, called the Rapid Alert System for Food and Feed (RASFF).

If the product exceeds any regulatory levels or contains non-authorised substances, it is then it is up to the exporter in the country of origin to decide to get the product back or let it to be destroyed.

3.9

Rapid Alert System for Food and Feed / RASFF

The RASFF²⁴ is a tool that the EU uses to enable the quick and effective exchange of information between Member States and the Commission when risks to human health are detected in the food and feed chain. RASFF provides a round the clock service to ensure that urgent notifications are sent, received and responded to in the shortest time possible. The CE publishes a weekly summary of the notifications²⁵ under the RASFF system.

When a notification pertains to imported product the CA of the country of origin has to undertake a full investigation and report back to the EU on their results and measures to avoid recurrences.

3.10

Labelling

New legislation has been introduced in the EU that will impact on seafood labelling and traceability requirements across the seafood supply chain, from the point of harvest/capture through to retail sale.

Compliance with the EU legislation referred to in this guide is the responsibility of the EU Food Business Operator (EU FBO) or the EU Importer that is placing product on the market in the EU.

While the EU Control Regulation (Reg N° 1224/2009)²⁶ references the exclusion of product imported to the EU under the CCS, its Implementing Regulation(Reg N° 404/2011)²⁷ does not. It refers to the inclusion of all fisheries and aquaculture product (under Chapter 3 and tariff headings 1604 and 1605).

24. For more information on RASFF: http://ec.europa.eu/food/food/rapidalert/index_en.htm

25. For example: http://ec.europa.eu/food/food/rapidalert/reports/week8-2008_en.pdf

26. Regulation (CE) No. 1224/2009 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:343:0001:0050:EN:PDF>

27. Implementation regulation (EU) No. 404/2011 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:112:0001:0153:EN:PDF>

The Implementing Regulation does exclude part of the labelling requirements for imported products excluded from the Catch Certification requirements (whereas there is no mention of these exclusions in the Control Regulation).

While these various exclusions exist in the legislation for imported product, it is highly likely that importers and their subsequent customers will expect the same labelling and traceability for all products in the market, regardless of whether they are imported or EU domestic sourced product. In addition, it is difficult to see how the EU FBO will be able to comply with this legislation unless the traceability system (and associated labelling) is introduced from the point of harvest/catch and continues through-out the supply chain.

The purpose of this section is to provide the readers with information regarding the EU labelling and traceability requirement, but as always is best to refer to the regulations, to your clients and to the CAs.

Regulation (EU) No. 1379/2013, also explicitly states that it is necessary to ensure that imported products entering the Union market comply with the same requirements and marketing standards that Union producers have to comply with, and for certain aspects of labelling, the legislation specifically includes imported product.

Regulation 1169/2011 on the provision of food information to consumers contains labelling and information provisions and applies to all food intended for retail sale or to supply mass caterers.

The key elements to keep in mind are:

| Labelling or Information Requirements | Further Detail |
|---------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Identification number of each lot External identification number and name of fishing vessel or name of aquaculture production unit | A unique number be allocated to each lot. Name and number of the vessel or the marine farm lease/licence/permit number. |
| The FAO alpha-3 code of each species | This is a 3 letter code assigned by FAO. To find the correct code, there is a database which can be found here: http://termportal.fao.org/faoas/main/start.do Type the scientific name and click search, the 3-letter code can be found under Remarks. |
| The date of catches or the date of production | This is the catch or harvest date, it can include several days or one period of time corresponding to several dates of catches. |
| Quantity | Usually expressed as the net weight or where appropriate the number of individuals. |
| Name and address of suppliers | This information may be provided by way of the identification mark, i.e. the approval number of the establishment. |
| The commercial designation of the species and its scientific name | The Common Name and Scientific Name of the species. |
| The production method, in particular by the following words "... caught ..." or "... caught in freshwater..." or "farmed..." | This is to identify if the product is wild caught or aquaculture, etc. i.e. wild caught; or farmed; or caught in freshwater. |
| Whether the product has been defrosted | This will only be relevant for any product that is sold to the EU in a chilled state that has previously been frozen and thawed. |

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>The area where the product was caught or farmed, and the category of fishing gear used in capture of fisheries as laid down in the first column on Annex III to this regulation</p> | <p>This will most commonly be a reference, for example, to the FAO area. If the product was caught by the act of fishing, information on the specified gear type is also required. It is possible to combine the production method, the area from which it was caught or farmed and the fishing gear in one sentence, e.g.</p> <ul style="list-style-type: none"> • Wild Caught in Pacific Ocean, Area FAO 71 by Purse seine <p>Note – Gear Types: On a mandatory basis, if the product was caught by any of the 7 gear types listed in Annex III The gear type must be included on the label. You can add more detail as per column 2 and/or 4 of Annex III if you wish.</p> <p>For other fishing techniques not covered by Annex III (e.g. hand gathering or diving), you are free to indicate the fishing technique used if you wish, provided that the information they provide is clear, unambiguous and verifiable.</p> |
| <p>The date of minimum durability, where appropriate</p> | <p>This is likely to be a best before date for the majority of seafood products.</p> |

3.10.1 Food information for consumers

In order to achieve a high level of health protection for consumers and to guarantee their right to information, Council Regulation (EU) 1169/2011²⁸ Provision of Food Information for Consumers was established. This regulation amends and repealed a number of existing regulations and is designed to provide a basis for consumers to make informed choices and to prevent practices that may mislead the consumer.

The key elements to keep in mind are:

| Labelling or Information Requirements | Further Detail |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>The name of the food</p> | <p>This shall be the legal name of the food – for seafood this requirement should be met by inclusion of the common and scientific name of the species on the pack. The name shall also be accompanied by the physical condition of the food or treatment it has undergone (i.e. powdered, freeze-dried, quick frozen, smoked, etc.) where its omission could mislead the purchaser.</p> <p>There are additional naming requirements for fishery products containing added proteins, added water (if more than 5% by weight of final product), and for formed fishery products. See Annex VI of Regulation (EU) 1169/2011.</p> |
| <p>The list of ingredients</p> | <p>The list of ingredients shall include all ingredients in the food, in descending order of weight. It shall be headed up by a suitable heading, i.e. Ingredients List. Specific rules are found in Annex VII.</p> |
| <p>Any ingredient or processing aid listed in Annex II or derived from substances listed in Annex II causing allergies or intolerances used in the manufacture or preparation of a food and is still present in the finished product</p> | <p>Annex II of Regulation (EU) 1169/2011 includes substances which are considered allergenic or intolerant and these must be declared on the label (i.e. in the ingredients list) if used and present in the finished food.</p> |
| <p>The net quantity</p> | <p>Net quantity is to be expressed in the most appropriate units of volume for liquids or units of mass for other products (i.e. grams or kilograms).</p> |

28. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0018:0063:EN:PDF>

| | |
|-----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The quantity of certain ingredients or categories of ingredients | <p>The indication of the quantity of ingredient or category of ingredients is required if it appears in the name of the food, is usually associated with the name of the food, is emphasised on the labelling or is essential to characterise a food (unless it is a single ingredient food and that is included in its name).</p> <p>There are technical rules applying to this requirement and are found in Annex VIII of Regulation (EU) 1169/2011.</p> |
| The date of minimum durability or 'use by' date | <p>The best before date shall be included unless food would be considered a danger to human health (i.e. unsafe) after a specified time in which case a 'use-by' date shall be applied.</p> <p>Annex X of Regulation (EU) 1169/2011 provides further detail.</p> |
| Any special storage conditions and/or conditions of use | <p>In cases where foods require special storage conditions or conditions of use, i. keep chilled, keep frozen, specific cooking instructions, or storage/ use of food after opening, these shall be included as appropriate.</p> |
| The name or business name and address of the food business operator referred to in Article 8 (1) | <p>Article 8 (1) Refers to the food business operator responsible for the food information, is the operator under whose name or business name the food is marketed, or if that operator is not established in the European Union, the importer into the EU market.</p> |
| The country of origin or place of provenance where provided for in Article 26 | <p>This is mandatory where failure to indicate it might mislead the consumer, particularly if other labelling or information accompanying the food would imply a different origin or place of provenance.</p> <p>For example, Country A caught fish that is sent to Country B for processing prior to export to the EU. This should be identified as:</p> <p>Product of Country B, Origin Country A (or similar wording).</p> <p>Product that is caught on a Country A flagged vessel, processed in Country A and then exported directly to the EU would be: Product of Country A.</p> |
| The instruction for use where it would be difficult to make appropriate use of the food in the absence of such instructions | <p>The instructions for use shall be included if necessary to enable appropriate use of the food.</p> |
| A nutrition declaration (note requirement applies from 13 December 2016) | <p>The detailed requirements for nutrition declarations are outlined in Article 30 – 35, Annex I and Annex XIII of Regulation (EU) 1169/2011. These requirements come into force for products labelled on or after 13 December 2016.</p> <p>There are foods which are exempted from the mandatory nutrition declaration requirements, including unprocessed products that comprise a single ingredient. Details are found in Annex V.</p> |
| With respect to frozen unprocessed fishery products | <p>The date of freezing or the date of first freezing in cases where the product has been frozen more than once.</p> <p>The wording shall say:</p> <p>'Frozen on ...' Followed by the date of first freezing, the date shall be dd/mm/yy in that order and in un-coded form.</p> |

3.11 Traceability

Traceability refers to the ability to trace good along the supply chain. It requires critical information to be linked with the physical flow of product. Traditionally this has been provided by a combination of physical labelling on the packaging and associated documentation supplied with the product.

The traceability system required depends on the reason for which you are implementing it. Traditionally traceability systems in the seafood industry have been required for food safety. This has meant that companies have systems in place to identify the source of the product and to whom it was supplied, i.e. the principle is “one step backwards, one step forwards”. (From where and who does it come from, what is done with it, whom is it given to).

The CA should verify the efficiency of a traceability system adopted by an operator. Furthermore the CA is required to manage and have control over the whole traceability chain from harvest to export.

Introduction of new European legislation and with a number of other countries reviewing their own traceability requirements means that processors and exporters supplying seafood to the European market may need to reconsider the traceability systems used in practice – the EU will require product in market to be traceable back to its catching or harvesting event (although this is already in place for aquaculture shellfish).

European legislation, Council Regulation (EC) No. 1224/2009, Article 58 (1) states that all lots of fisheries and aquaculture products shall be traceable at all stages of production, processing and distribution from catching or harvesting to retail stage.

While it is the EU FBO or EU Importer placing the product on the market that is ultimately responsible for complying with this new legislation, it is difficult to see how this can be done without its suppliers implementing traceability systems. Again the advice is to check with your importer/agent to determine what they will require.







WHAT DOES THE CATCH CERTIFICATION IMPLY?

Conceptually the EU IUU Catch Certification Scheme (CCS) has been a game changer. If the flag state cannot certify that the catch was legal, that consignment is not allowed to enter the EU market.



While the total responsibility for the CCS is on the vessel's Flag State, the fisheries CA of the Port State where fish are transhipped, landed, stored and/or processed do play a role under the CCS.

The responsible CA is expected to provide official assurances on the vessels details, volumes and species being handled under their responsibility, and with the original Catch Certificate validated by the CA of the country where the harvesting vessel is flagged.

4.1

What is IUU fishing?

It is not the intention of this guide to define and discuss the details of IUU fishing and its impact. However, under the scope of the IUU Regulation the concept covers:

- *Infringements to rules on management and conservation of fisheries resources in national and international waters;*
- *Fishing activities in high seas areas covered by a Regional Fisheries Management Organisation (RFMO) carried out by vessels without nationality or registered under a Flag States which is a non-contracting or non-cooperating Party to the RFMO and in a manner contravening the rules issued by this organisation;*
- *Fishing activities carried out in high seas areas not covered by a RFMO in a manner inconsistent with state responsibilities for the conservation of fisheries resources under international law.*
- *Behaviours which shall be qualified as presumed IUU fishing activities. Under the IUU Regulation, a fishing vessel is notably presumed to be engaged in IUU fishing activities if it is shown that its operators have carried out activities in contravention with the conservation and management measures applicable in the area concerned, such as fishing without a valid licence, in a closed area, beyond a closed depth or during a closed season, or by using prohibited gear, as well as the failure to fulfil reporting obligations, falsifying its identify, or obstructing the work of inspectors.*

In very general terms, the “legality” of a fish can be defined by the existence of the responses within a legal framework, to a series of basic questions: Who caught it? Where was caught? How much was caught? When was it caught? How was it caught?

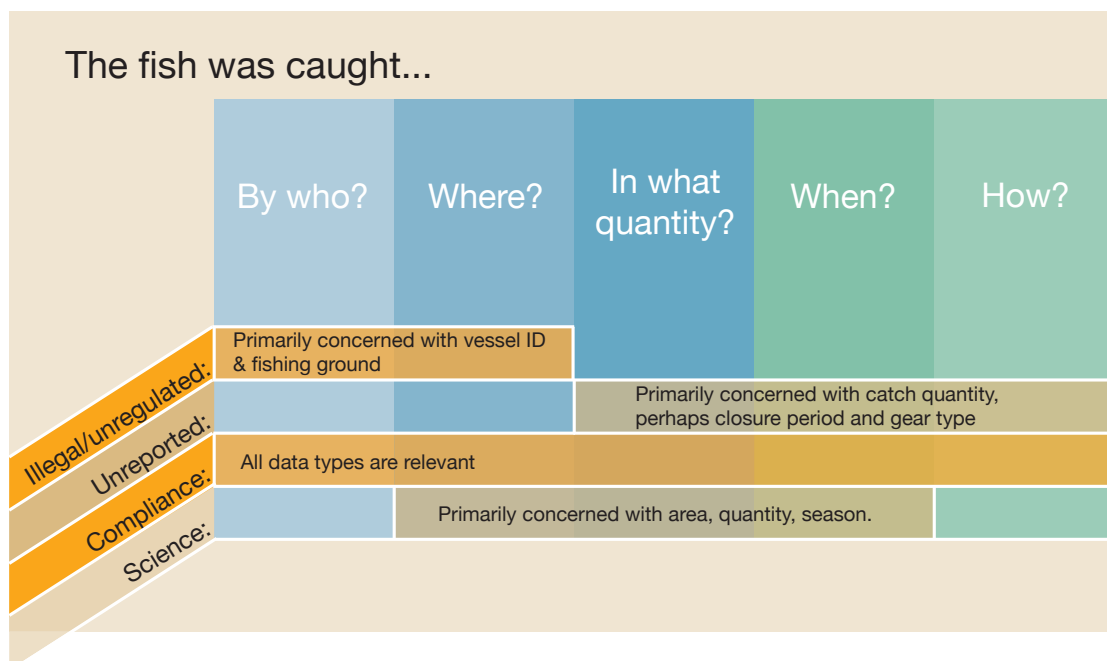


Fig 2: Schematic diagram of data types needed for compliance.²⁹

The answers to these questions must be verifiable in relation to the fisheries management framework of the harvesting vessel's Flag State and subject to applicable laws and international conservation and management measures.

