
Report on the implementation of the EU Unfair Trading Practices Directive beyond the EU

Rwanda

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1. Introduction

1.1. Background and aims of the research

The [Directive \(EU\) 2019/633](#) to address unfair trading practices (UTP) in business-to-business relationships within the agricultural and food supply chain is a tool that exists to protect actors in the agri-food chain against abusive commercial practices. One crucial element of this directive is that it does not only protect EU farmers and suppliers, but it also protects non-EU suppliers as long as they have a contractual relationship with an EU-based buyer. This report contains on-the-ground data on the implementation (or lack thereof) of the UTP directive by non-EU suppliers. It will centre around the two following topics.

- Firstly, offering insights into the extent to which non-EU suppliers selling to the EU can effectively benefit from the directive, i.e. having access to legal information regarding their rights, and the right tools to file a complaint while remaining anonymous. And, if we found that they lack information or legal resources, suggesting ways to address this situation.
- Secondly, identifying what unfair trading practices which are not covered by the Directive are problematic for agri-food producers and should be banned in the future.

1.2. Introduction to the UTP Directive

The European Union's Unfair Trading Practices (UTP) Directive aims to protect agricultural producers and small to medium-sized suppliers from unfair practices imposed by larger buyers in the agri-food supply chain. Enacted in 2019, the Directive addresses imbalances in bargaining power by prohibiting a range of UTPs, such as late payments, last-minute order cancellations, and unilateral contract changes. The Directive ensures fairer and more transparent trading relationships, providing suppliers with mechanisms to lodge complaints and seek redress against UTPs, thereby fostering a more equitable trading environment.

1.2.1. Black and grey UTPS

Black Practices:

These are outright prohibited practices, including:

- Late payments for perishable goods (beyond 30 days) and non-perishable good (beyond 60 days).
- Last-minute order cancellations for perishable goods.
- Unilateral changes to contract terms by the buyer.
- Refusing written confirmation of a supply agreement.
- Payments not related to the sale of the agricultural and food products
- Misuse of trade secrets
- Acts of commercial retaliation
- Transferring the costs of dealing with customer complaints
- Payment for wastage of agricultural and food products

Grey Practices:

These are practices that are allowed only if previously agreed upon in clear and unambiguous terms, such as:

- Returning unsold products to the supplier.
- Charging the supplier for stocking, displaying, or listing products.
- Payments requested by the buyer for promotion, marketing, advertising, staff of the buyer or fitting out premises.

1.2.2. Legal enforcement

The enforcement of the UTP Directive is carried out at the national level by designated enforcement authorities within each EU Member State. Here are the key components of its enforcement mechanism:

Designation of National Authorities:

- Each EU Member State appoints one or more authorities responsible for ensuring compliance with the UTP Directive. These authorities can include existing bodies or newly established ones specifically for this purpose.

Powers of Enforcement Authorities:

- Investigative Powers: Authorities can initiate investigations based on complaints from suppliers, information from other authorities, or on their own initiative.
- Request for Information: Authorities can request information from buyers, suppliers, and third parties necessary to carry out investigations.
- Conduct Inspections: They have the right to conduct on-site inspections and access business premises.

Sanctions and Remedies:

- Imposing Fines: Authorities can impose fines or other penalties on buyers found to be engaging in prohibited UTPs.
- Orders to Cease and Desist: They can issue orders requiring buyers to cease prohibited practices and take corrective measures.
- Public Disclosure: Authorities may publicly disclose the identity of the buyers found in violation and the nature of the infringement to deter non-compliance.

Complaints Mechanism:

- Anonymity: Suppliers can lodge complaints anonymously to protect them from potential retaliation by buyers.
- Support and Guidance: Authorities provide guidance and support to suppliers on how to lodge complaints and the procedures involved.

Cross-Border Cooperation:

- National authorities cooperate with their counterparts in other EU Member States to address cross-border UTPs. This includes sharing information and coordinating enforcement actions.

Reporting and Review:

- Member States are required to submit annual reports to the European Commission on the activities of their enforcement authorities, including the number of complaints received, investigations conducted, and penalties imposed.
- The European Commission reviews these reports to assess the effectiveness of the directive and may put forward additional legislative proposals if necessary.

