

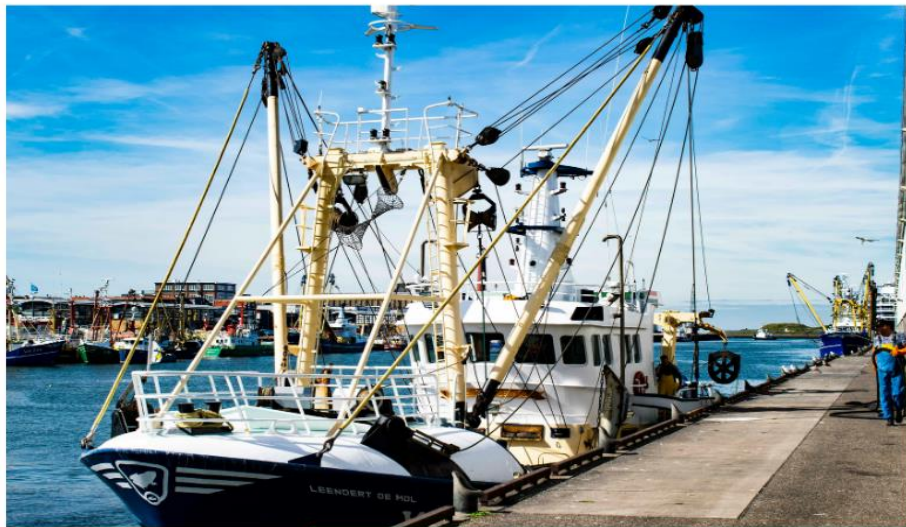
Seychelles – Ghana Administrative Cooperation for cumulation purposes in the fishery sector under the Economic Partnership Agreements

A case study

August 2016

Author:
Guillaume Gérout

Research paper



Commissioned and financed by:

Published by

Astove Conseil
37 boulevard Dubouchage
06000 Nice
France
E-mail: bonjour@astoveconseil.com

Web: <https://astoveconseil.com/>

Copyright © Astove Conseil 2016

Citation

Gérout, J. 2016. Seychelles-Ghana Administrative Cooperation for Cumulation Purposes in the Fishery Sector under the Economic Partnership Agreements. A Case Study. Nice: Astove Conseil

Credit

Paul Einerhand on Unsplash

TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
1. INTRODUCTION.....	6
1.1. Background	6
1.2. Context.....	6
1.3. State of play	10
2. METHODOLOGY	11
2.1. Choice of the case unit	11
2.2. Protocol	12
2.3. Limitations.....	12
3. IDENTIFYING THE APPLICABLE CUMULATION REQUIREMENTS.....	13
3.1. EU preferential schemes applicable to the ACP States.....	13
3.2. Applicable regimes.....	14
3.3. List of requirements for eligibility to the acquisition of the originating status of the final product incorporating cumulated inputs, in accordance with the different regimes	14
4. ASSESSMENT OF THE APPLICABILITY OF THE CUMULATION PROVISIONS.....	17
4.1. Geographical criterion	17
4.2. Administrative cooperation criteria	17
4.3. Applicable sets of RoO	18
4.4. Proof of origin related criterion.....	19
5. IDENTIFICATION OF THE IMPEDIMENTS TO EFFECTIVE CUMULATION	20
5.1. Identified possible reasons to the stalemate of the process.....	20
5.2. Identified recommendations.....	22
6. CONCLUSION	25
ANNEX 1 - LIST OF REVIEWED DOCUMENTS.....	26
ANNEX 2 - MEETING GUIDELINES.....	28
ANNEX 3- LIST OF STAKEHOLDERS INTERVIEWED	34
ANNEX 4 - BRIEF ANALYSIS OF THE JU	35

ACRONYMS AND ABBREVIATIONS

Art.	Article
ACP	African, Caribbean and Pacific Group of States
ACA	Administrative Cooperation Agreement
CPA	Cotonou Partnership Agreement
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa
EU	European Union
GSP	General Scheme of Preferences
JU	All-ACP Joint Undertaking
MAR	Market Access Regulation, also referred to as Regulation (EC) no. 1528/2007
OJEU	Official Journal of the European Union
RoO	Rules of origin
RTA	Regional Trade Agreement
WA	Western Africa
WTO	World Trade Organization

EXECUTIVE SUMMARY

The cumulation provisions laid down under the APC – EU Economic Partnership Agreements (EPAs) allow virtually all African countries to source their material in other African countries' territories whilst maintaining the preferential treatment for their final product. This important rule is seen as having the potential to boost intra-African trade, as well as up-scaling African productions in regional and global value chains.

Most of the EPA cumulation rules are conditional to the conclusion of administrative cooperation arrangements between the countries involved in the cumulation process. This prerequisite aims at ensuring the correct application of the rules of origin.

In this light, the Seychelles and Ghana have signed an administrative cooperation agreement for cumulation purposes. This came close to achieving its purpose however the EU informed of the need for this instrument to be amended. Both countries agreed to initial amendments however a second amendment has been proposed which, to date, remains to be addressed.

A certain number of challenges have undermined the completion of this process. Amongst those, the commitment of negotiating parties is perceived to be a key issue.

As the revision of the rules of origin is a question that seems to have awakened interest among the Eastern and Southern Africa (ESA) States, consideration should be given to the revision of rules that subject the implementation of some ESA – EU EPA rules, such as cumulation, to the willingness of a cumulation partner which is not party to the ESA- EU EPA. This issue has proven to be very difficult to overcome in the context of ACP – ACP cumulation.

This point is to be considered as it is also a source of concern in the context of cumulation between an ACP State and neighboring developing countries, as well as all other possible territories with which cumulation may be allowed. In the context of cumulation of duty-free products under the new generation cumulation system, this virtually applies worldwide.

The present pilot study outlines the issues identified as hampering the conclusion of the bilateral administrative cooperation agreement between the Seychelles and Ghana. However, it also touches upon the incidental repercussions of another initiative which also aims to conclude the administrative cooperation requirements on a multilateral basis: the all-ACP Joint Undertaking for cumulation purposes under the Economic Partnership Agreements.

KEY MESSAGES

- The existence of cumulation provisions is not a sufficient condition for triggering their implementation. The administrative mechanisms to ensure their implementation has proven to be incomplete so far, hence preventing both the Seychelles and Ghana from benefiting from this key provision.
- It is to be noted that the all-ACP Joint Undertaking has been endorsed by the ACP Group and signed by a certain number of ACP States but Ghana is not among them. Additionally, a certain

number of issues arise concerning the enforceability of this instrument.

- The present pilot study identifies the need for a deeper analysis of the applicability of the all-ACP Joint Undertaking for cumulation purposes under the Economic Partnership Agreements.

Addendum

The present study has been carried out during the first half of the year 2016, based on the assumption that Ghana would implement – after signature and ratification – the Economic Partnership Agreement concluded between the West African region, on the one side, and the European Union and its Member State, on the other.

On the 27th July 2016, Ghana has signed the STEPPING STONE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN GHANA, OF THE ONE PART, AND THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE OTHER PART.¹

The Ghana – EU Stepping Stone Economic Partnership Agreement contains a different set of rules of origin which will affect the results of the present study.

¹ <http://www.myjoyonline.com/business/2016/August-1st/ghana-signs-interim-economic-partnership-agreement-with-the-eu.php>, consulted 2 August 2016

1. INTRODUCTION

1.1. Background

The Economic Partnership Agreements (EPAs) are regional trade agreements (RTAs), established between the European Union (EU) and the African, Caribbean and Pacific (ACP) countries. They aim to provide to the economic and trade cooperation chapter of the Cotonou Partnership Agreement (CPA) a content compatible with the disciplines of the World Trade Organization (WTO). In this light, the EPAs pursue the objectives and principles of the CPA – as mentioned in their preambles – including by aiming “to foster smooth and gradual integration of the ACP States into the world economy, especially by making full use of the potential of regional integration and South-South trade”.²

Preferential treatment is granted when eligible products comply with the set of conditions referred to as the preferential rules of origin (RoO).

A certain number of flexibilities allow the parties to deviate from the main disciplines laid down under the RoO so as to provide sufficient space for production processes to take place in satisfactory conditions.

Amongst those flexibilities can be mentioned the cumulation which the European Commission’s defines as “a mechanism that permits [...] to consider non-originating materials used or processing carried out in another country as originating in [a territory party to an RTA] or carried out in [a territory party to an RTA]”.³

1.2. Context

The Seychelles and Ghana are two (2) ACP countries that have negotiated EPAs within their regional contexts, respectively the Eastern and Southern Africa (ESA) and Western Africa (WA) negotiating groups.

