



EUROPEAN  
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ANNEX 1

**ANNEX**

**to the**

**Proposal for a Council Decision**

**on the signing and provisional application of the Economic Partnership Agreement (EPA) between the West African States, ECOWAS and the UEMOA, of the one part, and the European Union and its Member States, of the other part**

## ANNEX

**ECONOMIC PARTNERSHIP AGREEMENT (EPA) BETWEEN  
THE WEST AFRICAN STATES, ECOWAS AND THE UEMOA,  
OF THE ONE PART,  
AND  
THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE OTHER PART**

### **Contents**

List of the Parties to the Agreement:

Introduction

#### **PART I: ECONOMIC AND TRADE PARTNERSHIP FOR SUSTAINABLE DEVELOPMENT**

#### **PART II: TRADE POLICY AND QUESTIONS CONCERNING TRADE**

Chapter 1: Customs duties

Chapter 2: Trade defence instruments

Chapter 3: Technical barriers to trade, sanitary and phytosanitary measures

Chapter 4: Other non-tariff barriers

Chapter 5: Facilitation of trade, customs cooperation and mutual administrative assistance

Chapter 6: Agriculture, fisheries and food security

#### **PART III: COOPERATION FOR IMPLEMENTATION OF DEVELOPMENT AND ACHIEVEMENT OF THE OBJECTIVES OF THE EPA**

#### **PART IV: DISPUTE AVOIDANCE AND SETTLEMENT**

Chapter 1: Objective, scope and Parties

Chapter 2: Dispute avoidance: consultation and mediation

Chapter 3: Dispute settlement procedures

Chapter 4: General provisions

#### **PART V: GENERAL EXCEPTIONS**

#### **PART VI: INSTITUTIONAL PROVISIONS**

#### **PART VII: FINAL PROVISIONS**

### ANNEXES

THE REPUBLIC OF BENIN,  
BURKINA FASO,  
THE REPUBLIC OF CAPE VERDE,  
THE REPUBLIC OF CÔTE D'IVOIRE,  
THE REPUBLIC OF GAMBIA,  
THE REPUBLIC OF GHANA,  
THE REPUBLIC OF GUINEA,  
THE REPUBLIC OF GUINEA-BISSAU,  
THE REPUBLIC OF LIBERIA,  
THE ISLAMIC REPUBLIC OF MAURITANIA,  
THE REPUBLIC OF MALI,  
THE REPUBLIC OF NIGER.  
THE FEDERAL REPUBLIC OF NIGERIA,  
THE REPUBLIC OF SENEGAL,  
THE REPUBLIC OF SIERRA LEONE,  
THE TOGOLESE REPUBLIC,

and

THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS),

and

THE WEST AFRICAN ECONOMIC AND MONETARY UNION (UEMOA),

of the one part,

and

THE KINGDOM OF BELGIUM,  
THE REPUBLIC OF BULGARIA,  
THE CZECH REPUBLIC,  
THE KINGDOM OF DENMARK,  
THE FEDERAL REPUBLIC OF GERMANY,  
THE REPUBLIC OF ESTONIA,  
IRELAND,  
THE HELLENIC REPUBLIC,  
THE KINGDOM OF SPAIN,  
THE FRENCH REPUBLIC,  
THE REPUBLIC OF CROATIA,  
THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,  
THE REPUBLIC OF LATVIA,  
THE REPUBLIC OF LITHUANIA,  
THE GRAND DUCHY OF LUXEMBOURG,  
HUNGARY,  
THE REPUBLIC OF MALTA,  
THE KINGDOM OF THE NETHERLANDS,  
THE REPUBLIC OF AUSTRIA,  
THE REPUBLIC OF POLAND,  
THE PORTUGUESE REPUBLIC,  
ROMANIA,  
THE REPUBLIC OF SLOVENIA,  
THE SLOVAK REPUBLIC,  
THE REPUBLIC OF FINLAND,  
THE KINGDOM OF SWEDEN,  
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

and

THE EUROPEAN UNION,

of the other part,

HAVING REGARD TO the Georgetown Agreement establishing the Group of African, Caribbean and Pacific States (ACP), the treaties establishing the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (UEMOA) of the one part, and the Treaty on European Union and the Treaty on the Functioning of the European Union, of the other part;

HAVING REGARD TO the ACP-CE Partnership Agreement signed in Cotonou on 23 June 2000, as first amended in Luxembourg on 25 June 2005 and as amended for the second time in Ouagadougou on 22 June 2010, hereinafter the " Cotonou Agreement ";

CONSIDERING the importance, on the one part, of the links between the European Union, its Member States and the West African region (WA) and, on the other part, the common values they share;

CONSIDERING that the European Union, its Member States and the West African region wish to strengthen their close links and establish enduring relations based on partnership, development and solidarity;

MINDFUL of the need to promote the economic and social progress of the people in a way that takes account of the need for sustainable development and environmental protection;

CONSIDERING the importance attached by the Parties to the principles of the United Nations Charter, particularly the observance of human rights;

CONSIDERING their commitment to the principles and rules governing international trade, in particular those contained in the Agreement establishing the World Trade Organisation (WTO);

CONSIDERING the need to strengthen integration between the West African States and Euro-African relations;

RECALLING that the purpose of the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (UEMOA) is to promote regional cooperation and integration with a view to the establishment of a West African economic union in order to raise the standard of living of the people, maintain and increase economic stability, strengthen relations between the Member States and contribute to the progress and development of the African continent;

REAFFIRMING their commitment to working together towards the achievement of the ACP-EU partnership as defined in the Cotonou Agreement, namely the reduction and long-term eradication of poverty, sustainable development and the successful and harmonious integration of the ACP countries in the world economy;

CONSIDERING that the Millennium Development Goals emanating from the Millennium Declaration adopted by the United Nations General Assembly in 2000, in particular the eradication of extreme poverty and hunger, as well as the development targets and principles agreed in the United Nations Conferences, provide for a clear vision and must underpin partnership between the West African region and the European Union and its Member States under this Agreement;

TAKING ACCOUNT of the willingness of the European Union and its Member States to provide significant support for West Africa in its efforts to reform and adjust in terms of the economy and social development and their commitment to implement the Joint European Union-Africa strategy;

TAKING ACCOUNT of the difference in the level of economic and social development between the West African region on the one part and the European Union and its Member States on the other part and the need to strengthen the process of integration and economic development of the West African region;