The "operating system" of this certification is based on the capacity of the fisheries CA of vessel's Flag State to give official assurances about the existence and "legality" of the answers to these questions.

The CA in turn, has a series of "programs" or tools within their scheme of Monitoring, Control and Surveillance (MCS) of fishing activities (eg. fishing permits, fisheries observers, inspectors, VMS³⁰, landing controls, etc.) that allow them to validate the accuracy of the information in the certificate.

4.2

The EU IUU Regulation and subsequent regulations

The EU IUU Regulation is placed in the broader context of the Common Fisheries Policy, established in 2002 through Council Regulation (EC) No. 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the EU's Common Fisheries Policy.

The legal base of the EU IUU Regulation is Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate IUU fishing.

Subsequent and complementary to this is the primary implementing regulation, Commission Regulation (EC) No. 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

Complementary to these two central regulations are a number of Commission Regulations and Implementing Regulations, a Commission Decision, a Commission Statement, some general information, including a handbook, and various documents including notifications and notes.

The Commission Statement, the general information and the notifications are not binding to any degree, but they do have a strong influence on the application of the Regulation and interpreted compliance with it.

29. Adapted from: Best Practice Study of Fish Catch Documentation Schemes Phase 1 Report, 2009. MRAG Asia Pacific Pty Ltd for the UK Department of Environment, Food and Rural Affairs (DEFRA)

30. Fishing Vessels Monitoring Systems. Usually satellite based, see <http://www.fao.org/fishery/vms/en>

The Handbook which provides guidelines and answers on the implementation of the EU IUU Regulation is lengthy and wordy and it was written before the implementation of EU IUU Regulation itself, so many scenarios are not contemplated and the substantial changes of interpretation (such as the Weight in the Catch Certificate - WICC note³¹), make the document of limited use. Moreover, all of the notes indicated in the additional information lack any formal reference, seven lack a date and are sometimes written in a confusing language.

These notes do not have any legal value but provide important instructions on the interpretation of the EU IUU Regulation and how some of its provisions should apply. Therefore, if they are not followed by third countries and by EU MS, consignments risk being rejected.

The EU IUU Regulation establishes a “Community system” against IUU fishing, and indicates that this shall “apply to all IUU fishing and associated activities carried out within the territory of Member States to which the Treaty applies, within Community waters, within maritime waters under the jurisdiction or sovereignty of third countries and on the high seas” (article 1).

Thus the scope of the EU IUU Regulation is wider than just control of imports. However, the core provisions aim at limiting the importation of IUU fishing products into the EU territory or directly landed by third country vessels or imported by consignments. The main chapters that contribute to this aim are the following:

- *Chapter II Inspections of third country vessels in MS ports*
- *Chapter III Catch Certification scheme for importation and exportation of fishery products*
- *Chapter IV Community alert system*
- *Chapter V Identification of fishing vessels engaged in IUU fishing*
- *Chapter VI Non-cooperating third countries*
- *Chapter VII Measures in respect of fishing vessels and States involved in IUU fishing*

Other chapters are also part of the system established by the EU to prevent, deter and eliminate IUU fishing activities (e.g. sanctions).

Chapter I lays down basic principles, such as the scope of the EU IUU Regulation, definitions of some terms used in the EU IUU Regulation and the definition of when fishing vessels are engaged in IUU fishing. These are deemed to be serious infringements, subject to specific ranges of sanctions in Art 42 in Chapter IX covering immediate enforcement measures and sanctions.

The definitions provided in the EU IUU Regulation will have an impact on the scope of application of its provisions. Importation “means the introduction of fishery products into the territory of the Community, including for transshipment purposes at ports in its territory” (Art 2.11). Territory is not defined in the EU IUU Regulation, though in some cases and some perspectives (such as rules of origin and customs) these are deemed to be in the Territory of the community by virtue of having been fished by Community flagged vessels, albeit outside Community waters.

A definition of the fisheries products is given and Annex I of the EU IUU Regulation gives a list of List of products excluded from the definition of ‘fishery products’ set out in point 8 of Article 2. According to this Annex I, freshwater fishery products and aquaculture products obtained from fry or larvae, among others are excluded from the scope of the CCS. The latest precise list of exclusions is provided for in Commission Regulation (EU) No. 202/2011 of 1 March 2011 amending Annex I to Council Regulation (EC) No. 1005/2008 as regards the definition of fishery products.

31. IUU Regulation – Weight in the Catch Certificate – Product Code (undated, no reference)
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/weight_in_catch_certificate_en.pdf
IUU Regulation – Weight in the Catch Certificate – Part II (August 2010)
http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/weight_in_catch_certificate_part2_en.pdf

The focus of the EU IUU Regulation is on the primacy of the responsibility of the Flag State. Indeed the designated Flag State authorities validate the CC.

Often vessels are operating in distant waters where the Flag State does not always have sufficient information to ensure the legality of the products caught. This underlines the importance of complementary Port State measures such as inspections of landings and transshipment, and of complementary coastal State measures. There are measures that relate to nationals engaged in IUU fishing in Chapter VIII of the EU IUU Regulation.

Chapter III of the EU IUU Regulation contains the core provisions on FAP import requirements as it establishes the Catch Certification Scheme (CCS). The importers have the obligation to provide the CC to MS authorities, as provided by the exporters and validated by the CA of the Flag State. EU importers have an obligation to provide CCs for direct (Art 12) and indirect (Art 14) imports from third countries and from recognised Catch Documentation Schemes (Art 13). MS CAs must validate CCs for exports where these are required by third countries in the framework of the cooperation agreement (Art 15). MS CAs must receive CCs in advance and carry out checks on them (Art 16) as well as verifications (Art 17). Chapter III also contains provisions on refusal of consignments (Art 18), transit and transshipment (Art 19), Flag State notifications (Art 20), re-exportation from the EU (Art 21) and record-keeping (Art 22).

Regarding direct importation from a third country (Art.12), consignments must be accompanied by a Catch Certificate according to Annex II of the EU IUU Regulation, which includes a statement from the master of the fishing vessel or from his representative, and which must be validated by the Flag State of the fishing vessel.

For indirect imports that have passed through a third country, if they are unprocessed (Art14.1), the consignment must be accompanied by the Catch Certificate(s) and documented evidence that the fishery products did not undergo operations other than unloading, reloading or any operation designed to preserve them in good and genuine condition, and remained under the surveillance of the competent authorities in that third country. This documented evidence can be a single transport document or document issued by the competent authorities of that third country.

If the products have been processed, they must be accompanied by a Processing Statement in accordance with Annex IV of the EU IUU Regulation in accordance with Art 14.2.

The EU IUU Implementing Regulation amends the list of FAPs to be excluded from the CCS which is contained in Annex I of the EU IUU Regulation. The new list of excluded products which are mainly freshwater, bivalves and aquaculture products is included in the Annex XIII and is much more detailed than the Annex I of the EU IUU Regulation. This list was amended a second time by Commission Regulation (EU) No. 202/2011 of 1 March 2011 amending Annex I to Council Regulation (EC) No. 1005/2008 as regards the definition of fishery products.

4.2.1 The designation of the CA in the third countries

According to Article 20 of the EU IUU Regulation third countries should nominate their CA, by providing a Flag State notification (see Annex III of EU IUU Regulation). The latest list was published on the DG MARE web site on 18 March 2013³².