Among the countries belonging to the ESA EPA configuration –namely Comoros, Djibouti, Eritrea, Ethiopia, Madagascar, Malawi, Mauritius, the Seychelles, Somalia, Sudan, Zambia and Zimbabwe – four (i.e. Madagascar, Mauritius, the Seychelles and Zimbabwe) has signed an interim EPA with the EU on the 29 August 2009. The Agreement is provisionally applied since 14 May 2012.⁴ The eight member States of the ESA EPA configuration not having signed the agreement have expressed their willingness to pursue the negotiations towards a comprehensive EPA; however, the negotiations have been stalling since the last round of negotiations held in 2011; market access offers of most of the ESA States are still outstanding. During the 23rd ESA EPA Council meeting, held on 8 December

² Art. 36, 2010 Cotonou Agreement

³ http://exporthelp.europa.eu/thdapp/display.htm?page=cd/cd_Cumulation.html&docType=main&languageId=EN

⁴ Notice concerning the provisional application of the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, OJ L 125, 12.5.2012, p. 1.

2015 in Lusaka, Zambia, the ESA EPA Council called upon all ESA EPA negotiating States in position to do so to produce their offers in view of pursuing the negotiation process as swiftly and inclusively as possible.⁵

The WA configuration – composed of Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Mauritania, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo – has concluded its EPA negotiations with the EU on the on 6 February 2014. The text was initialed on 30 June and on 10 July 2014, the ECOWAS Heads of State endorsed the EPA for signature. The signature process is currently ongoing.⁶

1.2.1. The Seychelles' trade profile

Fishery products represented by far the most exported category of products with in average about 86%⁷ of the Seychelles' world exports during the period 2011 – 2015.⁸

The EU constitutes the first trading partner of the Seychelles, whether in terms of exports, whereby fishery products represent more than 95% of Seychelles' exports⁹ to the EU (see **Table 1**).

Table 1. Seychelles' trade exchanges with the rest of the world, WTO Stats

Share in world total exports	0.00	Share in world total imports	0.01
Breakdown in economy's total exports		Breakdown in economy's total imports	
By main destination		By main origin	
1. European Union (28)	40.9	1. European Union (28)	29.7
2. Saudi Arabia, Kingdom of	26.8	2. United Arab Emirates	16.7
3. Switzerland	0.8	3. Saudi Arabia, Kingdom of	14.5
4. Sri Lanka	0.7	4. Singapore	8.2
5. United States	0.5	5. South Africa	6.2
Unspecified destinations	27.3	Unspecified origins	0.0

As informed during a mission to the Seychelles, canned tuna – which is the main export to the EU – is competitive only thanks to the preferential duty-free quota-free treatment granted to products originating in the Seychelles.

In terms of imports, the EU is also the Seychelles' first trading partner, accounting for almost 30 % of the Seychelles' imports, with raw fish, machinery and transport equipment, representing respectively about 17% and 45% of Seychelles' imports¹⁰ from the EU.

⁵ COMESA, "Member States Urged to Conclude EPA Negotiations", *E-COMESA Newsletter*, Issue 472, 16.12.2015, p. 3.

⁶ European Commission, *Overview of the EPA Negotiations*, Updated September 2015, p. 1.

⁷ All shares of trade provided under this section are in value terms.

⁸ Author's calculations based on ITC Trade Map data.

⁹ http://trade.ec.europa.eu/doclib/docs/2011/january/tradoc_147379.pdf

¹⁰ Idem

1.2.2. Ghana's trade profile

Ghana's main exported categories of products are pearls, precious stones and metals (largely gold); cocoa and cocoa transformed products; and mineral fuels, oils and distillation products. These accounted for about 36%, 16% and 30% of Ghana's world exports, respectively, during the period 2011 – 2015.¹¹ Fishery products, notably those under Harmonized System (HS) at 2-digit level Chapters 03 and 16, represented less than 0.7% of Ghana's world's exports during the same period.

Similarly as to with the Seychelles, the EU also constitutes the first trading partner of Ghana (see **Table 1**); whereby agricultural products represent more than 42% and fishery products about 4% of Ghana's exports¹² to the EU.

Table 2. Ghana' trade exchanges with the rest of the world, WTO Stats

Share in world total exports	0.07	Share in world total imports	0.08
Breakdown in economy's total exports		Breakdown in economy's total imports	
By main destination		By main origin	
1. European Union (28)	29.6	1. European Union (28)	28.7
2. South Africa	22.4	2. China	17.8
3. United Arab Emirates	13.1	3. United States	9.8
4. Switzerland	9.3	4. India	4.8
5. Burkina Faso	3.7	5. Korea, Republic of	3.5

In terms of imports, the EU is also Ghana's first trading partner with agricultural products, machinery and transport equipment, and mineral fuels and related materials representing respectively about 11%, 28% and 23% of Ghana's imports¹³ from the EU.

1.2.3. The Seychelles – Ghana economic ties within the EPAs context

Trade between the Seychelles and Ghana is relatively low (data is furthermore not available for 2014 and 2015). The below tables illustrate the trade flows.

Table 3. Ghana's imports from the Seychelles, 4-digit HS Codes

Product code	Product label	Ghana's imports from Seychelles (in USD)				
		Value in 2009	Value in 2010	Value in 2011	Value in 2012	Value in 2013
TOTAL	All products	477,000	613,000	853,000	549,000	459,000
0303	Fish, crustaceans, molluscs, aquatic invertebrates nes	314,000	313,000	0	0	0

¹¹ Author's calculations based on ITC Trade Map data.

¹² Author's calculations based on Eurostat data, extracted from the following: http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122461.pdf

¹³ Idem

1516	Animal or veg fats, oils&fract, hydrogenated	1,000	0	0	0	0
1904	Breakfast cereals & cereal bars	7,000	0	0	0	0
1905	Bread, biscuits, wafers, cakes and pastries	1,000	0	0	0	0
2007	Jams,fruit jellies & marmalades	1,000		0	0	0
2009	Fruit & vegetable juices, unfermented	2,000	0	0	0	0
2103	Sauces mixed condiments & mixed seasonings	4,000	0	0	0	0
2202	Non-alcoholic beverages (excl. water, fruit or vegetable juices and mi	1,000	0	0	0	0
2301	Flour etc of meat, meat offal, fish, crust etc unfit for human consumptio	144,000	136,000	509,000	540,000	442,000
2309	Animal feed preparations, nes	0	159,000	0	0	0
2710	Petroleum oils, not crude	0	0	97,000	0	0
3306	Oral & dental hygiene preparations	1,000	0	0	0	0
4016	Articles of 10ulcanized rubber o/t hard rubber, nes	0	0	0	0	3,000
7312	Iron & steel stranddwire, ropes, cables, etc, not electrically insulated	0	0	63,000	0	0
8424	Mechanical appl. For proj/dispersing/spray;sandblastgmac h,etc	0	0	0	1,000	0
8481	Tap, cock, valve for pipe, tank for the like, incl pressure reducing valve	0	0	15,000	5,000	14,000
8518	Microphones & stand;loudspeaker;headphone/earphone;sound amplifier set	0	1,000	0	1,000	0
8521	Video recording or reproducing apparatus	0	1,000	0	0	0
8523	Prepared unrecorddd media for sound record (tapes)	0	1,000	0	0	0
8527	Reception app for radio-telephony/radio-broadcastg	0	1,000	0	0	0
8528	Television receivers (incl video monitors & video projectors)	1,000	1,000	0	0	0
8907	Floating structure, nes (raft/tank/coffer-dam / landing stage)	0	0	169,000	0	0
9999	Commodities not elsewhere specified	0	0	0	2,000	0

Source: Author's calculation based on ITC Trade Map, UN Comtrade

Remark: The table is based on the lasted available data.

Further disaggregation of products under HS 2301 imports – from 4-digits to 6-digits codes – shows that the totality of it falls under HS 2301.20 (Description: Flour, meal & pellet of fish, crust, mol/othaqua invert, unfit human cons). The description is not more precise at tariff line level (HS 2301.20.00).

Table 4. Seychelles’ imports from Ghana, 4-digit HS Codes¹⁴

Product code	Product label	Ghana's imports from Seychelles (in USD)				
		Value in 2009	Value in 2010	Value in 2011	Value in 2012	Value in 2013
TOTAL	All products	0	0	0	3,111,000	2,000
0303	Fish, crustaceans, molluscs, aquatic invertebrates nes	0	0	0	3,111,000	0
3215	Tanning, dyeing extracts, tannins, derivs, pigmentsetc	0	0	0	0	2,000

Source: Author's calculation based on ITC Trade Map, UN Comtrade

Remark: The table is based on the lasted available data

Further disaggregation of products under HS 0303 imports – from 4-digits to 6-digits codes – shows that the totality of it falls under HS 0303.49 (Description: Tunas nes, frozen, excluding heading No 03.04, livers and roes). The description is not more precise at tariff line level (HS 0303.49.00).