By ensuring that national authorities have robust powers and mechanisms to investigate and penalize unfair trading practices, the UTP Directive aims to create a fairer trading environment in the agri-food supply chain across the EU.

2. Methodology

Methodology:

Our research used a mixed-method approach combining qualitative and quantitative analysis. This involved stakeholder interviews and surveys to gather comprehensive data. The qualitative aspect included semi-structured interviews to explore in-depth experiences and perceptions of unfair trading practices (UTPs). The quantitative aspect involved surveys to collect structured data on awareness, experiences, and perceptions of UTPs among exporters. Both methods aim to identify challenges, assess enforcement mechanisms, and provide recommendations for improving the UTP Directive.

Research Questions:

- Do the forbidden UTPs laid out in the directive still take place in the horticultural and coffee sectors in Rwanda? If so, how could they be remedied?
- Do other UTPs affect exporters, particularly those not included in the directive but forbidden by the laws of some EU Member States?
- Would exporters be able to file a complaint if they were the victim of a UTP, given the mechanisms that are in place?

The interview and survey questions used can be found in Annex and are derived from the main research questions.

3. Results and analysis

This report consolidates insights from interviews with several stakeholders involved in the export of agricultural products, combined with the results from the survey. We reached out to several exporters in the horticulture and coffee sector in Rwanda working with smallholder farmers or farmer groups and managed to interview 4 horticulture exporters (out of 6 contacts) and 1 coffee exporter. Additionally we interviewed 2 sector organisations being Fairtrade Africa and IDH as well as the National Agricultural Export Board (NAEB) on their support to the respective sectors and their experience with UTPs.

From all 17 Fairtrade certified coffee organisations 6 anonymous responses were received. The survey was sent out in English and French with the intention to facilitate understanding and participation and so were the reminders.

We present here the abstracts of the interviews and overview of the survey responses.

3.1. Interview Garden Fresh Rwanda

The respondent has been exporting vegetables and fruits, including beans, chillies, avocados, and corn to the UK, Netherlands, and Belgium since 2016. His business operates with its own packhouse and farms. The respondent expressed his lack of awareness regarding any legislation on unfair trading practices. He highlighted the issue of rejections, where it is often unclear who is at fault, resulting in financial compromises. He believes that producers should bear the responsibility for production house issues, but currently, his business has to share these costs, which he feels is unjust.

Regarding payment issues, the respondent noted that while most clients adhere to the 30-day payment timeline, there are exceptions. **To maintain relationships and avoid losses, they sometimes tolerate delayed payments, even though it can result in financial strain.** The respondents also discussed the need for more structured support and information, particularly regarding the directive on unfair trading practices, to better navigate the challenges faced by his business.

3.2. Interview IDH

The respondent highlighted several challenges faced by Rwandan exporters, particularly when accessing the European market. He pointed out the stringent legislation and standards that are costly and time-consuming to comply with, as well as logistical and pricing challenges. The respondent mentioned that there is a significant lack of support or subsidies making it difficult for Rwandan exporters to compete with their EU-based counterparts.

He also raised concerns about unfair trading practices, especially in the horticulture sector, where **contracts are often unclear** and not mutually beneficial. He emphasized the need for more transparency and fairness in the decision-making processes for shipments and cargo to Europe.

The IDH program in the horticulture sector supports companies with accessing investments in infrastructure like cold storage rooms and packhouses as well as good agricultural practices training.

3.3. Interview NAEB

The respondents' organisation has taken proactive steps by hiring experts to navigate the complex landscape of European regulations. Despite these efforts, they face significant challenges due to harsh Sanitary and Phytosanitary (SPS) regulations, particularly affecting fresh produce. **She mentioned that a considerable amount of their produce is rejected by the EU due to sanitary issues, which she believes are not justified given the actual quality of the products.**

The respondent also highlighted **the informal nature of most of their contracts, which exacerbates the difficulties they face with rejections and compliance.** She stressed the need for better education and support from the European Union to help farmers understand and meet the stringent standards required. NAEB is currently not involved in supporting exporters with legal action or legal counsel.

3.4. Interview Best in Rwanda Group

The respondent, who focuses on the export of kidney beans, discussed his plans to pursue fair trade certification, which aligns with the demands of his market. He described the trading relationships with European clients as generally compliant with contract terms, but noted that there are always areas for improvement, such as the move towards organic production and soil protection. The organic market, due to its regulations, is not necessarily easy to reach for smallholder farmers, but is handled by much more formal enterprises than smaller and rather informal traders.