TAKING ACCOUNT, in particular, of the fact that the West African region includes a large number of less developed countries (LDC) and that it is facing serious difficulties due to its special economic position and its specific needs with regard to development and the promotion of its trade and finances;

UNDERLINING that the Economic Partnership Agreement (EPA) is based, in particular, on the progressive, asymmetrical liberalisation of trade in goods and services in favour of the West African States;

REAFFIRMING that the EPA must be a development tool for promoting, in particular, sustainable development, increasing the production capacity and exports of the West African States and supporting the structural transformation of the West African economies and their diversification and competitiveness, leading to the development of trade, technology, the creation of jobs in the West African States and attracting investment to them;

REAFFIRMING, moreover, that stability and enduring peace are crucial factors for the success of effective regional integration in West Africa, to which the EPA must contribute;

EXPRESSING their determination to jointly achieve the aforementioned objectives while preserving the achievements of the Cotonou Agreement and therefore wishing to conclude a mutually beneficial agreement that is truly conducive to development

HAVE AGREED AS FOLLOWS:

## **PART I**

### **ECONOMIC AND TRADE PARTNERSHIP FOR SUSTAINABLE DEVELOPMENT**

#### *Article 1*

#### **Objectives**

1. The objectives of this Agreement are:
  - a) To establish an economic and trade partnership to achieve rapid and sustained economic growth that creates employment, reduce and then eradicate poverty, raise living standards, achieve full employment, diversify economies and raise real income and output in a way that is compatible with the needs of the West African region while taking account of the Parties' different levels of economic development;
  - b) To promote regional integration, economic cooperation and good economic governance in the West African region;
  - c) To increase intra-regional trade and encourage the formation of a unified and efficient regional market in West Africa;
  - d) To contribute to the harmonious and progressive integration of the West African region into the world economy, in accordance with its political choices, its priorities and its development strategies;
  - e) To strengthen economic and trade relations between the Parties on a basis of solidarity and mutual interest in accordance with WTO obligations, in a way that takes account of the significant difference in competitiveness between the two regions.
2. For the purpose of achieving the objectives referred to in paragraph 1 of this Article, the Parties undertake to:
  - a) Encourage an improvement in the supply capacity and competitiveness of the production sectors of the West African region;
  - b) Strengthen the capacity of the West African region with regard to trade policy and the rules relating to trade;
  - c) Contribute to the effective meeting of the commitments undertaken by the Parties in international fora concerning sustainable development, development financing, enhancement of the role of trade in development and raising the volume and effectiveness of aid;
  - d) Establish and implement an effective, predictable and transparent regional regulatory framework in the West African region in order to promote investment, development of the West African private sector, Public-Private dialogue and partnership between the private sectors of West Africa and the European Union;
  - e) Establish an effective, predictable and transparent framework for cooperation measures that will make it possible to promote the objectives of this Agreement, including the EPA Development Programme (PAPED) and provisions concerning its implementation;

- f) Effect the progressive and asymmetrical liberalisation of trade between them and strengthen cooperation in sectors relating to trade in goods and services.

## *Article 2*

### **Principles**

1. The EPA is based on the principles and essential points of the Cotonou Agreement, as set out in Articles 2, 9, 19 and 35 of the said Agreement. The EPA is founded on the achievements of the Cotonou Agreement and previous EPA-EU conventions in the areas of financial cooperation, regional integration and economic and trade cooperation.
2. The EPA shall be implemented in a way that complements the achievements of the Cotonou Agreement and for it to be viable, the commitments of both Parties must be met, including those of the European Union regarding development finance cooperation and aid for trade.
3. The Parties shall honour their commitments with regard to development cooperation throughout the life of the EPA and undertake to set up the arrangements necessary to ensure consistency over time between EPA accompanying measures, as set out in the EPA Development Programme contained in Part III of this Agreement, and development cooperation.
4. The trade relations between the two regions shall be based on reciprocity and the difference in levels of development. The commitments undertaken in this regard under this Agreement shall comply with Article 34 of the Cotonou Agreement, which applies special and differential treatment to commitments between the two Parties. The Parties shall, in particular, ensure that account is taken of the vulnerability of the economies of the West African region and that the liberalisation process incorporates the principles of progressivity, flexibility and asymmetry in favour of the West African region.
5. While observing the trade commitments made under this Agreement, the Parties shall refrain from undermining the implementation of agricultural and food security, public health, education and any other economic and social policies adopted by the West African region under its sustainable development strategy.
6. For the EPA to be successful, it is necessary to establish a demanding partnership based on the mutual responsibility of the Parties for its implementation. The Parties therefore undertake to strive to ensure its viability.
7. The Parties reaffirm the commitment they made in the Doha Development Round to reduce and avoid measures likely to create distortions in trade and their support for ambitious results in this regard.
8. To ensure efficient implementation of the Agreement, the Parties shall set up joint institutions to establish a permanent management and monitoring/evaluation arrangement to make possible any adjustments that are necessary for achievement of the objectives of this Agreement.

## *Article 3*

### **Economic growth and sustainable development**

1. The Parties reaffirm that the objective of sustainable development is to be applied and integrated at every level of their economic partnership, in fulfilment of their commitments set out in Articles 1, 2, 9, 19, 21, 22, 23, 28 and 29 of the Cotonou Agreement, and especially the general commitment to economic development and reducing and eventually eradicating poverty in a way that is consistent with the objectives of sustainable development.
2. Under this Agreement, the Parties view the objective of sustainable development as a commitment to take full account of the human, cultural, economic, social, health and environmental interests of their respective people and their future generations.
3. In the fight against poverty the Parties reaffirm their commitments to draw up and implement programmes likely to strengthen the macro-economic framework, promote rapid and sustainable economic growth and create the infrastructures essential for the development of the intra-regional and international trade of the West African region. The Parties therefore support the institutional reforms intended to adapt the national and regional administrative authorities to the requirements of trade liberalisation and strengthen the capacity of the production sectors in the West African region.
4. The Parties support the efforts of the West African region with regard to the sustainable management of forests, fisheries and the emergence of modern agriculture. They shall therefore initiate and implement innovative forms of trade favourable to the preservation of natural resources.
5. The Parties shall work on strengthening the technical capacities and abilities of the operators in order to promote the creation of jobs and provide for adjustments to achieve the social goals of the EPA.