The tables thus illustrate that the large majority of goods exchanged between Ghana and the Seychelles are fish and processed fish products.

As gathered during interviews with Seychellois stakeholders, the canning factory is one of the main initiators for the cumulation request with Ghana. Indeed, the Thai Union group, which is the canning factory’s parent company, has another canning factory in Ghana which supplies the Seychelles’ canning factory in raw material when the availability in Seychelles is too low.

This initiative has primarily focused on Ghana to boost intra-industry trade in fishery products.

1.3. State of play

Should the EPAs find their grounds in Art. 36 CPA which provides for the establishment of the partnership under the “Economic and Trade Cooperation” title, those agreements are to be governed by the same overarching objectives and fundamental principles as those of the Cotonou Agreement, which is the parent-agreement of the EPAs. However, Art. 2 CPA notably provides that the cooperation shall be exercised following the principle of differentiation and regionalization, with particular emphasis on the continental level.¹⁵

¹⁴ Mirrored data, calculated on the basis of Ghana’s exports to the Seychelles

¹⁵ Art. 2, para. 5, 2010 Cotonou Agreement

This provision, added to the CPA after the second revision of the Agreement, held in 2010, aims at providing the policy space for ACP countries to pursue their regional integration agenda. Therefore, the question is being raised as to understand how those RTAs – which have similar end goals i.e. alleviating poverty and ensuring sustainable development in Africa – can be coordinated to make them effective and efficient tools for the integration of Africa into global trade.

The preliminary findings of ongoing research on the matter have indicated that under the EPA RoO, there exist two (2) main cumulation systems:¹⁶

- The first system is inherited from Annex V CPA whereby it is notably possible to cumulate with all seventy-nine (79) ACP States. It applies to the EPAs between the EU and CARIFORUM, Central Africa and ESA, and;
- The second system is a new and enhanced cumulation system provided for under EPAs with the East African Community (EAC), WA and Southern African Development Community (SADC), whereby it is notably possible to cumulate with ACP States that have at least provisionally applied and EPA and General Scheme of Preferences (GSP) countries.

It is to be noted that there is a prerequisite to the implementation of the cumulation process. Indeed, the EPA RoO provides for the conclusion between the ACP States involved in the cumulation process of agreements or arrangements on administrative cooperation so as to ensure the correct implementation of the cumulation-related provisions laid down under the respective EPAs.

Nonetheless, the cumulation systems under the EPAs seem to theoretically have the potential to boost intra-African trade as all cumulation regimes virtually provide for cumulation with all African ACP States.

The present case study aims at assessing the state of play pertaining to the institutional setting for cumulation between the Seychelles and Ghana, whether under the umbrella of the ACA or the JU. The JU will be addressed when needed in this study and a brief analysis of the JU in the Seychelles – Ghana context is annexed (cf. Annex 4) but does not constitute the core of the present analysis.

The second section presents the methodology. The third and fourth sections will respectively address the applicable regimes for exporting to the EU and their applicability. A fifth section will cover the perceived impediments to effective cumulation.

2. METHODOLOGY

2.1. Choice of the case unit

To date, only two (2) initiatives – a bilateral Administrative Cooperation Agreement (ACA) established between the Seychelles and Ghana, and an All-ACP Joint Undertaking (JU) opened for signature at the ACP Secretariat for all ACP States – have been envisaged to meet the administrative

¹⁶ ECA, EPA Comparative Analysis, ATPC

cooperation requirements for cumulative rules of origin.

As these administrative cooperation provisions are a prerequisite for cumulation under the EPAs, the present case study will aim at paying close attention to the provisions laid down under the different EPAs to trigger the cumulation mechanisms.

It is in this context that the present case study focuses on dissecting the bilateral ACA established between the Seychelles and Ghana on the 20 May 2014 so as to highlight the key elements from which to draw lessons of the conclusion of the instrument. Nonetheless, as the Seychelles is a signatory of the JU, its applicability will also be addressed within the context of cumulation between the Seychelles and Ghana.

2.2. Protocol

The present case study relies on the analysis undertaken in an EPA Comparative Analysis¹⁷ which highlights the disciplines – main similarities and differences – governing trade between the ACP EPA States and the EU under the EPAs, including a section on the cumulation mechanisms under the EPAs.

Whilst the present study builds on the findings of the above-mentioned EPA Comparative Analysis, the two (2) below-mentioned steps will lead the analysis, with aim at providing a diagnosis of the state of play concerning bilateral cumulation between the Seychelles and Ghana. The steps are as follows:

- i. Review of documents comprising: administrative cooperation agreements, diplomatic correspondences, preparatory documents, reports, minutes and any other documents made available deemed relevant to the research;
- ii. Thematic interviews and thematic analysis.

The proposed approach is, therefore, to use a staggered approach, in which the findings of the EPA Comparative Analysis is used to assess the applicability of the ACA and – to the extent of bilateral cumulation – the JU.

2.3. Limitations

A certain number of constraints are to be acknowledged and taken into consideration whilst analyzing the results of the present case study.

- The study relies on an EPA Comparative Analysis which is a work in progress. Notably, although the general disciplines governing the RoO and cumulation have been identified, the comparative analysis recognizes the need for further research to be undertaken in view of highlighting the similarities and differences provided under the lists of rules. It should be noted that the same study shows that there are grounds to believe that the lists of rules may entail significant differences across EPAs.

¹⁷ ECA, EPA Comparative Analysis, ATPC

- One of the main overall limits of interviews as a research method is the issue of neutrality and non-personal interference of the researcher. Although the experience, the knowledge of the Seychelles' institutional setting, the understanding and participation in the overall process, as well as the deep-rooted network amongst the community of practitioners involved in the process have been assets for the overall conduct of the present case study, the issue of interference is to be taken into account. Nonetheless, a double-filter has been agreed upon as to mitigate this risk. The mitigation mechanism consists in: i) A recording of the interviews or – when a recording was not possible – a joint review of the minutes of the meetings; ii) A peer-review of the study by Seychellois senior officials and practitioners involved in the process.
- The process is a bilateral one between the Seychelles and Ghana; however, due to a certain number of factors, including resource constraints, the choice has been made to field the mission to the Seychelles rather than to Ghana because the whole drafting process, the signature of the ACA and the subsequent steps have been initiated, mainly performed and carried out in the Seychelles and by the Government of the Seychelles. Ghana has nonetheless been contacted in the context of the present study; however, no feedback has yet been received.

3. IDENTIFYING THE APPLICABLE CUMULATION REQUIREMENTS

3.1. EU preferential schemes applicable to the ACP States

The regulation (EC) no. 1528/2007 – also called Market Access Regulation (MAR)¹⁸ – is the EU reference document in terms of EPA-based preferential access to the EU market. It sets the conditions for preferential treatment of products originating from an EPA ACP State. Therefore, the regime is applicable to all the beneficiary countries listed in Annex I of the MAR. Nonetheless, as the EPAs have been negotiated separately,¹⁹ a certain number of provisions may differ under the EPAs and the MAR, notably the RoO. It is thus to be understood that the MAR provides the market access conditions but, where at least provisionally applied, the RoO laid down under the EPAs supersede the ones listed under the MAR.²⁰

Originally, all EPA negotiating States were beneficiaries of the MAR; however, the MAR was amended in 2013 to exclude from its benefit all EPA negotiating States that had not “taken the necessary steps”

¹⁸ COUNCIL REGULATION (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements, OJ L 348, 31.12.2007, pp. 1 - 154

¹⁹ The five African EPAs comprise as follows: Western Africa (Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Mauritania, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo); Central Africa (Cameroon); EAC (Burundi, Kenya, Rwanda, Tanzania, and Uganda); ESA (Madagascar, Mauritius, Zimbabwe and Seychelles) and SADC (Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland).

²⁰ For the purpose of the present study, focus will be put on the RoO regimes. Therefore, wherever referred to hereafter, the term regime means the “applicable set of rules of origin”.

to move towards the conclusion/implementation of an EPA²¹ by the 1 October 2014.²²

Since the entry into effect of the amendment, a certain number of the previously excluded ACP States concluded negotiations or ratified their EPA and thus were reinstated as beneficiaries.²³ The Annex I MAR provides an insight of the ACP States that have made progress towards the conclusion of an EPA, although does not necessarily mean that the EPA is the applicable regime.