The respondent emphasized the importance of using the right seeds and handling processes to minimize rejections, which are currently low at about 10%. He also noted the crucial role of sector organizations in providing support and training, which enables his business to function effectively and consider expansion.

The awareness of the directive is limited, but when asking on trading experiences several practices considered 'black' practices were mentioned like unexplained rejection, very late payment as well as last minute cancellation. **No legal action was undertaken due to the high costs and sometimes lack of a formal exporting contract.**

3.5. Interview Virunga Biotech

The respondent started in 2017 and used several field tests to settle on a number of out-growers and products like chillis, aubergine and french beans to export to the European market. In the beginning, due to the smaller quantities and sometimes fluctuating quality a smaller exporter like Virunga Biotech highly depended on wholesale buyers who distribute to local markets. It made them dependent on waiting for the buyer to indicate their needs, waiting to get paid which was sometimes late or less than the volumes shipped due to rejections. As most shipments were airfreight and often went through Ethiopia it was hard to indicate if the rejection was correct or not. **They tried once through a British lawyer to get paid, but although they managed to get the attention of the buyer, payment did not come and as the legal route is costly, they had to let it go.**

Since they have participated in the IDH Hortinvest program they have been able to train farmers and establish a pack-house for processing of both fresh and pickled produce. The construction of the pack-house is just completed (by July 2024) which will include the latest equipment and machinery to improve the quality and increase the shelf-life of their produce. This means that besides chillis they can export several vegetables like aubergine, French beans and bitter gourds and plan to introduce other vegetables to their offer in the near future. Contracted farmers have Global Gap which is a guarantee for clients on the agricultural practices and quality of the shipment.

Regarding the directive the reaction was quite clear as it is relatively unknown to him and certainly not known to the growers. His focus is on growing the business and work as much as possible with the formal and reliable clients he currently has.

3.6. Interview Proxifresh Rwanda

The respondent is an executive of the Rwandese subsidiary of Proxifresh Mauritania and exports for 8 years now fruits and vegetables from approximately 20 farms, particularly french beans. Currently there are 150 hectares under cultivation, and they have managed to reach GlobalGap and Smeta certification. This has been quite a journey, and they have encountered similar problems until they managed to establish the right infrastructure including cold storage, get all exporting farms certified and therefore having now more reliable buyers. Also, the support of NAEB has been important for them as it has allowed them to get into contact with European buyers, setting up relationships with investors and ultimately growing their business.

When discussing the European directive, it became clear that this is less known and not a priority to include in the sensitization sessions with farmers or employees. The focus is more on the criteria as laid down in Globalgap or Smeta as this has a direct link to their clients' requirements.

3.7. Interview Fairtrade Africa

The respondent, active at Fairtrade Africa, supports the Fairtrade certified coffee organisations in Rwanda which are mainly smallholders. Only a few of them export directly and others work through national exporters. Their export sales are directed at the fair trade market in Europe and partly the USA, specifically the specialty coffee market. This is a more high end market in comparison to what was mentioned in the horticulture interviews.