#### *Article 4*

#### **Regional integration**

1. The Parties recognise that regional integration is an essential part of their partnership and a powerful tool for achieving the objectives of this Agreement and agree to give it their strong support.
2. For the purposes referred to in paragraph 1, the European Union Party shall contribute, according to the provisions laid down in Part III, through technical and financial assistance to the efforts of the region with regard to integration, in particular the achievement of customs union and a common market, the implementation of macro-economic and trade surveillance and the preparation of regional rules for making the business environment more attractive in the West African region.

### **PART II**

## **TRADE POLICY AND QUESTIONS CONCERNING TRADE**

### *CHAPTER 1*

#### **CUSTOMS DUTIES**

## *Article 5*

### **Scope**

The provisions of this Chapter shall apply to trade in goods between the Parties.

## *Article 6*

### **Rules of origin**

1. For the purposes of this Article, originating applies to goods that comply with the rules of origin set out in Annex A to the Protocol defining the concept of 'originating products' and the methods of administrative cooperation.
2. At the latest five years after the date of entry into force of this Agreement, the Parties shall draw up new rules of origin with the aim of simplifying the concepts and methods used to determine origin in the light of the development objectives of the West African region and the process of integration of the African Union. Within this framework, the Parties shall take account of technological development, the production processes and any other relevant factors that might necessitate changes to the Protocol on rules of origin.
3. Any amendment or revision of the rules of origin referred to in paragraph 1 shall be carried out by a decision of the Joint Council of the EPA.

## *Article 7*

### **Customs duties**

1. Customs duties are taken to refer to the deductions of charges of any kind, including any kind of surcharge or supplement imposed in connection with the import or export of goods; the following are not included:
  - a) taxes or other internal charges imposed in accordance with Article 35;
  - b) anti-dumping, countervailing or safeguard measures applied in accordance with Chapter 2;
  - c) fees or other charges imposed in accordance with Article 8 on fees and other charges.
2. For each product, the basic customs duty to which the successive reductions set out in the Agreement are to be applied shall be that effectively applicable on the day of entry into force of the Agreement.

## *Article 8*

### **Fees and other charges**

The fees and other charges referred to in Article 7 are subject to specific tariffs corresponding to the real value of the services provided and must not constitute indirect protection of national products or the taxation of imports or exports for fiscal purposes.

## *Article 9*

### **Status quo**

1. No new customs duties on imports shall be introduced on products covered by the liberalisation between the Parties, nor shall those currently applied be increased from the date of entry into force of this Agreement.
2. Notwithstanding paragraph 1, and as part of the finalisation of the common external tariff of ECOWAS, the West African region may until 31 December 2014 revise its basic customs duties on goods originating in the European Union insofar as the general impact of these duties is no higher than that resulting from the duties specified in Annex C. The Joint Council of the EPA shall amend Annex C accordingly.

#### *Article 10*

##### **Elimination of customs duties on imports**

1. Products originating in the West Africa Party shall be imported into the European Union free of customs duties as defined in Article 7, except in the case of the products indicated and under the conditions defined in Annex B.
2. The West African region shall progressively reduce and eliminate customs duties, as defined in Article 7, applicable to products originating in the European Union in accordance with the schedule shown in Annex C.

#### *Article 11*

##### **Autonomous resources of the regional Economic Communities of West Africa.**

Under this Agreement, the Parties agree that the autonomous financing arrangement of the West African Organisations responsible for regional integration (ECOWAS and UEMOA) shall be maintained until a new financing method has been set up.

#### *Article 12*

##### **Change in the tariff commitments of West Africa and common sectoral policies of the West African region**

1. Without prejudice to Article 10 concerning the elimination of customs duties from the West African region, in view of its special development needs, in particular the need to support its common sectoral policies, the West Africa Party may decide, after agreement within the Joint Council of the EPA, to change the level of customs duties laid down in Annex C, which are applied to one or more goods originating in the European Union Party when they are imported into West Africa. For this purpose, the Joint Council of the EPA shall take a decision within six (6) months of the European Party being notified.
2. The Parties shall ensure that no such amendments result in incompatibility with Article XXIV of the General Agreement on Tariffs and Trade (GATT) 1994.
3. The amendments to the tariff commitments shall be maintained only for the period necessary to meet the special development needs of West Africa.

#### *Article 13*

##### **Export duties and taxes**

1. No new duties or taxes on exports or charges with equivalent effect shall be introduced, nor shall those currently applied in trade between the Parties be increased from the date of entry into force of this Agreement.
2. The duties, taxes on exports or charges with equivalent effect shall be no greater than the same duties and taxes applied to similar goods exported to any other countries that are not party to this Agreement.
3. In exceptional circumstances, if the West Africa Party can justify specific needs for income, promotion for fledgling industry or environmental protection, it may, on a temporary basis and after consulting the European Union Party, introduce duties, taxes on exports or charges with equivalent effect on a limited number of additional goods or increase the impact of those that already exist.
4. The Parties agree to review the provisions of this Article in the framework of the Joint Council of the EPA in accordance with the revision clause of this Agreement, taking full account of their impact on the development and diversification of the economy of the West Africa Party.

#### *Article 14*

##### **Movement of goods**

1. Goods originating in one of the Parties shall be subject to customs duties only once in the territory of the other Party. They may move freely in the territory of the other Party without being subject to additional customs duties.
2. For the purposes of application of the provisions of paragraph 1, the West African region shall be granted a transitional period of five (5) years starting from the date of entry into force of the Agreement in which to set up a free movement system. This period may be reviewed depending on the results of the transitional fiscal reforms to be effected by the West African region in cooperation with the European Union. For this purpose, the Parties shall evaluate the implementation of these reforms on a regular basis.
3. The Parties shall cooperate in order to facilitate the movement of goods and simplify customs procedures in line with the provisions of Chapter 5 concerning the facilitation of trade.

#### *Article 15*

##### **Classification of goods**

The classification of goods covered by this Agreement shall be as set out in each Party's respective tariff nomenclature in conformity with the Harmonised Commodity Description and Coding System (HS).

#### *Article 16*

##### **MFN clause**

1. The Parties reaffirm their commitment with regard to the enabling clause.
2. The European Union Party shall grant the West Africa Party any more favourable tariff treatment that it grants to a third Party if the European Union Party becomes

party to a preferential agreement with the third Party in question after the signing of this Agreement.