In the run-up to the implementation of the EU IUU Regulation and in its first months, the EC (DG MARE) largely accepted the nominations of CAs from third countries without questioning whether these were indeed the most appropriate authorities. In some countries, the authority nominated has been the CA nominated to validate the Health Certificate under the hygiene regulation. This arises from confusion in the terminology applied by the EC, because the CA under the hygiene regulations were in some cases assumed by third countries to be the same CA under the EU IUU Regulation. Indeed, when the EU IUU Regulation entered into force, some countries did not understand the purpose of the CC or see the difference between the CC and the Health Certificate.

32. http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/flag_state_notifications.pdf

However, in most countries the nominated CA, is with the Fisheries Authority, that while is competent in about IUU fishing and Monitoring and Control and Surveillance (MCS) measures, are not familiarized with the complexities of certification.

According to the wording of the EU IUU Regulation it would seem that the acceptance of the notification is automatic and cannot be refused if the information requested in Article 20 is provided. It is not very clear on which grounds the EC is currently basing the acceptance or not of the notification.

DG MARE has affected various missions to a number of countries (sometimes more than once to the same country), while other countries have not been visited.

Explicit mention is made of signature of Catch Certificates in Article 20. Article 20 makes no mention of CAs for signing Annex IV Processing Statements nor of the CAs in States that are processing products and are not Flag States. There is provision in the Processing Statement (Annex IV to the EU IUU Regulation) for endorsement by the Competent Authority, but there is no indication as to which authority this should be. One might presume, from the fact that the Health Certificate number and date are requested on the form, that this CA is the one nominated under the Health Regulations. Similarly, there is no indication in the EU IUU Regulation or its implementing rules on which should be the CA authorising transshipments within a port area and validating section 7 of the regular Catch Certificate.

The handbook indicates that these authorities have to be notified to the EC, but the point still stands that there is no provision for this CA in the Regulation itself and there is no provision for the approval or publication of the authorities approved for transshipments. At present transshipments are authorised by authorities in third countries that have not had their CA notification published by the EC, but have been informally allowed to sign.

4.3

The Catch Certification Scheme

Validated Catch Certificates must accompany all marine fishery products traded with the EC, including processed products. It is up to the exporter to request a Catch Certificate for catches which are to be traded to the EC, complete it and transmit it to the competent Flag State authority for validation.

The EC importer must ensure that the consignment to be imported is accompanied by a validated Catch Certificate transmitted by the exporter prior to the importation to the EC.

4.3.1 Trade flows

The Catch Certification scheme applies to all fishery products imports, exports and re-exports to and from the Community, irrespective of the means of transport (fishing vessel, other vessel, air or land transportation). Some products are excluded from the scope of the IUU Regulation. However, these are limited and relate to freshwater species, marine species by products and some invertebrates. A complete list is available in the Annex 3 of Regulation (EC) No. 1010/2009³³.

There is no minimum weight below which samples are exempted from the Regulation.

4.3.1.1 Indirect importation without processing in another third country

(Article 14(1))

In order to ensure full traceability, the certification scheme also applies to situations where the fishery products are imported from another country than the Flag State. As a result products which are transported to another third country before reaching the Community must also be accompanied by a validated Catch

33. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:280:0005:0041:EN:PDF>

Certificate and documented evidence that the products did not undergo any operations other than unloading, reloading or any operation designated to preserve them in a good and genuine condition.

Such documented evidence may consist of:

- *a single transport document, covering the passage from the Flag State to the Community through that third country (of indirect importation); or,*
- *a document issued by the authorities in that third country competent for monitoring such activities mentioning:*
 - *The fishery products*
 - *The dates of unloading/reloading*
 - *Names of the ships or other means of transport*
 - *The conditions in which the products remained unchanged in that third country until re-export to the Community, or*
- *Where appropriate, the re-export certificate established by a RFMO catch documentation scheme recognised in accordance with Article 13 of the IUU Regulation.*

4.3.1.2 Indirect importation with prior processing in another third country

(Article 14(2))

Where products are processed in a country other than the Flag State the importer in the Community shall submit a statement established by the processing plant in the other third country, provided in Annex IV of the IUU Regulation.

The statement must give an exact description of the products and must indicate that the products originated from catches accompanied by a Catch Certificate. A copy of those Catch Certificates must be attached to this statement. The competent authorities in the processing State must endorse the statement.

N.B: Freezing is not regarded as processing, but rather preservation. For freezing of products Article 14(1) applies as explained in the previous paragraph. However, other conservation methods, such as drying, salting or smoking are considered processing, since the structure of the product is significantly changed by such treatments.

4.4

The Catch Certificate and its contents

Central to the effectiveness of the regulation is the Catch Certificate, a document not easy to handle, so this section will try to “reverse engineer” the ways each section is being handled by the different countries and the CA in the MS that receive them, in an attempt to clarify its use and the justifications that deal with it.

4.4.1 The Catch Certificate sections

There is not a “standard understanding”; the EC does not interfere with the interpretation by EU MS, and has not audited the practices of EU MS in a standard way.

The manual, as discussed, has not been updated since the implementation of many of the technical notes. So, while well intended, it is limited use.

As explained before, this guide is based on experiences with the certificate, so the idea of this section is to facilitate the understanding of the sections by analysing them one by one.

4.4.1.1 Section 1

This requires the details of the authority entrusted for this job (normally the fisheries authority) of the Flag State. The authority has to be “notified” by DG MARE as previously mentioned, by responding to a series of questions.

But there is a “catch 22” type situation in between the requirements from the EU Catch Certification (CCS) and the Health Certification, since some Flag States while having a fisheries body, lack the EU DG SANTE’s authorization from a sanitary perspective to export, without which raw products sourced from such vessels will remain ineligible. So only the countries that are approved from a sanitary perspective get to be in the list of notified, even if they comply with all the “fisheries elements.”

| EUROPEAN COMMUNITY CATCH CERTIFICATE | | | |
|---------------------------------------------|----------------|-----------------------------|------------|
| Document number | | Validating authority | |
| 1. Name | Address | Tel. | Fax |

In regards the details there, the authority is in charge of managing a unique consecutive numbering system for each cert. The complexity and structure of this system is up to the country. And while not listed, it is sensible for the authority to have a dedicated e-mail contact.

4.4.1.2 Section 2

| | | | |
|--------------------------------------|----------------------------------------------------------------------|------------------|---------------------------------------|
| 2. Fishing vessel name | Flag – Home port and registration number | Call sign | IMO/Lloyd’s number (if issued) |
| Fishing licence No – Valid to | Inmarsat No, Fax No, Telephone No, E-mail address (if issued) | | |

In principle this part seems to be easy however there might be more complications than expected.

A significant part of the fishing world works on principles of “charter” vessels (for various reasons, subsidies, lack of corporate responsibility, tax evasion, etc., etc.), hence vessels flagged in country “A” are based and operate in country “B” under its legislation and controls. Chances are that Flag State “A” may not have seen that vessel in years, may not even know where it is, but under Flag State responsibility is the Flag State (A) that had to validate the Catch Certificates of the vessels that operates in country B.

So in a ideal world, country “A” would establish an MoU with the Coastal States where the vessels operate and/or with the Port State where the fish is landed/transshipment and/or with the processing state where the fish is processed (note that all this can happen in one country or different ones). Once these MoUs are in place a robust system of information sharing can be established, enabling the Flag State to provide the required “official assurances” during validations.

In the real world, most of the countries that are utilising charter vessels are not those particularly responsible in terms of fishing compliance. Hence they don't really give much attention to these issues (in fact there are very few such MoUs in place).