3.2. Applicable regimes

Whilst reviewing the list of beneficiaries provided for under Annex I of the MAR, it is to be noted that both the Seychelles and Ghana are MAR beneficiaries, meaning that they have undertaken the necessary steps towards the conclusion of an EPA. More specifically,

- The Seychelles is provisionally applying the interim ESA – EU EPA. Accordingly, the regime applicable to products originating from the Seychelles is the EPA since the 14 May 2012;²⁴
- Ghana has concluded the negotiations of the WA – EU EPA.²⁵ The Agreement has been initialed but is yet to be signed and provisionally applied, pending ratifications.²⁶ The WA – EU EPA is thus not yet provisionally applied. The applicable regime for Ghana is the one under the MAR. It will migrate to the one under the WA – EU EPA after notification of provisional application of the WA – EU EPA in the Series C of the Official Journal of the EU (OJEU).

3.3. List of requirements for eligibility to the acquisition of the originating status of the final product incorporating cumulated inputs, in accordance with the different regimes

3.3.1. Choice of criteria relevant to the present study

Based on the definition of the cumulation mechanism referred to under section 1.1, it is possible to elaborate a sequence for the application of the cumulation mechanism as follows:

²¹ Cf. REGULATION (EU) No 527/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 May 2013 amending Council Regulation (EC) No 1528/2007 as regards the exclusion of a number of countries from the list of regions or states which have concluded negotiations, OJ L 165, 18.6.2013, pp. 59 - 165

²² Botswana, Cameroon, Fiji, Ghana, Ivory Coast, Namibia and Swaziland were removed but reinstated before the entry into effect of the deadline. Kenya has been removed and reinstated in December 2014.

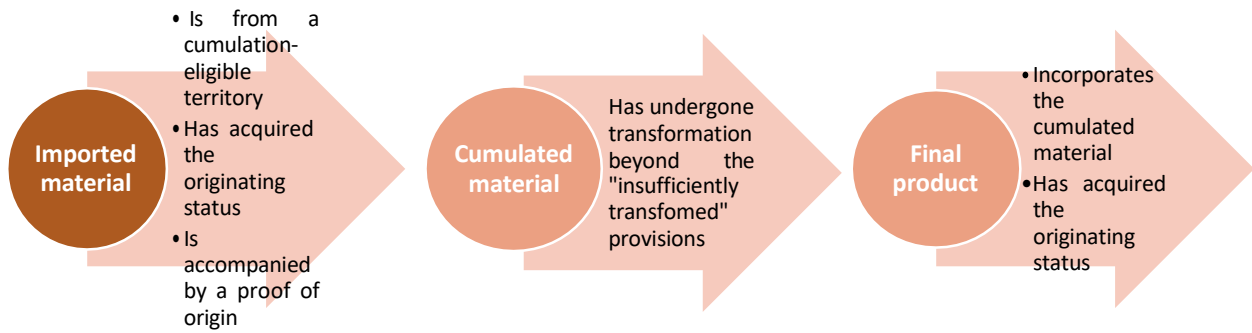
²³ To note that Congo is subject to GSP and Gabon is subject to MFN treatment since 2014.

²⁴ Notice concerning the provisional application of the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, OJ L 125, 12.5.2012, pp. 1 – 1

²⁵ COMMISSION DELEGATED REGULATION (EU) No 1025/2014 of 25 July 2014 amending Annex I to Council Regulation (EC) No 1528/2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements, as amended by Regulation (EU) No 38/2014 of the European Parliament and of the Council amending certain regulations relating to the common commercial policy as regards the granting of delegated and implementing powers for the adoption of certain measures, OJ L 284, 30.9.2014, pp. 1 – 2.

²⁶ European Commission, *Overview of the EPA Negotiations*, updated February 2016, p. 1.

Figure 1. Acquisition of the originating status using cumulated materials



Remark: "Sufficiently transformed" refers to a case whereby manufacturing operations have been carried out locally on non-originating materials in such a way that the final output has undergone substantial work to be considered originating.

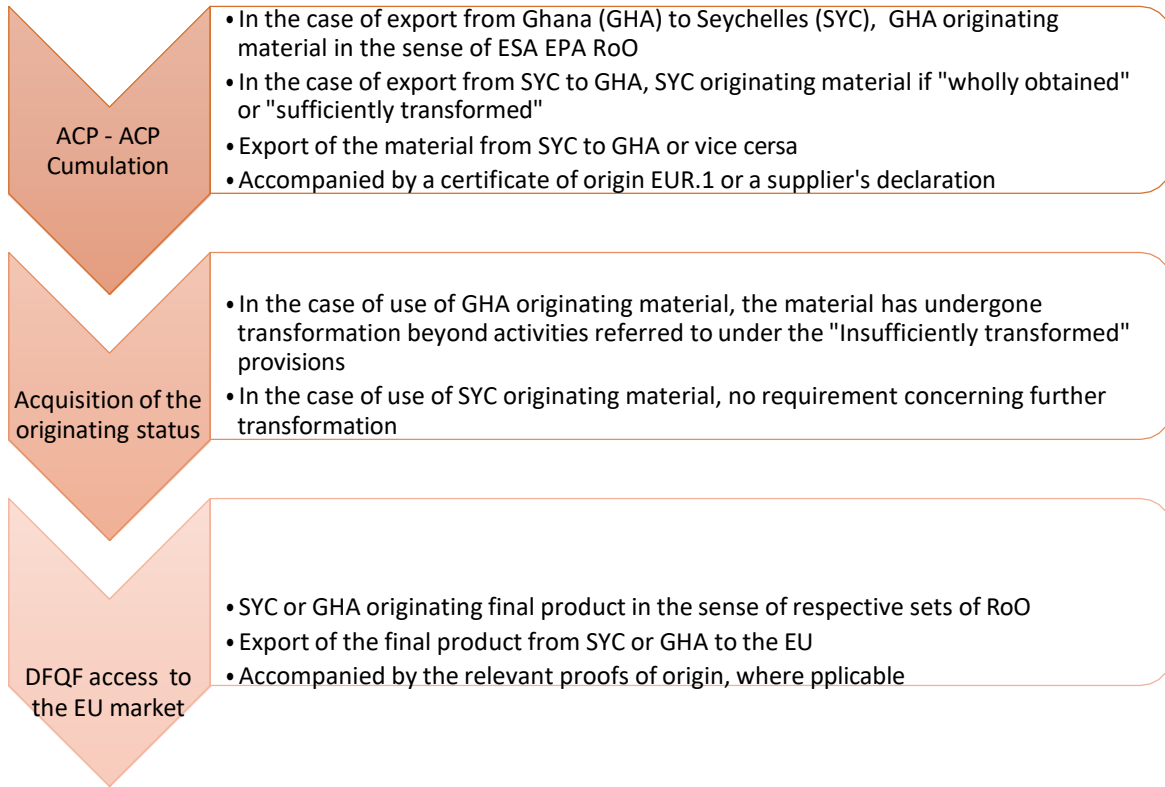
Noting that the purpose of the present study is not to review the industrial processing steps that confer the originating status, only the requirements that constitute the institutional framework for cumulation will be analyzed.

3.3.2. Institutional framework

Based on the identified criteria, the institutional settings for cumulation are thus as follows:

Eligibility under the present situation,²⁷ i.e. ESA – EU EPA and MAR

Figure 2. Eligibility criteria under the present applicable regimes

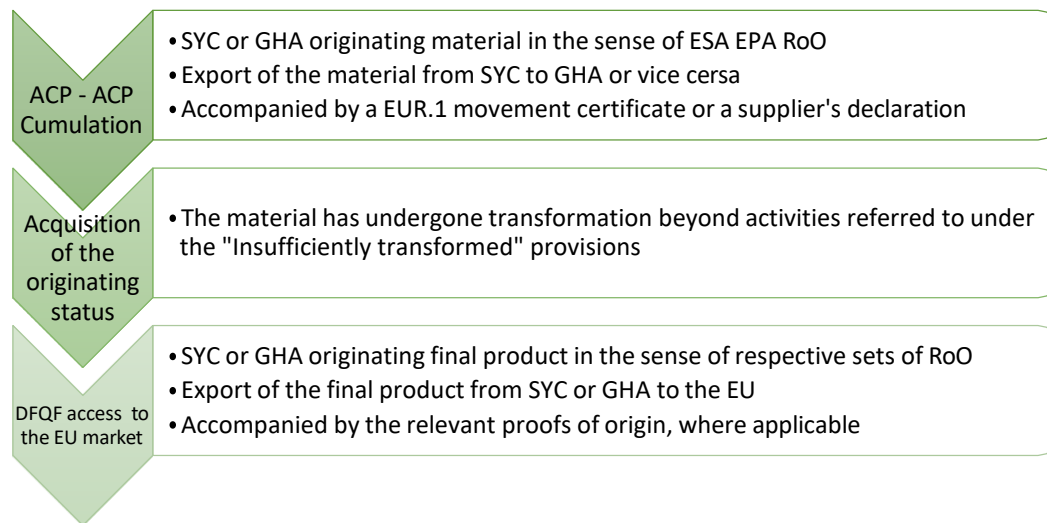


Remark: Movement certificate EUR.1 refers to the proof of origin under the EPAs.