3. The West Africa Party shall grant the European Union Party any more favourable tariff that it grants after the signing of this Agreement to a trade partner other than the countries of Africa and the ACP States having both a share of world trade in excess of 1.5 per cent and an industrialisation rate, measured as the ratio of manufacturing value added to GDP, in excess of 10 per cent in the year preceding the entry into force of the preferential agreement referred to in this paragraph. If the preferential agreement is signed with a group of countries acting individually, collectively or through a free trade agreement, this threshold relating to the share of world trade shall be 2 per cent. For calculation purposes, the official data of the WTO shall be used for the main world exporters of goods (excluding trade within the European Union) and that of the United Nations Industrial Development Organisation (UNIDO) for manufacturing value added..
4. If the West Africa Party obtains from the trade partner referred to in paragraph 3 substantially more favourable treatment than that offered by the European Union Party, the Parties shall consult each other and decide together on the implementation of the provisions in paragraph 3.
5. The Parties agree to resolve any dispute concerning the interpretation or application of this Article by entering into consultations in good faith with the aim of reaching an agreed solution.
6. The provisions of this Chapter cannot be interpreted as requiring the Parties to mutually grant each other preferential treatment that would be applicable owing to one of the Parties being signatory to a preferential agreement with a third Party on the date on which this Agreement enters into force.

#### *Article 17*

##### **Special provisions on administrative cooperation**

1. The Parties agree that administrative cooperation is essential to the implementation and control of the preferential treatment granted in this Chapter and undertake to combat irregularities and fraud regarding customs and related fields.
2. Where one Party obtains proof, based on established information, of a failure to provide administrative cooperation and/or of irregularities or fraud, the Party may temporarily suspend the preferential treatment of the product(s) concerned in accordance with the provisions of this Article.
3. For the purposes of this Article, a lack of administrative cooperation shall include the following:
  - a) repeated failure to comply with the obligation to verify the originating status of the product(s) concerned;
  - b) repeated refusal to conduct a subsequent check of proof of origin and communicate the results, or undue delay in doing so;
  - c) repeated refusal to grant authorisation for a cooperation mission to check the authenticity of documents or the accuracy of information of relevance to the preferential treatment in question, or undue delay in doing so.

4. The application of a temporary suspension shall be subject to the following conditions:
  - a) A Party that obtains proof from established information of a lack of administrative cooperation and/or irregularities or fraud must notify the Joint Implementation Committee of the EPA without undue delay that it has obtained the proof and the established information, and must consult with the Joint Implementation Committee of the EPA to find a solution acceptable to both Parties, drawing on all relevant information and objective evidence.
  - b) When the Parties have entered into consultation with the Joint Implementation Committee of the EPA, as provided for above, and have been unable to agree on an acceptable solution in the three (3) months following notification, the Party concerned can temporarily suspend the preferential treatment granted to the product(s) concerned. Temporary suspension must be reported without undue delay to the Joint Implementation Committee of the EPA
  - c) Temporary suspensions under this Article shall be limited to what is necessary to protect the financial interests of the Party concerned. They shall not exceed a period of six (6) months, which may be renewed. Temporary suspensions shall be reported as soon as they have been adopted by the Joint Implementation Committee of the EPA They shall be subject to periodic consultations within the Joint Implementation Committee of the EPA, in particular with a view to repealing them once the conditions for application no longer exist.
5. At the same time as the notification of the Joint Implementation Committee of the EPA specified in paragraph 4(a) of this Article, the Party concerned shall publish a notice for importers in its Official Journal. This notice for importers shall indicate that, for the product concerned, and on the basis of established information, proof has been obtained of a lack of administrative cooperation and/or irregularities or fraud.

#### *Article 18*

#### **Management of administrative errors**

In case of error by the competent authorities in the management of preferential systems for exports, and in particular in the application of the Protocol defining the concept of "originating products" and methods of administrative cooperation set out in Annex A, where this error leads to consequences in terms of import duties, the Party facing such consequences may request the Joint Implementation Committee of the EPA to examine and adopt all appropriate measures with a view to resolving the situation.

#### **CHAPTER 2**

#### **TRADE DEFENCE INSTRUMENTS**

#### *Article 19*

#### **Objectives**

1. The objectives of this Chapter are to lay down the conditions in which the two Parties may take trade defence measures while at the same time working on the development of trade in goods between them, by way of derogation from the provisions of Articles 9,10 and 34 of this Agreement.

2. The Parties shall ensure that the measures taken under the provisions of this Chapter are no more than is necessary to prevent or rectify the situations described there.

#### *Article 20*

##### **Anti-dumping and countervailing duties**

1. None of the provisions of this Agreement shall prevent the European Union or the States of the West Africa Party from individually or collectively taking anti-dumping or countervailing measures under the relevant WTO Agreements, in particular the WTO Agreement on Implementation of Article VI of the GATT and the WTO Agreement on Subsidies and Countervailing Measures.
2. For the purposes of applying this Article, origin shall be determined according to the non-preferential rules of origin of the Parties on the basis of the WTO Agreement on Rules of Origin.
3. The special situation of the States of the West African region as developing countries shall be taken into account when the application of anti-dumping or countervailing measures is considered. Before imposing definitive anti-dumping or countervailing measures, the Parties shall consider the possibility of constructive solutions, such as those provided for in the relevant WTO Agreements. The investigating authorities, may, in particular, carry out appropriate consultations for this purpose.
4. The anti-dumping duties or countervailing measures shall remain in force only for the time and extent necessary to offset dumping or harmful subsidies.
5. No product originating from one Party, when imported into the territory of the other Party, shall be subject both to anti-dumping and countervailing duties in order to rectify the same situation resulting from dumping or export subsidies. The Parties guarantee that anti-dumping or countervailing measures cannot be applied simultaneously to the same product at both national level, on the one hand, and regional or sub-regional level, on the other.
6. The Parties agree to each set up a single legal review body, including an appeal level. The judgments of this single body must enter into effect in the territory of all the States in which the disputed measure is applicable.
7. The provisions of this Article shall be applicable to all investigations initiated after this Agreement enters into force.
8. The provisions of this Article shall not be subject to the dispute settlement provisions of this Agreement.