While initially this was a "Catch Certificate" (hence certified the fish caught, at the time of landing), after recording the "Weight In the CC" notes, it becomes a "Export Certificate" for fish being processed in the country of the Flag State. As these are based on the volumes in the consignment exported, the consignment could consist of various landings of various vessels, hence there could be 20+ vessels in one consignment (the regulation ask for 1 certificate for 1 consignment), and there is no chances to put 20 vessels in this section. This is provided for in Annex B (see sub section 4.1.1.12 in this chapter).

It only is a "Catch Certificate" (in the sense that certifies catches at the moment of landing) when the whole load of fish is unloaded in country that is not the Flag State. Then, it is one vessel - one volume but unfortunately is often not the reality.

The fishing licence number and validity normally refers to the Flag State license and not to the coastal state where the vessels may be operating, however the legality of the catch is associated to the conditions imposed by the coastal state and not only to the Flag State. Furthermore, the validity may be really different (yearly for Flag State, monthly for coastal state), so it gets complicated and the "manual" provided by the EU remains silent on this. Based on this, the numbering of the licence and validity of the vessel by the Flag State, may not have any inference in regards to the legality of the catch.

4.4.1.3 Sections 3 and 4

These sections are somewhat "mixed" and complicated. In reality, Section 4 relates more to Section 2 (in function of the legal conditions under which the vessel operates and catches fish). Here consideration is given to Flag State related measures (high seas permits, conditions related to leaving the Flag State EEZ, measures related to the RFMO in which that vessels operates, etc.) and/or the measures imposed by the Coastal State (permit number, conditions, etc.). However, as mentioned, on the Manual there are not many points that clarify these options. Section 3 touches on a different topic as it describes the product.

| 3. Description of product | | Type of processing authorised on board | | 4. References of applicable conservation and management measures | |
|---------------------------|--------------|----------------------------------------|----------------------------|------------------------------------------------------------------|-----------------------------------------------|
| Species | Product code | Catch area(s) and dates | Estimated live weight (kg) | Estimated weight to be landed (kg) | Verified weight landed (kg) where appropriate |
| | | | | | |

SECTION 3.

PRODUCT DESCRIPTION: The product is described by using the species name and the product code is the customs code used in the nomenclature implemented by the third country (however in reality it is the one that the client request) in the sections below. However, some countries ask for the generic name of the product to be listed (i.e. Tuna loins).

CATCH DATES AND AREAS: Dates of catch can be interpreted as the actual dates of fishing. However, a vessel may not catch every day, so certainty is required as to whether this constitutes each active fishing date, or the time in between the 1st fishing operation (i.e. trawl, set, hook in the water, etc.) and the last one. This could also be from port departure to return or from or from empty hold to full hold depending on the way the vessel concerned operates. This is not defined, hence it is potentially in the hands of the operators that complete this section to choose what they want, or it may also be subject to a directive from the fisheries authority defining what is required.

WEIGHTS: This is also complex and somewhat confusing in regard to weight discussion in the WICC note. The original note said:

Weight in the Catch Certificate (“Estimated live weight”, “Estimated weight to be landed”, “Verified weight landed”) should only cover the consignment to be exported to the EU and not the total catch landed.

Then, around two months later, a further note added:

- *If all the fish from one landing (either in the Flag State or another Port State) is exported to the EU in one consignment, the weight of the landed fish should be included in the box “Estimated weight to be landed”. This is interesting because it can be assumed that the load could have been verified at landing, and furthermore, is this assuming all the species in the load are destined to the EU*
- *In all other cases, e.g. when fish is exported live; when only part of the landed catch is exported or when products are processed in the Flag State prior to exportation to the EU, the box “Estimated live weight” should be used and only the weight of the product to be exported should be included in the box “Estimated live weight”. Again this is somewhat confusing because “live weight” normally refers to the weight of the fish when it was alive, but if they are processed, then the weight is lower than the “live weight”, and this note is all about the weights of the product that is processed and being exported only. Even if we have the total weight to be exported, the section refers to the Estimated live weight so there is uncertainty as to whether this is the correct place to enter the information.*
- *In either of the above cases, the only validating authority of the Flag State should include details of “Verified weight landed” if this is available.*

In reality what actually does happen is that when fish from a vessel flagged in country “A” unloads in country “B” for processing, the whole volume of fish landed can be quoted in the “estimated” box. Alternatively, if it controlled by the authority of “B” then landing verification can take place directly, or via verifying the entry logs in cool store/factory. Ideally, any authority that follows the financial transactions relating to the product and the documentation that confirms the volumes by which crew or broker will get paid, will have the truly verified volumes by species.

So there is some confusion with the correct manner to complete this section. So, the most appropriate course of action is to fix the figures so that any box filled in shows the weight of the consignment. In this way it should enter the EU without there being problems.

The Irish CA in a useful small document³⁴ recommends:

Estimated live weight: This is the weight of the fish in the consignment. For a processed product the weight of fish in the finished product should be shown here, only include the actual consignment weight in this section.

Estimated weight to be landed: This is the weight of the total landing and is only relevant where the whole catch is landed in another Flag State or EU Member State.

Verified weight landed: If the landing is inspected/weighed on landing by either an authority in the third country of landing or EU Member State the weight verified by the competent authority in the country of landing should be included in the box “Verified weight landed”.

Nevertheless, this may not be the way that another MS CA could see this issue. If the rigours of the Flag State dictate honesty, and they say “but we landed more than we exported in this case”, then they should make sure that the right-most column they happen to fill in reflects the weight of the consignment to be exported exactly, but it is best to fill in only one figure.

34. http://www.sfpa.ie/Portals/0/Sea-Fisheries%20Conservation/IUU%20Documents/IUU%20Guide%20for%20Exporters%20in%20Third%20Countries_Weights%20and%20Product%20Codes_v1.2_06.2014.pdf

4.4.1.4 Section 5

| |
|----------------------------------------------------------------|
| 5. Name of master of fishing vessel – Signature – Seal: |
|----------------------------------------------------------------|

This should be easy and in principle it is a good idea as a way to make the Skipper responsible for the fish caught. However, as is often the case, the Certificate is raised when the product is ready to be exported, which in most cases means processed (not for the product caught). This may happen in a different country and months after the vessel landed and therefore that Skipper may not be available to sign the document.

In theory this is something that the CAs should be validating and most operators have scans of the skippers' signatures on file, or add the concept of "authorized company representative" or others along those lines.

4.4.1.5 Section 6

| | | | | |
|-----------------------------------------------------------------------------------|------------------|---------------------------|------------------------------------------|--------------------------------------|
| 6. Declaration of transshipment at sea Name of master of fishing vessel | | Signature and date | Transshipment date/ area/position | Estimated weight (kg) |
| Master of receiving vessel | Signature | Vessel name | Call sign | IMO/Lloyds number (if issued) |

Transshipments at sea are heavily regulated worldwide and there are good reasons for this. Transshipments are permitted in various fisheries, and under the fishing rules of the Flag State and/or RFMO, and/or coastal state. Nevertheless, is the Flag State's responsibility to attest to the legality of transshipment at sea. Hence the Flag States should have processes and instruments in order to ensure the operations were legal and no underreporting took place.

Some difficulties apply here in addition to the other elements of the CC. Completion of the paperwork may take place some time well after the event and be handled by the processors and not by the fishers. So in this case, how does the Flag State knows and validate the identity (and signature) of both masters?