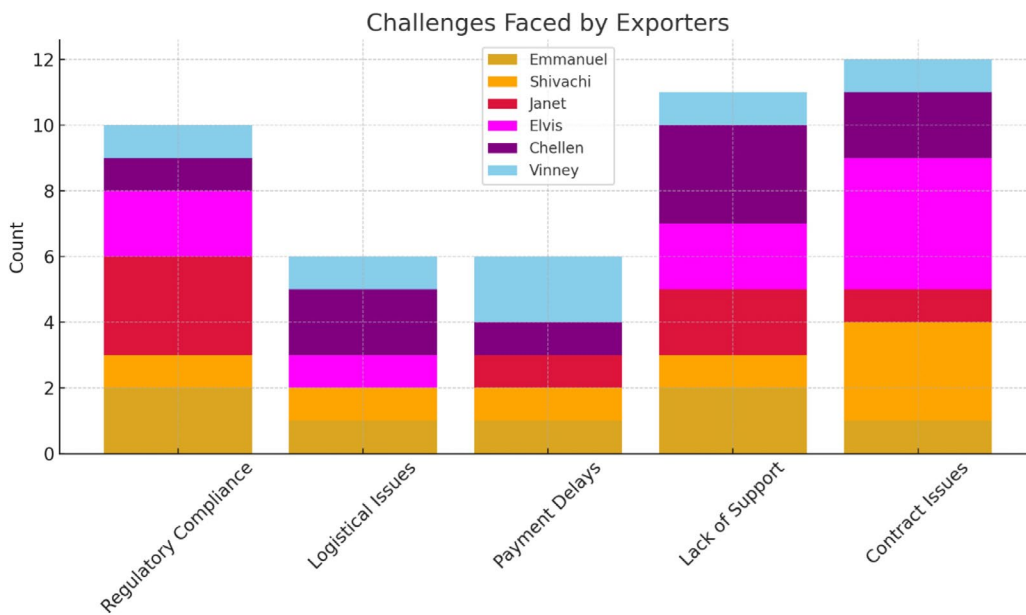
The respondent highlighted several challenges faced by Rwandan coffee farmers and its exporters, very similar to the explanation given by IDH and the horticultural exporters. The farmer organisations are focusing on maintaining their Fairtrade certification and strengthening their practices. For them, clients in Europe and the export requirements they ask adherence too seem of secondary importance. Legislation and directives are not actively known nor where their experience lies.

The export experience is mainly with the specialty, fairtrade certified market in Europe and partly the USA which makes for clear, standardized contracts and controlled payments. The main challenges of the smallholder coffee sector is to comply with the certification requirements and all support is directed at this aspect like standardizing the administration, internal monitoring and awareness raising on quality requirements and the financials of the farmer organization. European directives are too abstract.

3.8. Interview Kopakaka / Sucafina

Kopakaka and other cooperatives form part of the RWACOF network as Sucafina receives the cherries at the washing stations and from there controls the entire process, including export. The cooperatives deal with the coffee production, record keeping and overall support to improve the production and farmer livelihoods, but they have no direct trading connections with the European coffee market. Their understanding of product requirements are derived from the training and support they receive from being part of the Sucafina network and the washing stations they work with. That specific relationship is very clear and well administered, but does not go beyond the relationship with the washing station.

At the moment RWACOF manages approximately 30 washing stations in Rwanda and besides farmer field schools also started promoting gender equity at farm level through their partner Kahawatu Foundation. At that level it was indicated that they understand market requirements in both Europe and the USA, but not in how far that is linked or supported by a European Directive. **Being a larger player on the market all contracts are formal and follow all legal requirements.** It was indicated that probably management at regional level, based in Kenya, would have more knowledge on UTPs.



3.9. Overview results from survey among coffee organisations

The following is based on the anonymous responses on the survey which was mailed to certified coffee organisations and a set of exporters provided by the Rwanda Development Board.

1. Awareness of EU Directive on unfair trading practices:

Low Awareness: All responses indicated a lack of awareness regarding official directives on unfair trading practices. This derives from having limited to no direct exporting experience or contacts.

Priority on Certification Standards: All responses indicated their knowledge and focus lies on meeting the requirements as written down in the certification standard they work with. In the case of coffee this is primarily fairtrade.

2. Contractual Challenges:

Unclear and Informal Contracts: Responses received indicate that since their relationship is with established fairtrade markets they have clear arrangements.

Responsibility for Rejections: All responses indicated that rejections are done based on clear quality requirements and for farmers this is at the level of washing stations, not export.

3. Compliance and Standards:

Stringent Sanitary and Phytosanitary (SPS) Regulations: Respondents indicated this is important at the level of washing stations and those that are managed by experienced export companies do fully comply.

Training and Support Initiatives: all respondents indicated support from farmer field school and/or Kahawatu Foundation. Training is directed at improving product quality and yield. Other support received was getting access to the banking system (receiving and doing payments as well as saving).

4. Market Access and Pricing Challenges:

Dependence on washing stations was mentioned by all respondents. They receive indications on prices and quality at that level and when delivering the coffee cherries the rules are followed. Respondents indicated that quality requirements to get access to better prices and payments are high.

Logistical Barriers: Unlike answers coming from the horticulture sector, indicating logistical challenges, such as navigating complex EU regulations without subsidies, making it difficult for Rwandan exporters to compete, the survey respondents did not indicate logistical barriers.