²⁷ Editorial note: For a purpose of space, the words "Ghana" and "the Seychelles" are referred to by the ISO-3166 Alpha-3 codes, namely "GHA" and "SYC".

After the entry into effect to WA EPA i.e. ESA – EU EPA and WA – EU EPA

Figure 3. Eligibility criteria after the entry into effect of the WA - EU EPA regime



4. ASSESSMENT OF THE APPLICABILITY OF THE CUMULATION PROVISIONS

As section 3 provides for a list of the institutional requirements and eligibility criteria for cumulation under both the present situation and the situation after the entry into effect of the WA –EU EPA, the analysis of their applicability is based on a review of the documents listed in Annex 1.

The following criteria were isolated to carry out the study and used as the indicators for the applicability assessment:

4.1. Geographical criterion

All three (3) regimes, i.e. ESA EPA, WE EPA and MAR, allow for cumulation between the Seychelles and Ghana. Therefore, the geographical criteria are compatible for cumulation between the two (2) countries²⁸ since the ACA applies to the Seychelles and Ghana.

4.2. Administrative cooperation criteria

The EPAs provide for a framework that allows cumulation; however, the ACA has not completed the administrative steps for entry into effect, although the amended ACA is fully compatible.

More specifically, the following elements failed to meet the administrative cooperation criteria laid down under the EPAs:

- ❖ The States involved in the cumulation process have an concluded agreement to ensure the correct application of the RoO

²⁸ To be noted that in the specific scenario whereby GHA would cumulate with another ACP States after the taking into effect of the WA EPA, the geographical criterion would not necessarily accommodate cumulation with any ACP; whilst it virtually does in the current situation.

Explanation

The Seychelles and Ghana signed an ACA on 20 May 2014. Nonetheless, Art. 8 ACA provided for a Protocol on rules of origin based on the ESA – EU EPA RoO.

- To be noted that the EU indicated that the ACA had to be re-examined to: Either insert explicit references to the application of the protocols on rules for origin of the relevant preferential trading framework both applicable to the Seychelles and Ghana, under the current schemes or after the entry into effect of the WA – EU EPA; Or to annex the relevant protocols – which would thus lead to revision of the ACA whenever one or both protocols are amended.²⁹ The amendment of the ACA has been undertaken but at this point, the amended ACA is not signed.

Therefore, the ACA has not been concluded in the sense of the ESA EPA or the WA EPA.

- ❖ Publication in the OJEU Series C and the respective gazettes of the ACP States with entry into effect of the ACA for cumulation purposes possible on the date of publication in the OJEU

Explanation

Although not explicitly referred to under the ESA – EU EPA, the publication of the notification is subject to reception by the European Commission of the amended ACA. The matter is specified by the EU in their note verbale for amendment. The note verbale reads as follows:

The Commission would like to reassure Seychelles of its commitment to publish the notification in the C series of the Official Journal of the European Union, as soon as the Commission receives a revised version of the ACA which is compliant with the EU-ESA [EPA]. The cumulation between Ghana and Seychelles foreseen under the EU-ESA iEPA may be applied starting with the date of this publication.³⁰

Remark: iEPA refers to the interim EPA

The amendments have been formally approved by Ghana. However, an additional amendment has been proposed by the Seychelles for which Ghana has not commented on. This implies that the ACA has not been formally amended. The amended ACA has not been notified and published in the respective gazettes.

Therefore, the ACA has not been published in the sense of the ESA – EU EPA or the WA – EU EPA

4.3. Applicable sets of RoO

To be noted that the provision has been analysed in the context of the Seychelles – Ghana cumulation request context, which aims at ensuring cumulation of tuna, whether whole or in fillets.

²⁹ Cf. Note verbale from the EU, date 30 July 2014, p.2

³⁰ Note verbale from the European Commission to the Seychelles, p. 3.

The applicable general rules have been identified as similar under the three (3) regimes except for the cumulation and tolerance rules.³¹

Furthermore, the specific rules provided under the lists of rules are similar:

Table 5. Specific rules of origin applicable to HS 0303 and 0304

HS code	Description	WA EPA	Reg. 1528	ESA EPA
0303	Fish, frozen, excluding fish fillets and other fish meat of heading No.0304	Manufacture in which all the materials of Chapter 3 used are wholly obtained	Manufacture in which all the materials of Chapter 3 used are wholly obtained	Manufacture in which all the materials of Chapter 3 used are wholly obtained
0304	Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 % of the ex-works price of the product	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 % of the ex-works price of the product	Manufacture in which the value of any materials of Chapter 3 used does not exceed 15 % of the ex-works price of the product

Although similar in the present case, should products fall under other headings, a systematic analysis will be needed as there is a possibility that some rules differ depending on the products concerned.

As the three (3) regimes are compatible for cumulation of products falling under HS 0303 or 0304, the amended ACA is compatible as it refers to the applicable regimes for the Seychelles, on the one side, and Ghana, on the other.

Reference to the relevant sets of RoO is also one of the recommendations of the European Commission.

4.4. Proof of origin related criterion

The proofs of origin to be used for cumulation with another ACP State is either a certificate of origin EUR.1 or a supplier's declaration across the three (3) regimes. Similarly, the proof of origin for

³¹ Cf. EPA Comparative Analysis

products cumulated further work carried out in another ACP State is a supplier's declaration across the three (3) regimes and the procedure for issuance of a proof of origin for cumulation with another ACP State is EUR.1 movement certificate or supplier's declaration across the three (3) regimes. The rules governing the proofs under the different regimes are thus compatible.³²

The signed ACA does not provide for the issue of proofs of origin for products cumulated further to work carried out in another ACP State, thus is incomplete concerning the information for cumulation; whereas the amended refers to the relevant sets of rules of origin, and thus encapsulates all the information for cumulation. In this context, the amended ACA is compliant with the EPA requirements.

5. IDENTIFICATION OF THE IMPEDIMENTS TO EFFECTIVE CUMULATION

Based on the analysis of the interviews carried out using the annexed guidelines,³³ another angle was given to the process as the interviews aimed at providing an insight of the practitioners' perspectives.³⁴ This approach was complementary to the purely institutional proceedings that were gathered from the review of documents. Additionally, their perspectives provided a picture of the possible reasons that could have impeded the process and could explain the state of play, as well as their recommendations to overcome the identified difficulties.

5.1. Identified possible reasons to the stalemate of the process

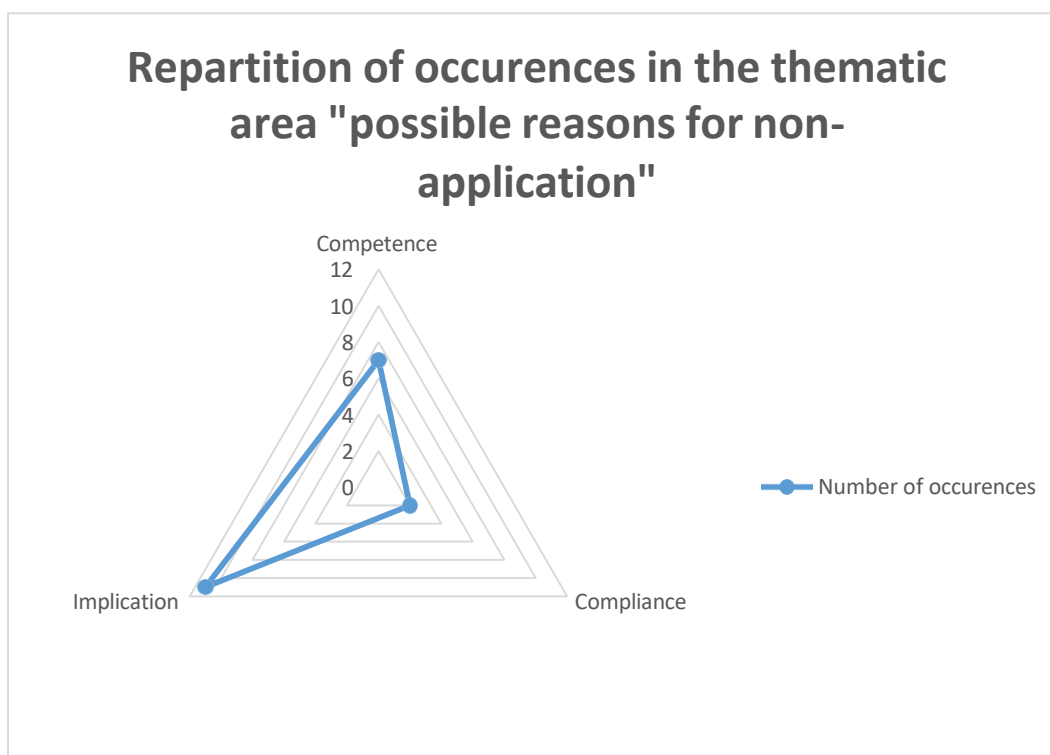
The main outcomes of the analysis of the interviews is the fact that the most cited reason identified as an impediment to the conclusion of an effective bilateral process to conclude an administrative cooperation instrument between the Seychelles and Ghana is the lack of implications for the Ghanaian authorities. While failing to ensure cumulation would imply significant challenges for the Seychelles, the impact is perceived to be relatively smaller for Ghana.