#### *Article 21*

##### **Multilateral safeguard measures**

1. Subject to the provisions of this Article, this Agreement shall not prevent either of the Parties from adopting exceptional measures for a limited period in accordance with Article XIX of the General Agreement on Tariffs and Trade (GATT) of 1994, the Agreement on Safeguards or Article 5 of the WTO Agreement on Agriculture.
2. For the purposes of applying this Article, origin shall be determined according to non-preferential rules of origin of the Parties on the basis of the WTO Agreement on Rules of Origin.

3. Without prejudice to the provisions of paragraph 1, and in the light of the overall development objectives of this Agreement and the small size of the economies of the West African States, the European Union Party shall exclude imports from the West African States Party from any measures taken pursuant to Article XIX of the GATT of 1994, the WTO Agreement on Safeguards and Article 5 of the WTO Agreement on Agriculture.
4. The provisions of paragraph 3 shall apply for a period of five (5) years, beginning with the date of entry into force of this Agreement. At the latest one hundred and twenty (120) days before the end of this period, the Joint Council of the EPA shall re-examine the implementation of these provisions in light of the development needs of the States of the West African region in order to determine whether their period of application should be extended.
5. The provisions of this Article shall not be subject to the dispute settlement provisions of this Agreement.

## *Article 22*

### **Bilateral safeguard measures**

1. Subject to the provisions of this Article, either of the Parties may take safeguard measures for a limited period that derogate from the provisions of Articles 9 and 10.
2. The safeguard measures referred to in paragraph 1 may be taken where a product originating in one Party is imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause:
  - a) serious injury to the domestic industry of like or directly competitive products in the territory of the importing Party;
  - b) disruptions in a sector of the economy, particularly where these disruptions produce major social problems or difficulties that could bring about serious deterioration in the economic situation of the importing Party; or
  - c) disruption in the markets of like or directly competitive agricultural products<sup>1</sup> or in the mechanisms regulating those markets.
3. The safeguard measures referred to in this Article shall not exceed what is strictly necessary to prevent or remedy serious injury or disruptions as defined in paragraphs 2, 4 and 5. These safeguard measures of the importing Party may consist only of one or more of the following:
  - a) the suspension of any further reduction in the customs duty on imports applicable for the product concerned, as provided for by this Agreement;
  - b) an increase in the customs duty on the product concerned up to a level that does not exceed the customs duty applied to other WTO Members; and
  - c) the introduction of tariff quotas on the product concerned.
4. Notwithstanding paragraphs 1 to 3 of this Article, when a product originating in one or more States of the West Africa Party is imported in such increased quantities and under such conditions as to cause or threaten to cause one of the situations described above in paragraphs 2(a), (b) and (c) in one or more outermost regions of the

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<sup>1</sup> For the purposes of this Article, agricultural products shall be those covered by Annex I to the WTO Agreement on Agriculture.

European Union Party, the European Union Party may take surveillance or safeguard measures, limited to the region(s) concerned in accordance with the procedures defined in paragraphs 6 to 11 of this Article.

5. Notwithstanding paragraphs 1 to 3 of this Article, when a product originating in one or more States of the European Union Party is imported in such increased quantities and under such conditions as to cause or threaten to cause one of the situations described above in paragraphs 2(a), (b) and (c) in one or more States of the West African region Party, the State or States in question may take surveillance or safeguard measures, limited to the territory of the State or States concerned in accordance with the procedures defined in paragraphs 6 to 11 of this Article.
6. The safeguard measures referred to in this Article shall be maintained only for the period necessary to prevent or resolve serious damage or disruptions such as those described in paragraphs 2, 4 and 5 above.
7. The safeguard measures referred to in this Article shall be applied for a period not exceeding four (4) years. Where the circumstances warranting the imposition of safeguard measures continue to exist, such measures may be extended for a further period of four (4) years.
8. The safeguard measures referred to in this Article that exceed one (1) year shall have a clear timetable for being phased out by the end of the set period, at the latest.
9. Except in exceptional circumstances subject to the approval of the Joint Implementation Committee of the EPA, no safeguard measures referred to in this Article shall be applied to a product that has previously been subject to such a measure for a period of at least one (1) year from the date of expiry of this measure.
10. For the implementation of the above paragraphs the following provisions shall apply:
  - a) when a Party considers that one of the circumstances referred to in paragraphs 2, 4 and 5 exists, it shall immediately refer the matter to the Joint Implementation Committee of the EPA.
  - b) the Joint Implementation Committee of the EPA can make any recommendation necessary to remedy the circumstances that have arisen. Where the Joint Implementation Committee of the EPA has not made recommendations to remedy the circumstances, or where a satisfactory solution has not been found in the thirty (30) days following notification to this Committee, the importing Party may adopt appropriate measures to remedy the circumstances, in accordance with this Article.
  - c) before taking one of the measures provided for in this Article or, in the cases referred to in paragraph 11 of this Article, as soon as possible, the Party concerned shall communicate to the Joint Implementation Committee of the EPA all information that can be used for a full examination of the situation with a view to finding an acceptable solution for both Parties.
  - d) when selecting safeguard measures, priority must be given to those that help to efficiently and rapidly solve the problem, while causing the least possible disruption to the smooth functioning of this Agreement.
  - e) All safeguard measures taken in accordance with this Article shall be reported immediately to the Joint Implementation Committee of the EPA and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their abolition as soon as circumstances permit.

11. Where exceptional circumstances require immediate action, the importing Party concerned, whether the European Union Party or the West Africa Party, as the case may be, may take the measures provided for in paragraphs 3, 4 and/ 5 on a provisional basis, without meeting the requirements of paragraph 10. Such action may be taken for a maximum period of one hundred and eighty(180) days where the measures are taken by the European Union Party and two hundred and forty (240) days when the measures are taken by the West Africa Party, or when the measures of the European Union Party are limited to one or more of its outermost regions. The duration of such provisional measures shall be counted as a part of the initial period or of any extension defined in paragraphs 7 and 8 of this Article. When taking these provisional measures, the interests of all stakeholders must be taken into account. The importing Party concerned shall inform the other Party and immediately refer the matter to the Joint Implementation Committee of the EPA for examination.
12. If an importing Party subjects imports of a product to an administrative procedure having as its purpose the rapid provision of information on the trend of trade flows liable to give rise to the problems referred to in this Article, it shall inform the Joint Implementation Committee of the EPA of this without delay.
13. The WTO Agreements shall not be invoked to prevent a Party from adopting safeguard measures under the provisions of this Article.