While there is no definition of "transshipment at sea" it is almost obvious that happens outside any port region, and many states have not defined the "format" in which the transshipment information is to be supplied. Examples have been cited where the CC declares two dates and positions (start of the transshipment and finish). This may suggest the idea that there were 2 transshipments instead of one. Indeed there could also in fact, be two consecutive transshipments by same vessels separated by a few days. Thus it is important that the validation authority clearly states how they require the information to be presented.

4.4.1.6 Section 7

| | | | | | | | |
|----------------------------------------------------------|------------------|------------------|----------------|-------------|------------------------|------------------------|---------------------|
| 7. Transshipment authorisation within a port area | | | | | | | |
| Name | Authority | Signature | Address | Tel. | Port of landing | Date of landing | Seal (stamp) |

This section is also complex and somewhat confusing. It says “date” and “port of landing” while transshipment is actually defined as in between two vessels, hence no actual landing is implied. Landing is putting the fish on land (even if not defined in the EU legislation). The term “port area” is also not defined but the general view on this is that it refers to being around a “port” where an anchored vessel is approached by another one to tranship. However, no official explanation has been given to date.

While not clearly explained in the regulations or manuals, this is the only part of the CC that requires the signature from the Port State instead of the Flag State. So vessels flagged in Country “A” tranship at a port in Country “B”. Country “A” is responsible for the validation of the CC but country “B” is responsible for authorizing the transshipment.

The transshipment can occur before the CC certificates are raised and validated (because in many cases there still no firm buyer for the fish) or because the fish has not been landed or processed at destination which may or may not be the Flag State.

This a difficulty for the Port State as if they were to sign Section 7 at the time of the transshipment, they’ll sign a “empty” CC, with information provided by the captain or agent unless the Flag State is really “onto it” an able to provide a validated CC based on reliable estimates provided by the captain via the logbook and/or observers, prior the transshipment (there is no evidence of this ever being the case). DG MARE in one of its notes³⁵ proposes that the Port State signs the non validated CC, however this can be seen as a not showing sufficient due diligence by the Port State CA.

Alternatively they need to keep the records of the transshipment authorization on file, until such a time the processors of the fish that was transhipped request the CC from the Flag State who can then issue the CC which can then go to the Port State for section 7 signature.

As it is now, the operational side of section 7 requires either jeopardy from the Flag State or from the Port State.

4.4.1.7 Section 8

| | | | |
|----------------------------------------|------------------|-------------|-------------|
| 8. Name and address of exporter | Signature | Date | Seal |
|----------------------------------------|------------------|-------------|-------------|

This is normally the same people that fill Section 5, as the CC is prepared by the processors (which, as discussed defeats the purpose of a Catch Certificate), so in general terms there are no issues with this section.

4.4.1.8 Section 9

| | | | |
|--------------------------------------------|------------------|-------------|---------------------|
| 9. Flag State authority validation: | | | |
| Name/title | Signature | Date | Seal (stamp) |

Here we have a similar situation to that one of Section 1, however a name and position are required. Initially it was believed that the details should be communicated to DG MARE. Yet in reality the CC is evaluated by the CA of the EU MS and yet there is no centralized system to verify (or not) the details of the CC. It is therefore up to the CA of the Flag State to decide to inform – or not – DG MARE in regards to the identity of the validating officers.

35. http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/transshipment_requirement_en.pdf

4.4.1.9 Section 10

| |
|---------------------------------------------|
| 10. Transport details (see Appendix) |
|---------------------------------------------|

A rather illogic part of the certificate which could just be an appendix or simply not referred to.

| 1. Country of exportation Port/airport/other place of departure | 2. Exporter signature | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|-------------|----------------|------------------|
| Vessel name and flag Flight number/airway bill number Truck nationality and registration number Railway bill number Other transport document | Container number(s) list attached | Name | Address | Signature |

In any case this is where the information to be provided relates to the transport details of the fishery products from the third country having validated the Catch Certificate to the next destination, an EU Member State in case of direct importation or an intermediate country in case of indirect importation to the EU.

As has been seen under part 7, if a transshipment in port happens in between vessels where the transshipment is in the waters where the Port State is the Flag State, then this can also be construed as having the carrier as the de facto transport vessel. In this case the details of the carrier will be entered in this section. There are also instances where the transshipment details being recorded in section 7 are the same details of the carrier being repeated in this section of transport details. Acceptance of this practice may be one of those issues that is dependent of the practices of the authorities of importing EU MS at the time the consignment enters the country.

4.4.1.10 Processing statement

The processing statement in Annex IV of the IUU Regulation has to be provided for indirect importations to the Community with prior processing. It has to be filled in by the processor in the third country other than the Flag State.

Annex IV serves as a template and the boxes provided can be extended if needed. The importer has nothing to declare on the Annex IV statement.

There are no significant issues in regards to this document. Some countries add the Flag State identity to the Catch Certificate number, and while some countries argue that the CA in charge of this document should be the one in charge of the Health Certification, the reality is that is more a fisheries issue than a health issue.

From the practical and management point of view, it is important for the CA of the processing state that validates this document to maintain a register of processing statements signed with description of species, volumes and destiny.

ANNEX IV

Statement under Article 14(2) of Council Regulation (EC) No .../2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

I confirm that the processed fishery products: ... (product description and Combined Nomenclature code) have been obtained from catches imported under the following catch certificate(s):

| Catch certificate number | Vessel name(s) and flag(s) | Validation date(s) | Catch description | Total landed weight (kg) | Catch processed (kg) | Processed fishery product (kg) |
|--------------------------|----------------------------|--------------------|-------------------|--------------------------|----------------------|--------------------------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |

Name and address of the processing plant:

.....

Name and address of the exporter (if different from the processing plant):

.....

Approval number of the processing plant:

.....

Health certificate number and date:

.....

| | | | |
|---------------------------------------------|------------|-------|--------|
| Responsible person of the processing plant: | Signature: | Date: | Place: |
| | | | |

Endorsement by the competent authority:

.....

| | | | |
|-----------|---------------------|-------|--------|
| Official: | Signature and seal: | Date: | Place: |
| | | | |

4.4.1.11 A Non-Processing statement?

The legislation does not stipulate a “non processing statement”, it only states that:

In order to import fishery products constituting one single consignment, transported in the *same form to the EU from a third country other than the Flag State*, the importer shall submit to the authorities of the Member States of importation:

(a) the Catch Certificate(s) validated by the Flag State; and

(b) documented evidence that the fishery products did not undergo operations other than unloading, reloading or any operation designed to preserve them in good and genuine condition, and remained under the surveillance of the competent authorities in that third country.

Documented evidence shall be provided by means of:

- *where appropriate, the single transport document*
- *a document issued by the competent authorities of that third country:*
 - *giving an exact description of the fishery products, the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used, and*
 - *an indication of the conditions under which the fishery products remained in that third country.*

Hence some countries have developed a ‘Non Processing Statement’ to cover all these issues and assist with their “fish accountancy”. An example of how the “Non Processing Statement” may look as the example at the top of the next page.

4.4.1.12 Annex B or attachment to Catch Certificate

This form was not published in the original legislation, hence it is not a compulsory form. In a note published by the EU on their website in July 2010, the EU welcomed the use of it for domestic product (i.e. product caught by the Flag State vessels in this case). They do not standardized the contents, hence countries can adapt it to best reflect their own systems and the outcome based on traceability.

The EU noted: *“Discussions are presently carried out with other third countries for provision of similar information regarding domestic processing activities. The Commission welcomes the support received from third countries and their positive approach to implement the IUU Regulation”*. Hence the third countries should use this to their advantage.