³² EPA Comparative Analysis

³³ Cf. Annex 2

³⁴ See the list of interviewed stakeholders. Cf. Annex 3.

Figure 4. Repartition of the identified reasons for the stalemate of the Seychelles - Ghana ACA



The above chart shows the main reasons perceived as reasons for the stalemate.

- Implication

Amongst the referred, the most cited reason to explain the stalemate is the implication of Ghana within the process.

Indeed, most of the interviewees explained that from their perspective, Ghana has been a recipient of the cumulation request but has never taken any initial step in the process.

The below trail of diplomatic notes examined during the document review tends to corroborate the fact that all correspondences were initiated by the Government of the Seychelles and that only one of the correspondences was replied by the Government of Ghana.

- | | |
|---------------|---|
| 8 May 2014. | The Seychelles sent a draft ACA to Ghana in preparation of a signature ceremony to be held in the Seychelles later in May 2014 |
| 28 May 2014. | The Seychelles sent a notification of the signature of the Seychelles – Ghana ACA to the Delegation of the European Union in Mauritius |
| 30 July 2014. | The Seychelles received a note verbale from the European Commission that explained that the Seychelles – Ghana ACA had to be amended prior to entry into effect of the cumulation provisions between the Seychelles and Ghana |

- 2 March 2015. The Seychelles received a note verbale from Ghana accepting the amendments to the ACA based on the proposed amendments by the European Commission
- 1 April 2015. The Seychelles prepared a draft note verbale to Ghana to make a new amendment to the ACA in view of inserting a provisional application clause therein
- 8 May 2015. The Seychelles sent a new draft to Ghana with a new amendment concerning the inclusion of a provisional application clause in the ACA

It was notably inferred that the fact that Ghana had not reverted to indicate the state of play concerning the internal processes to ensure the implementation of the provisions of the ACA was a sign that the intention to cumulate was rather of political nature than actual commercial interest.

- Competence

A certain number of the interviewees identified the issue of competences and/or capacity as a potential impediment either for past or future discussions and actions towards the conclusion of the ACA. Notably, in decreasing order of reference, were mentioned the following matters:

- i. The fact that the institutions in general may not have sufficient knowledge of the implications of the EPA and their role in the implementation of the Agreement;
- ii. The fact that the Ministry of Foreign Affairs as coordinator of the EPA dossier may not be sufficiently endowed; and
- iii. The fact that Customs Authorities may not have the proper capacities to monitor the certification of origin.

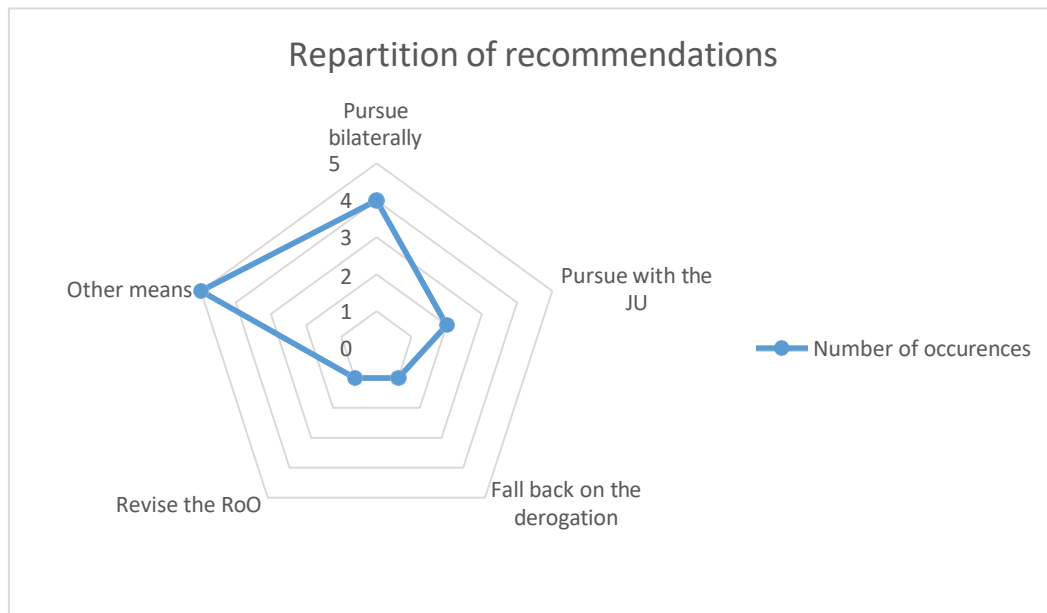
- Compliance

The matter of compliance has been cited only once to refer to the issue related to the late consultation of the European Commission in the process.

5.2. Identified recommendations

Similarly, a certain number of recommendations were given as a way forward to ensure the conclusion to the process.

Figure 5. Repartition of the recommendations



The above chart shows the main recommendations.

- Other means

Whilst it was generally agreed that cumulation is still a relevant matter and needs to be pursued to fully benefit from the EPA at earliest, heterogeneous means were referred to, namely:

- i. Allocating more resources to the cumulation process;
- ii. Seeking the moral assistance of the EU to lobby Ghana; and
- iii. Mobilizing all relevant stakeholders to leverage a course of actions at all possible levels.

- Pursuing bilateral discussions between the Seychelles and Ghana

Mostly all interviewees agreed that although not sufficient, the need to continue lobbying Ghana to complete the process is a solution to pursue. However, it is acknowledged that the lack of willingness that has been identified is a serious impediment to the successful completion of the process. This is why a constant lobbying at all possible levels is recommended.

- Pursuing with the JU

Although the pursuit of cumulation with Ghana through the JU is possible, it is infrequently perceived as a conducive means to secure cumulation. The fact that Ghana has not signed the JU undertaking can be seen as a plausible explanation to the fact that the matter is less considered.

It is also to be noted that the general knowledge amongst the interviewees concerning the JU and the related process is more limited than the knowledge pertaining to the ACA.

- Revision of the RoO

As the ESA – EU EPA provides for a revision of the RoO, consideration has been expressed once to the revision of the RoO.

To be noted that this matter may prove to be an issue in terms of negotiation of the full EPA as the situation is currently stalling due to the two (2) avenues that are being considered as contradictory by the EU, namely the deepening of the interim EPA or the continuation of the negotiation of the full EPA.

- Fall back on the derogation

The least considerable option that has been mentioned is to fall back on the derogation, should the quota be increased. However, the review of documents has shown that the derogation mechanisms needs to be refined.

A brief review of the figures shows that the mechanism has not been used optimally since its entry into effect in 2013.

At the ESA level, a regional derogation of 8,000 tonnes of preserved tuna is allotted yearly during the period 2013 – 2017.³⁵ The utilization rate is as follows:

Table 6. Derogation utilization at the ESA level

Year	Total used quota in tons	Additional derogatory quota	Total remaining quota	Utilization rate	
				Automatic derogation (%)	Yearly total allocation (%)
2013	4421.98	+2000 ³⁶	3578.02	55.27	44.22
2014	5223.11		2776.89	65.29	65.29
2015	4995.03		3004.97	62.44	62.44

Source: Author's calculations based on DG TAXUD data

At the Seychelles level, 3,000 tonnes out of the 8,000 tonnes of derogation for preserved tuna are yearly allocated to the Seychelles. The utilization rate at Seychelles level is as follows:

³⁵ The derogation also provides a quota of 2,000 tonnes of tuna loins. Those are not being considered as Seychelles has never used it.