5. Financial Implications and Payment Issues:

Delayed Payments: Not indicated by respondents as they receive payment at delivery of the produce, against agreed prices. Sometimes a second payment is done by the exporter after all sales are done.

Legal Recourse: No indications given that legal action has been pursued.

6. Role of Sector Organizations and Support Systems:

Support from Sector Organizations: All responses indicated this is crucial for their development.

4. Conclusions and recommendations

4.1. Conclusions

When approaching exporters in Rwanda trading coffee or horticulture produce from smallholders to the EU market it became clear that smaller exporters are not that aware of the EU Directive on unfair trading practices.

Especially exporters dealing with fresh horticulture produce were quite clear in their responses and experiences shared which showed an interesting pattern:

- Dealing with smaller companies in Europe, especially those selling in more informal markets, shows a higher risk of experiencing 'black' practices like last minute cancellations, unexplained rejections, late payments or working without written confirmation of the agreement.
- This lack of clarity often leads to disputes over responsibility for issues like product rejections, and it exacerbates the financial strain on suppliers. Support organizations such as NAEB and IDH do give information on proper contractual arrangements but are not involved in legal support.
- Grey practices as defined in the directive were not mentioned.
- There is a general lack of experience on how to assess the credibility of (smaller) European clients.
- Exporters are mostly 'learning by doing' which is financially risky.
- Exporting smaller quantities of horticulture produce is difficult due to all kinds of practical risks like the difficulty to do air freight directly to Europe, delaying the transportation time which is not favourable for fresh produce, nor can proper handling of the shipment be guaranteed during these stops/transfers in Kenya or Ethiopia.
- The farmers or farmer groups delivering the produce to the exporters have even less knowledge of legislation or directives like the one on UTPs. Whereas this group is not directly covered by the UTP directive, they do nonetheless experience UTPs.
- Exporters that shifted or are shifting their sales to more established markets/clients including certified markets (fairtrade and/or organic) are experiencing improvements in the trading conditions. **The relationship becomes more formalized in terms of contracts, quality controls and in the case of rejections are reported with explanations.**
- Due to the nature of many export relationships, especially in fresh produce, it is very difficult to start a legal complaint. It is costly and generally unsuccessful.
- Exporters do receive support from programs like [Hortinvest](#) (IDH) or by NAEB, but the focus is mainly on improving business aspects like investments in infrastructure or training farmers in good agricultural practices. Legal support or information on the EU directive is not done. The same is happening in coffee.
- Coffee exports, especially those by smallholder farmers, tend to be more directed to higher end markets like specialty coffee markets, the fairtrade or organic market. Due to this context, in combination with certification, seems to take away the risk of dealing with 'black' practices.
- Additionally, there are also several large trading companies active in the Rwandan coffee sector having access to established outlets in Europe. This seems to eliminate UTPs between exporters and European clients. However, the relationship between the exporter and farmers might still be characterized as an unbalanced power and knowledge relationship.

The pattern that can be derived from the interviews are supported by the survey responses, even though the response level was low.

The conclusion is that overall there is a gap in awareness and understanding of the UTP Directive among non-EU suppliers, which suggests that the current dissemination of information is insufficient. This gap hinders the ability of these suppliers to fully benefit from the protections offered by the directive.

When looking more precisely on the Sanitary and Phytosanitary (SPS) regulations imposed by the EU present, it is evident that these create significant hurdles for exporters. NAEB's experience, when compared to the responses given by exporters, confirms the existence of frequent rejections due to sanitary issues. It points at the need for clearer communication and education regarding these standards, but equally the need for investments in infrastructure like packhouses etc.

Overall the legal enforcement of the UTP Directive at the national level by designated enforcement authorities within each EU Member State is insufficient. The same can be said in how far national authorities cooperate with their counterparts in other EU Member States to address cross-border UTPs. This includes sharing information and coordinating enforcement actions.

Another conclusion that can be drawn is that there is a clear need for enhanced support systems to assist exporters in navigating the complex landscape of EU regulations. Stakeholders have called for more structured support, including education and legal resources, to help them better understand and comply with the UTP Directive and other relevant regulations.