### *Article 23*

#### **Fledgling industries clause**

1. The West Africa Party may temporarily suspend the reduction in the rate of customs duty or raise the rate of customs duty to a level not exceeding that of the duty applied to the other Members of the WTO if a product originating in the European Union, following a reduction in the rate of customs duty, is imported into its territory in quantities increased to such an amount and under such conditions that it poses a threat to the establishment of a fledgling industry or causes or threatens to cause disruption in a fledgling industry producing similar or directly competing products.
2.
  - a) If the West Africa Party considers that the circumstances defined in paragraph 1 exist, it shall immediately refer them to the Joint Implementation Committee of the EPA for examination.
  - b) The Joint Implementation Committee of the EPA can make any recommendation necessary to remedy the circumstances that have arisen. Where the Joint Implementation Committee of the EPA has not made recommendations to remedy the circumstances, or where a satisfactory solution has not been found in the thirty (30) days following notification to this Committee, the West Africa Party may adopt appropriate measures to remedy the circumstances, in accordance with this Article.
  - c) Before taking one of the measures provided for in this Article, the West Africa Party shall communicate to the Joint Implementation Committee of the EPA all information that can be used for a full examination of the situation with a view to finding an acceptable solution for both Parties.
  - d) When selecting the measures taken under this Article, priority must be given to those that disrupt the smooth operation of this Agreement as little as possible.

- e) Any measure taken under this Article shall be immediately reported to the Joint Implementation Committee of the EPA, within which it shall be the subject of periodic consultations.
  - f) Under critical circumstances, where a delay would cause a loss that it would be difficult to make good, the West Africa Party may take the measures provided for in paragraph 1 on a provisional basis without meeting the requirements of paragraphs a) to e). Such action may be taken for a maximum period of two hundred (200) days. The duration of such provisional measures shall be counted as a part of the period defined in paragraph 3 of this Article. The West Africa party concerned shall inform the European Union Party and immediately refer the matter to the Joint Implementation Committee of the EPA for examination.
3. These measures may be applied for a period of up to eight (8) years. The application of the measures may be extended by a decision of the Joint Council of the EPA.

#### *Article 24*

#### **Cooperation**

- 1. The Parties recognise the importance of cooperation with regard to trade defence instruments for ensuring fairness and transparency in the trade between them.
- 2. The Parties agree to cooperate, including by facilitating assistance measures, according to the provisions laid down in Part III, in the following areas in particular:
  - a) the development of regulations and institutions to ensure trade defence;
  - b) the development of capacity, in particular of the competent administrative authorities of the States of the West Africa Party, to improve understanding and use of the trade defence instruments provided for in this Agreement.

#### **CHAPTER 3**

#### **TECHNICAL BARRIERS TO TRADE, SANITARY AND PHYTOSANITARY MEASURES**

#### *Article 25*

#### **Objectives**

- 1. The objectives of this Chapter are to facilitate trade in goods between the Parties while increasing the capacity of the Parties to identify, prevent and eliminate unnecessary obstacles to trade as a result of technical regulations, standards and conformity assessment procedures applied by either Party while increasing the capacity of the Parties to protect plants, animals and public health.
- 2. When applying the provisions of this Chapter, each Party shall ensure that imported products originating in the territory of the other Party shall be treated in a way that is non-discriminatory in comparison with the treatment given to similar products of domestic origin and similar products originating in third countries.
- 3. Under the provisions of paragraphs 2 and 3 of Article 2 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), each Party shall also ensure that the sanitary and phytosanitary measures taken to preserve human health or safety or the lives or health of animals and to protect plants and the

environment shall not have the purpose or effect of creating unnecessary barriers to trade in goods between the two Parties. These measures shall therefore not restrict trade more than is strictly necessary.

#### *Article 26*

##### **Scope and definitions**

1. The provisions of this Chapter shall apply to technical regulations and standards, to the conformity assessment procedures set out in the WTO Agreement on Technical Barriers to Trade (TBT) and to the WTO sanitary and phytosanitary measures (hereinafter referred to as SPS measures) in so far as they affect trade between the Parties.
2. For the purposes of this Chapter and unless otherwise indicated, the definitions used in the TBT and SPS Agreements of the WTO, the relevant standards and instruments adopted by the Codex Alimentarius Commission, the International Plant Protection Convention (IPPC) and the World Organisation for Animal Health (OIE) shall apply, including any reference to the products in this Chapter.

#### *Article 27*

##### **Competent authorities**

1. The authorities of the two Parties responsible for the implementation of the measures set out in this Chapter are referred to in Appendix II to Annex D to this Agreement.
2. In accordance with Article 31, the Parties shall keep each other informed in good time of any significant changes in the competent authorities shown in Appendix II to Annex D. The Joint Implementation Committee of the EPA shall adopt any amendment necessary of Appendix II to Annex D to this Agreement.

#### *Article 28*

##### **Mutual obligations**

1. The Parties reaffirm their rights and obligations under the relevant WTO Agreements, in particular the SPS and TBT Agreements. The Parties also reaffirm their rights and obligations arising from the relevant standards and instruments adopted by the International Plant Protection Convention (IPPC), the Codex Alimentarius Commission and the World Organisation for Animal Health (OIE). The States that are not members of the WTO also confirm their commitment to applying the obligations provided for in the SPS and TBT Agreements in all areas concerning trade relations between the Parties.
2. The Parties reaffirm their commitment to improving public health in their respective territories, in particular by strengthening their capacities to identify non-compliant products.
3. When trading with one another, the Parties shall refrain from exporting or reexporting products that do not observe the requirements in force in the legislation of the exporting Party. However, the export or reexport of products subject to SPS measures shall be permitted if provision is expressly made for this by the authorities of the importing Party. The export of other products shall be permitted unless this is prohibited by the legislation of the importing Party.

4. These commitments, rights and obligations underpin the activity of the Parties in relation to this Chapter.

#### *Article 29*

#### **Equivalence**

1. The Parties shall accept the sanitary and phytosanitary measures of the other Party as equivalent, even if such measures differ from their own or those that are used by third countries marketing the same product, if the exporting Party objectively proves to the importing Party that the appropriate level of sanitary or phytosanitary protection applied in the territory of the importing Party is achieved through the domestic measures in question. For this purpose, reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures.
2. The Parties shall consult one another, on request and by mutual agreement, in order to reach, where applicable, bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

#### *Article 30*

#### **Determination of sanitary and phytosanitary areas**

In relation to importing conditions, the Parties may, on a case-by-case basis, propose and identify areas with an established sanitary and phytosanitary status, with reference to Article 6 of the SPS Agreement. The Parties shall, in particular, ensure that their sanitary or phytosanitary measures are adapted to the sanitary and phytosanitary characteristics of the areas - whether all of a country, part of a country, or all or parts of several countries - from which the product originated and for which the product is destined.