The certificate itself is still be fill as usual, but then sections 2 and 3 will refer to the attachment or Annex B.

This form is very useful when the consignment is made from various landings of various vessels, (as is common in canneries), as the form can replace otherwise 30 “individual” certificates.

Is easier to set up the information in a readable way, including the volumes landed, the volumes processed and the volumes exported, and the container number where that product is stored for dispatch, hence the whole traceability of the product is “visible” in one document, a example is shown at the bottom of the next page.

Non-Processing Statement
Under the requirements of the EU Catch Certification Scheme

XXXXX, xx/xx/xxxx

To whom it may concern

We state that the following fishery products did not undergo operations other than unloading, reloading or any other operation designed to preserve them in good and genuine condition, and remained under the surveillance of the competent authorities while in the Solomon Islands:

| Description of the fishery products | Catch certificate Number | Product Weight | Port and Date of unloading | Unloaded from: Vessel name, flag |
|-------------------------------------|--------------------------|----------------|----------------------------|----------------------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| Date reloading | Port / place of reloading | Reloaded onto: Vessel name, flag or other means of transport used | Total product weight reloaded |
|----------------|---------------------------|-------------------------------------------------------------------|-------------------------------|
| | | | |

| If product was stored: Name and address of storage facilities | Stored fresh | Stored frozen |
|---------------------------------------------------------------|--------------|---------------|
| | | |

| Name and address of exporter | Signature | Date |
|------------------------------|-----------|------|
| | | |

Authority Validation

| Name/Title | Signature | Date | Seal (Stamp) |
|------------|-----------|------|--------------|
| | | | |

ABOVE: example of a "Non-Processing Statement". BELOW: example of a Annex B or Attachment to a CC.

Attachment to Catch Certificate:

| | |
|------------------------------------------------------------------------|-----------------------------------------------------------|
| <p>Section I Shipment No Consignee location Booking No</p> | <p>Product Description Round Frozen RF /Whole Fish</p> |
|------------------------------------------------------------------------|-----------------------------------------------------------|

| Section II | | | | Fishing Vessel | | | | Product Description | | | | Customs | |
|------------|-----------------------------------|-----------|-----|---------------------|-----------------------------|-------------------------|--------------|---------------------|--------------------------------|----------------------------------|---------------------------------|-----------------|------------------|
| FV Name | Home port and registration number | Call sign | IMO | Contact (if issued) | Fishing license #/ Validity | Catch area(s) and dates | Species | Date of landing | Total catch of the vessel (Kg) | Volume Processed for export (Kg) | Volume of product exported (Kg) | Product Code | Container Number |
| | | | | | | | Esjay's Tuna | 27 01 14 - | 375 355 00 | 18 498 00 | 18 498 00 | 0303 44 00 00 0 | |
| | | | | | | | Esjay's Tuna | 22 10 13 - 24 10 13 | 396 725 00 | 7 502 00 | 7 502 00 | 0303 44 00 00 0 | |
| | | | | | | | Esjay's Tuna | 22 01 12 - 24 01 12 | 375 355 00 | 2 276 00 | 2 276 00 | 0303 44 00 00 0 | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| Total | | | | | | | | | | 20 268 00 | | | |

| | | | | |
|-------------------------------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <p>Name and Address Exporter</p> | <p>Signature</p> | <p>Validating Authority Name and Title</p> | <p>Date</p> | <p>Signature and Stamp</p> |
| <div style="border: 1px solid black; height: 20px; width: 100%;"></div> | <div style="border: 1px solid black; height: 20px; width: 100%;"></div> | <div style="border: 1px solid black; height: 20px; width: 100%;"></div> | <div style="border: 1px solid black; height: 20px; width: 100%;"></div> | <div style="border: 1px solid black; height: 20px; width: 100%;"></div> |

"I solemnly declare that the above information is true and corresponds to the above described export"



GSP / RULES OF ORIGIN / CERTIFICATION OF ORIGIN

The Rules of Origin are the means by which the EU determines where goods originate, i.e. not where they have been shipped from, but where they are deemed to have been produced or manufactured.



On 1 January 2011 the reform of the rules of origin for the European Union Generalized System of Preferences (GSP) went into force and introduced four major changes in the rules for determining origin.

- *First, while previously the same rules of origin applied to developing countries and least developed countries (LDCs), the new rules frequently include separate provisions for LDCs to address concerns about their capacity constraints. The origin-determining requirements for developing countries have also been modified.*
- *Second, “the List of Products and Working or Processing Operations which confer Originating Status” has been simplified to some degree, and the product-specific origin requirements contained in the current List differ from those in the previous List.*
- *Third, important changes have been made in the cumulation provisions that expand the possibilities of cumulation.*
- *Fourth, the new procedures will be effective from 1 January 2017, at which time the system of registered exporters and self-certification will be introduced. By then the governments of beneficiary countries are expected to have made necessary preparations, including the installation and management of electronic databases in their customs operations to implement the new procedures.*

The origin-determining criteria are fundamental to the rules of origin. They determine how and when a product can be considered as originating in a GSP beneficiary country. Broadly, there are three type of criterion: change of HS tariff heading, value percentage and specific process.

5.1

Origin determining criteria

The origin-determining criteria are fundamental to the rules of origin. They determine how and when a product can be considered as originating in a GSP beneficiary country. Unchanged from the previous rules, a product is considered as originating in a beneficiary country if it has been wholly obtained, or sufficiently worked or processed with wholly or partly imported materials (Article 72).

5.1.1 Wholly obtained

Article 75 lays down a list of products that are considered to be wholly obtained in a country. Products are included in this category by virtue of the total absence of imported input used in their production.

The definitions are the same as the previous rules of origin, except for fisheries products taken from the sea outside territorial waters, that is, outside the 12-mile zone. For these products the conditions

for fisheries vessels have been simplified. Previously there were some requirements on nationalities of masters, officers, and crews, but these conditions have been eliminated. Also, requirements for ownership of fisheries vessels have been simplified, and as explained in the subsequent paragraph following the list below, cumulation of conditions for fisheries vessels is permitted.

Under the current rules of origin for FAPs the following shall be considered as wholly obtained in a beneficiary country:

- a) Products obtained by fishing conducted there;*
- b) Products of aquaculture where the fish, crustaceans and molluscs are born and raised there;*
- c) Products of sea fishing and other products taken from the sea outside any territorial sea by its vessels;*
- d) Products made on board its factory ships exclusively from the products referred to in point (c);*

The terms “its vessels” and “its factory ships” in (c) and (d) shall apply only to vessels and factory ships which meet the following requirements (a), (b) and either (c) or (d):

- a) They are registered in the beneficiary country or in a European Union Member State;*
- b) They sail under the flag of the beneficiary country or of a European Union Member State;*
- c) They are at least 50 per cent owned by nationals of the beneficiary country or of European Union Member States, or alternatively,*
- d) They are owned by companies which have their head office and their main place of business in the beneficiary country or in European Union Member States and which are at least 50 per cent owned by the beneficiary country or European Union Member States or public entities or nationals of the beneficiary country or European Union Member States.*

Cumulation is allowed in meeting these conditions, and they may each be fulfilled in European Union Member States or in different beneficiary countries insofar as all the beneficiary countries benefit from “cumulative origin – regional cumulation³⁶”.

5.1.2 Product that are sufficiently processed with imported materials

When imported inputs are used to manufacture a finished product, the rules of origin require that these non-originating materials be sufficiently worked or processed to be considered as originating in the beneficiary country.