4.2. Recommendations

- **Increase Awareness and Accessibility:** It is essential to improve the dissemination of information regarding the UTP Directive to non-EU suppliers. This can be achieved through targeted outreach programs, translated materials, and training sessions that are accessible to exporters in their respective countries.
- **Complaints and legal advice:** The role of national agricultural export development boards in transmitting legal information to exporters could be strengthened. In the case of Rwanda's National export board, [NAEB](#), it could play a significant role in providing guidance and practical support to suppliers on how to lodge complaints and the procedures involved.
- **Enhance Contractual Clarity:** The small and medium-sized exporters need additional support, especially those working with fresh produce, on how to screen European traders/potential clients before entering into trading relationships. **Standardized contract templates could also help to ensure that terms are clear and mutually beneficial.** This could help reduce the number of disputes and provide suppliers with greater security in their trading relationships.
- **Enhance the capacity of national institutions to track the occurrence of 'black' trading practices** in order to get a good understanding of daily practices, per sector, and use the data to improve national support systems and policies (when relevant).
- **Simplify Regulatory Compliance:** The EU should consider providing more direct support to non-EU exporters in meeting these standards. This could include offering guidance on best practices, creating a hotline for immediate assistance, or developing partnerships with local organizations to educate farmers and exporters.
- **Strengthen Financial Protections:** Mechanisms to ensure timely payments and reduce the financial burden on exporters should be reinforced. This could involve stricter enforcement of payment timelines, and the introduction of financial safeguards or insurance products tailored to the needs of small and medium-sized exporters.
- **Provide Comprehensive Support Systems:** It is important to invest in creating or enhancing support systems that offer legal, educational, and financial assistance to non-EU suppliers. This would empower these exporters to better understand their rights, comply with regulations, and compete effectively in the European market.

In how far the EU can give follow up to the conclusions and recommendations is challenging, but we advise to make an effort as it will strengthen the working of the UTP Directive.

Besides the EU itself there are also institutions like the International Trade Centres supporting sectors with export training and advice or sector programs developed and implemented by (I)NGO's that could play a role in this.

Annex

Questions used in survey and interviews

Survey Questions:

- Are you aware of the UTP Directive?
- Which of the following principles are considered 'black' trading practices?
- Which of the following are considered 'grey' trading practices?
- Which instances of UTPs as defined by the UTP Directive have you experienced in your interactions with buyers or partners, if any?
- Over the past four years, have you noticed any changes in the frequency or severity of UTPs? If so, which ones?
- On a scale of 1 to 5, how confident are you in your understanding of the specific provisions outlined in the UTP Directive?
- To what extent do you believe the UTP Directive has contributed to improving fairness and transparency in your trade relationships?
- Have you received any formal training or guidance on how to comply with the requirements of the UTP Directive?
- How often do you seek legal or regulatory assistance when faced with potential instances of UTPs?
- How satisfied are you with the support provided by governmental or non-governmental organizations in ensuring compliance with the UTP Directive?
- Which practices would you like to see included in any potential updates to the UTP Directive, if any?
- In your opinion, what are the main challenges hindering effective implementation of the UTP Directive?

Interview Questions:

- What specific challenges do you face when considering lodging complaints about UTPs? Are you able to make these anonymously?
- Can you provide examples of situations where you lack sufficient information about the regulations and procedures for reporting UTPs? How does this impact on your willingness to come forward with complaints?
- In your experience, what factors contribute to your fear of commercial retaliation when you're aware of UTP regulations but hesitate to file complaints?
- Aside from issues related to information and fear of retaliation, what other challenges have you encountered when attempting to address UTPs?
- Have you observed any efforts by organizations like the European External Action Service to provide training or support regarding the UTP Directive and its implementation? If so, how effective do you perceive these efforts to be?
- Are there any additional types of support or resources that you believe would enhance your ability to navigate the complexities of the UTP Directive and effectively address UTPs?
- Can you identify any gaps or shortcomings in the current provisions of the UTP Directive that may leave certain practices unaddressed or inadequately regulated from your perspective?
- Are there specific practices or behaviors that you have encountered in your experience as an exporter that are not currently classified as UTPs by the Directive but nevertheless pose significant challenges or concerns to you?
- How would you recommend that future iterations of the UTP Directive be revised or expanded?
- In your opinion, what role should international collaboration and cooperation play in addressing UTPs and promoting fair trading practices across borders, considering your position as a participant in the export market?