³⁶ Derogation granted to Mauritius, Dec. 1/2013 CCC, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1460380438636&uri=CELEX:22013D0449>

Table 7. Derogation utilization at the Seychelles level

Year	Total used quota in tons	Reallocated derogatory quota	Total remaining quota	Utilization rate	
				Automatic derogation (%)	Yearly total allocation (%)
2013	2350.31		649.69	78.34	78.34
2014	4057.92	+1000	-57.92	135.26	101.45
2015	1099.05		1900.95	36.64	36.64

Although the Seychelles have fully utilized their quota in 2014 – and expectedly in 2016 –, the mechanism is sub-optimally used at regional level.

6. CONCLUSION

The cumulation mechanism that is tentatively being set up between the Seychelles and Ghana has gone through a parallel process, driven on the one side by the Seychelles Government and, on the other by the ACP Secretariat.

The Seychelles – Ghana ACA has gone quite well and is close to achieving its purpose since the agreement has been signed. The EU has informed of the need for the instrument to be amended, and these amendments have been agreed upon by both signatories. Nonetheless, a second amendment was proposed and, to date, remains unattended.

The JU has also been endorsed by the ACP Group and signed by a certain number of ACP States—but Ghana is not among them; however, it is to be noted that: i) its enforceability within the context of the ESA EPA Signatories may be contested as the provisions of the JU have been interpreted by the EU as in contradiction with the ESA - EU EPA RoO; and, ii) although welcomed by the EU, no trace of formal acceptance of the instrument as suitable for cumulation by the EU could be found.

Although cumulation through the JU is preferred as a multilateral instrument, the fact that the ACA has reached a very close point of enforceability makes it the most likely to meet the administrative cooperation requirements first. It is also the initiative which would require the least resources to be fully operationalized. Nonetheless, the commitment to ensure the completion of the process is required from all parties.

As the revision of the RoO is a question that seems to have awakened interest among the ESA States, consideration could be given to the revision of rules that subject the implementation of some ESA – EU EPA rules, such as cumulation, to the willingness of a third party. This issue has proven to be very difficult to overcome in the context of ACP – ACP cumulation.

This point is to be considered as it is also a source of concern in the context of cumulation between an ACP State and a neighboring developing countries, as well as, under the new cumulation system, all other possible territories where cumulation may be allowed.

ANNEX 1 – LIST OF REVIEWED DOCUMENTS

Title	Date	Reference
2nd CCC, Draft minutes of	5/14/2013	EPA/ACA/SYC/Doc/1
3rd CCC, Minutes of the	1/28/2014	EPA/ACA/SYC/Doc/2
4th CCC, Draft minutes of the	11/26/2014	EPA/ACA/SYC/Doc/3
Ghana No. 7/2013, Note verbale from the Seychelles to	12/18/2013	EPA/ACA/SYC/Doc/4
EU No. 11/2014, Note verbale from the Seychelles to	5/28/2014	EPA/ACA/SYC/Doc/5
Seychelles No. PRE/SCR/1E, Note verbale from Ghana to	2/25/2015	EPA/ACA/SYC/Doc/6
Seychelles No. ARES(2014)2521115-30/07/2014, Note verbale from the EU to	7/30/2014	EPA/ACA/SYC/Doc/7
Ghana No. 5/2013, Note verbale from the Seychelles to	5/28/2013	EPA/ACA/SYC/Doc/8
Ghana No. 12/2014, Note verbale from the Seychelles to	10/1/2014	EPA/ACA/SYC/Doc/9
Ghana No. 6/2015, Note verbale from the Seychelles to	5/8/2015	EPA/ACA/SYC/Doc/10

Amended draft ACA version 1	10/7/2014	EPA/ACA/SYC/Doc/11
Amended draft ACA version 2	5/5/2015	EPA/ACA/SYC/Doc/12
Amended draft ACA version 3	5/5/2015	EPA/ACA/SYC/Doc/13
Signed Seychelles - Ghana ACA	5/20/2014	EPA/ACA/SYC/Doc/14
3rd EPA Committee meeting, Mission report	1/28/2014	EPA/ACA/SYC/Doc/15
4th EPA Committee meeting, Mission report	11/27/2014	EPA/ACA/SYC/Doc/16
Agreed all-ACP JU	6/26/2015	EPA/ACA/SYC/Doc/17
Signed by Seychelles all-ACP JU	9/11/2015	EPA/ACA/SYC/Doc/18
Note verbale No. ACP/61/042/15 EOA/mgfeoa concerning the Signed all-ACP JU	7/1/2015	EPA/ACA/SYC/Doc/19

ANNEX 2 - MEETING GUIDELINES

Objectives

Assess the perceived obstacles to the effective conclusion of the ACA

Thematic sequences:

1. Contextualization
2. The process
3. The possible reasons for the non-application
4. The possible avenues
5. The possible gaps for efficient drafting
6. Other cumulation initiatives & way forward

Thematic sequence	Questions	Follow-up
1. Contextualization		
Presentation of the personal implication in the elaboration of the ACA	<p>Could you please present yourself?</p> <p>How much are you involved with EPA matters?</p>	What is your title? What are your main responsibilities?
Presentation of the allocated resources	<p>Do you know how much resource has been allocated to the ACA process both Seychelles – Ghana ACA and Seychelles – Maldives ACA?</p> <p>How many people of your department were involved in the two (2) processes?</p>	<p>In terms of human resources? In terms of time?</p> <p>Were those resources adequate? If no, what additional resources would have been needed?</p> <p>How many would have had the required background to assist?</p> <p>Do you consider that this human resource allocation was sufficient? If no, why were not there more people involved?</p> <p>Are there any documents available? If so, can we have access?</p>

Personal implication	How would you qualify the role of your department/institution in the process?	<ul style="list-style-type: none"> • <u>Initiator</u> i.e. you have formally formulated the request to initiate cumulation?
		<ul style="list-style-type: none"> • <u>Facilitator</u> i.e. you have contributed in some manner or other to provide some assistance to the process without being directly involved in the drafting? • <u>Drafter</u> i.e. you have been directly involved in the elaboration of the instruments? • <u>Other role?</u> If so please define. <p>To be noted that one can consider having a multiple role.</p>
Overall process	<p>Could you explain what the process was that laid to the conclusion the ACA between Seychelles and Ghana?</p> <p>Do you know how much resource Ghana did allocate to the process?</p> <p>Did any resource was requested to the EU?</p>	<p>What were the challenges?</p> <p>Was there any joint working committee?</p> <p>Has the EU provided any assistance during the process?</p>
Initial request	<p>Where does the need come from?</p> <p>Has the request been considered as sufficiently grounded for undertaking an ACA drafting process?</p> <p>From your perspective, does the process appeal any thought?</p>	<p>How has it been received in terms of possible compliance with the EPA cumulation rules?</p> <p>Has any other option been envisaged?</p>

Drafting process	<p>Do you know what has been the drafting process?</p> <p>Have you been involved with the elaboration of the ACA? If so, could you elaborate on your role in the process?</p>	<p>How has the decision for drafting the ACA been taken?</p> <p>Have you met any challenge? Can you explain why it has been a challenge and how you managed to overcome it?</p>
------------------	---	---

	<p>What was the role of Ghana in the drafting process?</p> <p>What was the role of the EU in the drafting process?</p> <p>From your perspective, does the process appeal any thought?</p>	<p>How do you explain the role of Ghana?</p> <p>How do you explain the role of the EU?</p>
--	--	--

Conclusion process	<p>Do you know how the decision for signature of the ACA between Ghana and Seychelles has been made?</p> <p>Have you been involved with the procedural and/or substantial scrubbing of the ACA? If so, could you elaborate on your role in the process?</p> <p>From your perspective, does the process appeal any thought?</p>	<p>What do you think of this decision? Has it posed any challenge? If so, what and how did you overcome it?</p> <p>Have you met any challenge? Can you explain why it has been a challenge and how you managed to overcome it?</p>
--------------------	---	--

Post-signature process	<p>Do you know what has been the post-signature process?</p> <p>What has been your role in the post-signature process?</p> <p>What was the role of Ghana in the process?</p> <p>What was the role of the EU in the process?</p> <p>From your perspective, does the process appeal any thought?</p>	<p>Has it called for subsequent actions? If so, what were they?</p> <p>Have you met any challenge? Can you explain why it has been a challenge and how you managed to overcome it?</p> <p>How do you explain the role of Ghana?</p> <p>How do you explain the role of the EU?</p>
2. Possible reasons for non-application		
EU ruling	Do you understand the position of the EU concerning	Can you explain the rationale behind the EU position?
	<p>the non-applicability of the ACA?</p> <p>Do you have any comment on the position? If so, can you elaborate?</p> <p>Do you see any other reason for the ACA to not be applicable? If so, please elaborate.</p>	
Applicability of the rules	Why would the ACA not be in line with the ACP – ACP cumulation requirement?	<p>Could you explain the reasons why the EU considers that the rules are not aligned?</p> <p>Can you refer to any instance whereby the ACP – ACP cumulation has been discussed? Can you elaborate on the substance of the discussions?</p>
3. Possible avenues		
With regard to the ACA	What are the possible ways forward to make it applicable?	