In particular, sufficient working or processing is defined as follows:

Products which are not wholly obtained in the beneficiary country concerned within the meaning of Article 75 shall be considered to originate there, provided that the conditions laid down in the list in Annex 13a³⁷ for the goods concerned are fulfilled (Article 76).

36. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010R1063>

37. The list in annex 13a is entitled the List of Products and Working or Processing Operations which Confer Originating Status (the Product List), and it is annexed to Commission Regulation (EU) No. 1063/2010

5.2

The Certificate itself

The authority in charge of this certificate tends to be customs (or a branch thereof), however each country would have its own administrative pathways for its emission. As discussed before, the details surrounding rules of origin would need to be further explored with the authorities of the exporting countries or via their export promotion agencies, as most issues are not as technically cut as in the case of the Health and Catch.

In any case a generic example of a Certificate of Origin is presented below for informative purposes only.

Certificate of Origin

| | | | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|---------------------------------|
| 1. Goods consigned from (Exporter's business name, address, country) | | Reference No | | | |
| 2. Goods consigned to (Consignee's name, address, country) | | <p style="text-align: center;">GENERALISED SYSTEM OF PREFERENCES CERTIFICATE OF ORIGIN (Combined declaration and certificate)</p> <p style="text-align: center;">FORM A</p> <p>Issued in _____ (country)</p> <p style="text-align: right;">See Notes overleaf</p> | | | |
| 3. Means of transport and route (as far as known) | | | | | |
| 4. For official use | | | | | |
| 5. Item number | 6. Marks and number of packages | 7. Number and kind of packages, description of goods | 8. Origin criterion (see Notes overleaf) | 9. Gross weight or other quantity | 10. Number and date of invoices |
| <p>11. Certification</p> <p>It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.</p> | | | <p>12. Declaration by the exporter</p> <p>The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in _____ (country)</p> <p>and that they comply with the origin requirements specified for those goods in the Generalised System of Preferences for goods exported to _____ (importing country)</p> | | |
| Place and date, signature and stamp of certifying authority | | | Place and date, signature of authorized signatory | | |



REFERENCES

Besides the references stated in the text, the author quotes text from the following freely available documents.

6.1

Health Certification

Compliance of Imports of Fishery and Aquaculture Products with EU Legislation. EU Parliament Study, 2013. Palin et al. GOPA Consortium.

[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/513968/IPOL-PECH_ET\(2013\)513968_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/513968/IPOL-PECH_ET(2013)513968_EN.pdf)

EU Market Access (Health and IUU) & Eco-labelling for Fishery and Aquaculture Products. Blaha, F. Swiss Import Promotion Programme (SIPPO). Zurich, 2011

http://exporters.sippo.ch/en/filefield-private/files/43451/field_blog_public_files/11536

Regulatory Alternatives for EU Market Access. Food and Agriculture Organization of the United Nations. Blaha, F. 2008. FAO Rome.

<ftp://ftp.fao.org/docrep/fao/012/i0884b/i0884b02c.pdf>

General guidance for third country authorities on procedures to be followed when importing live animals and animal products into the EU. SANCO/10063/2007 Rev.2 2009.

http://ec.europa.eu/food/animal/liveanimals/guide_thirdcountries_en.pdf

6.2

Catch Certification

Compliance of Imports of Fishery and Aquaculture Products with EU Legislation. EU Parliament Study, 2013. Palin et al. GOPA Consortium.

[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/513968/IPOL-PECH_ET\(2013\)513968_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/513968/IPOL-PECH_ET(2013)513968_EN.pdf)

Handbook on the practical application of Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (The IUU Regulation). Ref: Mare A4/PS D(2009) A/12880.

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/handbook_original_en.pdf

Addendum to the first edition of the Handbook on the practical application of Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/handbook_addendum_en.pdf

Technical note - detailed description of the catch certification scheme.

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/technical_note_en.pdf

List of Member States and their competent authorities concerning Articles 15(2), 17(8) and 21(3) of Council Regulation (EC) No. 1005/2008.

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/ms_authorities_en.pdf

Addendum to and amendment of list of competent authorities in Member States

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/addendum_authorities_en.pdf

6.3

Rules of Origin

Commission Regulation (EU) No. 1063/2010 of 18 November 2010 amending Regulation (EEC) No. 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code;

http://ec.europa.eu/taxation_customs/resources/documents/customs/procedural_aspects/general/regulation_2454_93_en.pdf

The European Union's Rules of Origin for the Generalized System of Preferences: A guide for Users, European Commission, July 2014.

http://ec.europa.eu/taxation_customs/resources/documents/guide-contents_annex_1_en.pdf

Handbook on the Rules of Origin of the European Union UNCTAD/ITCD/TSB/Misc.25/Rev.3/Add.1. 2013

http://unctad.org/en/PublicationsLibrary/itcdtsbmisc25rev3add1_en.pdf



ABOUT THE PROGRAMME

Switzerland Global Enterprise

Switzerland Global Enterprise (S-GE) works all over the world to support entrepreneurs and promote Switzerland as a business location. Its role as a center of excellence for internationalization is to foster exports, imports and investments, to help clients develop new potential for their international businesses and to strengthen Switzerland as an economic hub. S-GE is a strong and trusted partner for clients, the cantons and the Swiss government, with a global network of experienced advisers and experts.

Swiss Import Promotion Programme

SIPPO, the Swiss Import Promotion Programme is a mandate of the State Secretariat for Economic Affairs (SECO) within the framework of its economic development cooperation. Part of Switzerland's foreign economic strategy, the programme is conducted by Switzerland Global Enterprise, the official Swiss foreign trade promotion agency. It helps SMEs in selected partner countries and sectors to export their high-quality products to the European Union, Switzerland and other EFTA countries. SIPPO ensures qualified trade contacts are established between SMEs from partner countries and the Swiss and European import economy, by providing information, training and matchmaking services. SIPPO works in close cooperation with local business support organisations in order to guarantee a consistent and sustainable knowledge transfer for SMEs.

The programme's principal goals are:

- *To develop the manufacturing and exporting skills of SMEs in partner countries*
- *To establish qualified trade contacts between SMEs from partner countries and the Swiss and European import economy*
- *To strengthen the international competitiveness of SMEs in partner countries*
- *To promote innovative products with high potential on the Swiss and European markets*
- *To strengthen trade institutions and business sector organisations in partner countries in the trade promotion process in order to facilitate trade for exporting companies*

Companies will be preferentially promoted if they:

- *meet the standards within the environment and social fields or are working towards their implementation*
- *meet internationally relevant quality standards or are working towards their implementation*
- *generate local added value through their products*
- *have embedded sustainability principles in their strategic organisation and are progressing with their implementation*



NOTES



LIST OF ABBREVIATIONS

| | | | |
|-------------|----------------------------------------------------------|--------------|--------------------------------------------|
| EU | European Union | FVO | Food and Veterinary Office |
| BIP | Border Inspection Posts | IUU | Illegal, Unreported and Unregulated |
| CA | Competent Authority | MCS | Monitoring and Control and Surveillance |
| CC | Catch Certificate | MS | Member States (EU) |
| CCS | Catch Certification Scheme | RASFF | Rapid Alerts System for Food and Feed |
| EC | European Commission | RFMO | Regional Fisheries Management Organization |
| EFSA | European Food Safety Authority | SPS | Sanitary and Phyto-sanitary Agreement |
| EFTA | European Free Trade Association | WTO | World Trade Organizations |
| FAO | Food and Agriculture Organizations of the United Nations | | |
| FAP | Fish and Aquaculture Products | | |

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