#### *Article 31*

#### **Transparency of trade conditions and exchange of information**

1. To ensure conformity with their regulations, the Parties shall mutually inform one another of any change in their legal and administrative requirements concerning the products, in accordance with the notification procedures of the SPS and TBT Agreements.
2. If necessary, the Parties agree to inform each other in writing of the measures taken to prohibit the importing of goods with the aim of addressing a given problem concerning health (public, animal or plant), risk prevention or the environment as soon as possible, in accordance with the recommendations set out in the SPS Agreement.
3. The Parties agree to exchange information with the aim of cooperating to ensure that their products comply with the technical regulations and standards subject to which they may access each other's markets.
4. If necessary, the Parties shall also directly exchange information on other areas that the Parties agree to be of potential importance for their trade relations, including food security issues, the sudden appearance of animal or plant diseases, scientific opinions and other noteworthy events relating to product safety.

5. If necessary, the Parties agree to exchange information on the epidemiological surveillance of animal diseases. As regards phytosanitary protection, the Parties shall inform each other of the appearance of parasites presenting a known and immediate danger for the other Party, at the other Party's request.
6. The Parties agree to cooperate with a view to rapidly alerting each other when new regional rules might have an impact on mutual trade, in line with the notification procedures of the SPS and TBT Agreements.

#### *Article 32*

#### **Regional integration**

1. In order to facilitate trade between them, the Parties undertake to harmonise the rules, measures and conditions relating to imports at regional level, as far as this is possible.
2. Where import conditions already exist at the time of this Agreement's entry into force, and pending the introduction of harmonised import conditions, the existing import conditions shall be implemented by the States of the West African region and the European Union on the basis that a product originating in one of the Parties, legally placed on the market of a State of the other Party, may also be legally placed on the market of any other State of the other Party without any further restriction or administrative requirement.
3. Regarding the measures arising from this Chapter, the West African States shall ensure that the treatment they give to products originating in West Africa is no less favourable than the treatment they give to similar products originating in the European Union entering the West African region.

#### *Article 33*

#### **Cooperation**

1. The Parties recognise the importance of cooperating in the areas of technical regulations, sanitary and phytosanitary measures, conformity assessment and traceability in order to achieve the objectives of this Chapter.
2. The Parties agree to cooperate in order to raise the quality and competitiveness of priority products for the States of the West African region shown in Appendix I to Annex D to this Agreement and access to the market of the European Union, including through financial assistance measures, in accordance with the provisions contained in Part III, in the following areas in particular:
  - a) The establishment of an appropriate framework for the exchange of information and sharing of expertise between the Parties;
  - b) Cooperation with international standardisation, metrology and accreditation bodies, including facilitating participation by representatives of the West Africa Party in the meetings of such bodies;
  - c) The adoption of technical standards and regulations, conformity assessment procedures and sanitary and phytosanitary measures that are harmonised at regional level on the basis of the relevant international standards;
  - d) The strengthening of the capacities of public and private operators, including information and training, with a view to complying with the phytosanitary

- standards, regulations and measures of the European Union, and to participating in international standardisation bodies;
- e) The development of national capacities to comply with standards and assess product compliance and traceability and to gain access to the market of the European Union.

#### **CHAPTER 4**

### **OTHER NON-TARIFF BARRIERS**

#### *Article 34*

#### **Prohibition of quantitative restrictions**

On the entry into force of this Agreement, all prohibitions or restrictions on imports or exports affecting trade between the two Parties shall be eliminated, with the exception of the customs duties and taxes and the fees and other charges referred to in Articles 7 and 8 of this Agreement on customs duties, irrespective of whether they are implemented through quotas, import or export licensing or other measures. No new measures shall be introduced. The provisions of this Article are without prejudice to the provisions concerning trade defence instruments referred to in Chapter 2 and the provisions relating to the balance of payments referred to in Article 89 of this Agreement.

#### *Article 35*

#### **National treatment of internal taxation and regulation**

1. Imported products originating in one Party shall not be subject, either directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to similar products of the other Party. The Parties shall refrain from applying any other form of taxation or other internal charges with the aim of providing protection for their national output.
2. Imported products originating in one Party shall benefit from treatment that is no less favourable than the treatment given to similar products of the other Party in respect of all laws, regulations and requirements applicable to their sale, offering for sale, purchase, transportation, distribution or use on the national market. The provisions of this paragraph shall not prevent the application of differential internal transportation charges that are based exclusively on the economic operation of the means of transport and not on the origin of the product.
3. Neither Party shall establish or maintain any internal regulation relating to the mixture, processing or use of products in specified amounts or proportions that directly or indirectly requires any specified amount or proportion of any product that is the subject of the regulation to be supplied from domestic sources. Furthermore, each Party shall refrain from applying any other form of internal quantitative regulation with the aim of providing protection for its output.
4. The provisions of this Article shall not prevent the payment of subsidies intended exclusively for national producers, including payments to national producers derived from the proceeds of internal taxes or charges applied in compliance with the provisions of this Article and subsidies effected through governmental purchases of national products.

5. The provisions of this Article shall not apply to the laws, regulations, procedures or practices relating to public procurement.
6. The provisions of this Article shall be without prejudice to the provisions of this Agreement concerning trade defence measures.

## **CHAPTER 5**

### **FACILITATION OF TRADE, CUSTOMS COOPERATION AND MUTUAL ADMINISTRATIVE ASSISTANCE**

#### *Article 36*

##### **Objectives**

1. The Parties recognise the importance of customs cooperation and of facilitating trade in the evolving context of world trade. The Parties agree to increase cooperation in this area with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrative authorities, fulfil the objectives of effective control and promotion of the facilitation of trade, and contribute to the development and regional integration of the EPA signatory countries.
2. The Parties recognise that legitimate public policy objectives, including those relating to security and fraud prevention, shall not be compromised in any way.
3. The Parties undertake to ensure the free movement of the goods covered by this Agreement in their respective territories.