With regard to the JU	<p>Do you think that the All-ACP Joint Undertaking can be a solution to the issue?</p> <p>Have you been involved in the elaboration of the JU?</p>	<p>Can you elaborate on the reason why you think that the JU is or is not a possible avenue</p> <p>Have you met any challenge? Can you explain why it has been a challenge and how you managed to overcome it?</p>
4. Possible gaps for efficient drafting		
Possible impediments to effective conclusion	<p>What have been missing in, any terms, to successfully conclude an effective instrument?</p> <p>What are the lessons that you draw from the drafting and conclusion of the ACA?</p>	<p>What there any technical gap? Gap in terms of implications of the Parties?</p> <p>Can you elaborate?</p>
Cumulation with neighbouring countries	Could you tell me about the other cumulation initiatives undertaken by Seychelles, including the Seychelles - Maldives ACA?	<p>Have you met any challenge? Can you explain why it has been a challenge and how you managed to overcome it? What could be the way forward?</p>

ANNEX 3- LIST OF STAKEHOLDERS INTERVIEWED

Name	Title	Institution	Contact details
Ambassador Maurice LOUSTAU-LALANNE	Principal Secretary for Foreign Affairs	Ministry of Foreign Affairs and Transport	Tel: (+248) 428 35 00
Mrs. Beryl SAMSON	Principal Counselor to the PS(MFA)	Ministry of Foreign Affairs and Transport	Tel: (+248) 428 35 41 Email: bsamson@mfa.gov.sc
Mrs. Sandra MICHEL	Director for Legal Affairs	Ministry of Foreign Affairs and Transport	Tel: (+248) 428 35 00 Email: smichel@mfa.gov.sc
Mr. Terry ROMAIN	Director for Development and Regional Integration	Ministry of Foreign Affairs and Transport	Tel: (+248) 428 35 48 Email: tomain@mfa.gov.sc
Ms. Nan CONSTANT	Senior Economist – Desk Officer for the EU and the ACP	Ministry of Foreign Affairs and Transport	Tel: (+248) 428 35 15 Email : nconstant@mfa.gov.sc
Mr. Alexander MANCHAM	Second Secretary – Desk Officer for Ghana	Ministry of Foreign Affairs and Transport	Tel: (+248) 428 35 11 Email : amancham@mfa.gov.sc
Mr. Kurtis LESPOIR	Third Secretary – Desk Officer for the Maldives	Ministry of Foreign Affairs and Transport	Tel: (+248) 428 35 10 Email : klespoir@mfa.gov.sc
Mr. Paul BARRACK	Customs Consultant – Co-Chair of the Joint ESA – EU Customs Cooperation Committee	Ministry of Finance, Trade and Blue Economy	Tel: (+248) 438 20 54 Email : p.barrack@finance.gov.sc
Mr. Charles MORIN	Chief Negotiator	Ministry of Finance, Trade and Blue Economy	Tel: (+248) 438 20 54 Email: cmorin@finance.gov.sc
Mr. Philippe MICHAUD	Special Advisor to the PS(BE)	Ministry of Finance, Trade and Blue Economy	Tel: (+248) 438 20 04 Email: sabe@finance.gov.sc
Mr. Joram MADNACK	General Manager	Indian Ocean Tuna Ltd.	Tel : (+248) 428 25 00 Email : joe.madnack@thaiunion.com

ANNEX 4 – BRIEF ANALYSIS OF THE JU

The JU has been signed by a few ACP States with aim to comply with the administrative cooperation requirements laid down under the EPA on a multilateral basis. Therefore, it is expected that the instrument will replace bilateral ACAs.

In this light, the JU is supposed to ensure the same functions, on a multilateral basis, the hypothetical myriad of bilateral ACAs for cumulation purposes under the EPA.

A brief analysis is thus carried out in the context of the Seychelles – Ghana context, using the same criteria as those used under the section 4 of the study.

A. Geographical criterion

All three (3) regimes allow for cumulation between the Seychelles and Ghana. Therefore, the geographical criteria are compatible for cumulation between the two (2) countries³⁷ since the JU to all ACP States – when signed –, including the Seychelles and Ghana.

B. Administrative cooperation criteria

- i. The States involved in the cumulation process have concluded agreement to ensure the correct application of the RoO

Explanation

The Seychelles signed the JU on 11 September 2015. At the date of the study, Ghana had not signed the JU. To be noted that the JU does not entail any entry into effect clause.³⁸ Therefore, the JU has not been concluded in the sense of the ESA – EU EPA.

- ii. Publication in the OJEU Series C and the respective gazettes of the ACP States with entry into effect of the JU for cumulation purposes possible on the date of publication in the OJEU

Explanation

The JU provides for notification to the ACP Member States and European Commission at each new signature. At this point in time, a few ACP States have signed the JU,³⁹ including the Seychelles. Nonetheless, no notification could be found in the Series C of the OJEU.

³⁷ To be noted that in the specific scenario whereby GHA would cumulate with another ACP States after the taking into effect of the WA EPA, the geographical criterion would not necessarily accommodate cumulation with any ACP; whilst it virtually does in the current situation.

³⁸ Nonetheless, the JU have most of the characteristics of treaty in simplified form which, in accordance with the interpretation provided for under Art. 24 Vienna Convention, can enter into effect upon expression of consent to be bound, in the present case, further signature. Therefore, it would seem that the date of entry into effect would be the date of signature.

³⁹ As of the 1 April 2016, Guinea, Kenya, Madagascar, Mozambique and Seychelles have signed the JU.

In addition, a couple of documents indicate that the EU welcomed the JU as an initiative which will facilitate the implementation of the ACP - ACP cumulation mechanisms. For instance, the draft minutes of the 13th joint ACP – EU Ministerial Trade Committee reads as follows:

Commissioner Malmström took the opportunity to congratulate the ACP for the Joint Undertaking on Administrative Cooperation Agreements (ACA), which will facilitate cumulation of origin for all ACP countries concerned,⁴⁰

Nonetheless, no document which explicitly refers the recognition by the EU of the enforceability of the JU could be found. Further research are needed on this specific point.

Therefore, the JU has not been published in the sense of the ESA – EU EPA.

The JU has not completed the administrative steps for entry into effect and is not fully compatible.

C. Applicable sets of RoO

The JU does not explicitly provide for application of any set of RoO; however, it is implied that the applicable set is the one applicable between the exporting country and the EU.

Art. 3 JU reads as follows:

ARTICLE 3 **Conditions for the issuance and acceptance of proofs of origin**

1. Proofs of origin for cumulation purposes shall be issued on the basis of the rules of origin applicable between the exporting country and the EU.

Concerning the matter, the draft minutes of the 4th meeting of the ESA – EU Customs Cooperation Committee refer to the fact that:

The EU flagged that Articles 3(6)b and 4(6)b of Protocol 1 of the EU-ESA iEPA explicitly mentions that <<materials and products have acquired originating status by the application of the same rules of origin as provided in this Protocol>>. Thus the EU indicated that the Joint undertaking cannot be used for extended cumulation with ACPs and OCTs without reconsidering Article 3(1) of the Joint Undertaking. The EU will provide suggestions for the clarification of this Article to ESA.⁴¹

Remark: OCTs refer to Overseas Countries and Territories in the sense of Part IV of the Treaty on the Functioning of the European Union

There may thus be a risk that the EU considers that the use of the proof of origin as provided for

⁴⁰ <http://data.consilium.europa.eu/doc/document/ST-2120-2015-INIT/en/pdf>

⁴¹ Draft minutes of 4th meeting of the ESA – EU Customs Cooperation Committee, p. 3

under the JU is coinciding with an application of the rules of origin themselves, thereby inferring the fact that the set of RoO applicable is the one applicable between the exporting country and the EU, in accordance with the provisions of the WA –EU EPA but in contradiction with provisions of the ESA – EU EPA; although the proofs to be used for cumulation are the same.

As explained above, the JU does not refer to the relevant sets of rules of origin but provides that the applicable proofs of origin are provided for under the regime applicable between the exporting country and the EU, in accordance with the provisions of the WA – EU EPA but in contradiction with provisions of the ESA – EU EPA.