#### *Article 37*

##### **Customs cooperation and mutual administrative assistance**

1. In order to ensure compliance with the provisions of this Chapter, and to respond effectively to the objectives set out in Article 36, the Parties shall:
  - a) exchange information concerning customs legislation and procedures;
  - b) develop joint initiatives relating to import, export and transit procedures and initiatives to offer an efficient service to the business community;
  - c) cooperate on the automation of customs procedures and other trade procedures and on the establishment of common data exchange standards;
  - d) adopt wherever possible common positions in relation to customs in international organisations such as the WTO, the World Customs Organisation (WCO), the United Nations (UN) and the United Nations Conference on Trade and Development (UNCTAD);
  - e) cooperate on the planning and implementation of technical assistance, in particular in the area of customs reforms and to facilitating trade in accordance with the provisions of the Agreement; and
  - f) encourage cooperation between all the administrative authorities, organisations and other institutions concerned, both within the country and between countries.
2. Notwithstanding paragraph 1, the administrative authorities of the Parties shall provide mutual administrative assistance for customs matters, in accordance with the

provisions of the Protocol on Mutual Administrative Assistance in Customs Matters in Annex E.

*Article 38*

**Customs legislation and procedures**

1. The Parties shall do everything in their power to ensure that their respective trade and customs laws, provisions and procedures are based on:
  - a) the international instruments and standards in force in customs and trade areas, including the essential elements of the International Convention on the Simplification and Harmonisation of Customs Procedures (revised Kyoto Convention), the World Customs Organisation (WCO) Framework of Standards to Secure and Facilitate Global Trade, the WCO Customs Data Model and the International Convention on the Harmonised Commodity Description and Coding System (HS);
  - b) the use of a single administrative document or electronic equivalent in order to make import and export customs declarations;
  - c) regulations to avoid unnecessary and discriminatory measures for economic operations, protect against fraud and provide additional facilities for operators displaying a high level of compliance with customs legislation;
  - d) the use of modern customs techniques, including risk assessment, simplified procedures for the entry and release of goods, post release controls and enterprise audit methods;
  - e) the progressive development of systems, including those based upon Information Technology, to facilitate the electronic exchange of data between economic operators, customs administrations and other related agencies;
  - f) a system of binding customs information, in particular regarding tariff classification and rules of origin in conformity with the rules provided for in the legislation of each Party, in so far as the customs services have all the information they consider necessary;
  - g) rules relating to penalties for infringements of customs regulations or procedural requirements that are proportionate and non-discriminatory and the application of which will not give rise to undue delay;
  - h) transparent, non-discriminatory and proportionate rules in respect of the licensing of customs agents. The Parties recognise the interest in the future elimination of any obligation to use the services of customs agents. The Parties shall broach this question within the Special Customs and Facilitation of Trade Committee;
  - i) observance of the provisions of the WTO Agreement on Preshipment Inspection. The Parties recognise the interest in the future elimination of all requirements for the performance of compulsory inspections prior to the dispatch of goods or on reaching their destination. The Parties shall broach this question within the Special Customs and Facilitation of Trade Committee.
2. In order to improve working methods and ensure respect for the principles of non-discrimination, transparency and efficiency, the Parties shall:

- a) take the measures necessary to reduce, simplify and standardise the data and documents required by customs and other related bodies;
- b) simplify customs requirements and formalities wherever possible, in respect of the rapid release and clearance of goods;
- c) ensure effective, prompt, non-discriminatory and accessible procedures for applicants to secure a right of appeal against customs administrative actions and other decisions affecting imports, exports or goods in transit.
- d) ensure the maintenance of ethical standards through the application of measures reflecting the principles of the relevant international conventions and instruments in this area, in particular the revised Arusha Declaration of 2003.

#### *Article 39*

#### **Facilitation of transit movements**

1. The Parties shall ensure the free transit of goods through their territory on the most suitable transit route. Any restrictions, controls or requirements in this regard must be justified by a legitimate public policy objective, and must be non-discriminatory, proportionate and applied in a uniform manner.
2. Without prejudice to legitimate customs checks, the Parties shall treat goods in transit from the territory of the other Party no less favourably than goods from the domestic market, exports, imports and their movement.
3. The Parties shall establish transit customs regimes to allow the movement of goods with no obligation to pay customs duties or other charges, subject to the provision of appropriate guarantees.
4. The Parties shall endeavour to promote and implement regional transit arrangements with the aim of reducing barriers to trade.
5. The Parties shall use international standards and instruments arising from the transit of goods.
6. The Parties shall ensure the cooperation and coordination of all the relevant authorities in their territories in order to facilitate transit traffic and promote cross-border cooperation.

#### *Article 40*

#### **Relations with the business community**

The Parties agree:

- a) to ensure that all the legislation, procedures, fees and charges can be published by appropriate means and where possible by electronic means;
- b) to encourage cooperation between the operators and the relevant administrative authorities through the use of non-arbitrary, publicly accessible procedures such as the Protocols of Agreement based on those promulgated by the WCO;
- c) to ensure that their respective customs and related regimes and the requirements and procedures associated with them continue to meet the needs of the business community, are in line with best practices and remain as unrestrictive as possible for trade;

- d) on the need for consultation with trade representatives in due time and on a regular basis regarding legislative proposals and procedures relating to customs and trade issues. To this end, appropriate and regular mechanisms for consultation between the administrative authorities and the business community shall be established by each Party;
- e) that a sufficient period of time must pass between the publication and the entry into force of any new or amended laws, procedures, rights or charges; The Parties shall publish administrative information concerning in particular agency requirements, entry procedures, working hours and operational procedures of the customs authorities in ports and at border posts, and also on information contact points;

#### *Article 41*

#### **Customs value**

The WTO Agreement on Implementation of Article VII of GATT 1994 shall govern the application of the customs value to trade between the Parties. The Parties shall cooperate with a view to taking a common approach to issues relating to customs value.

#### *Article 42*

#### **Regional integration in the West African region**

1. The Parties agree to push forward customs reforms, in particular the harmonisation of procedures and regulation in order to facilitate trade in the West African region.
2. For the above purposes, the Parties shall organise close cooperation of all the bodies concerned by applying the relevant international customs rules.

#### *Article 43*

#### **Cooperation**

1. The Parties recognise the importance of cooperation on customs and trade facilitation for the implementation of this Agreement.
2. In accordance with paragraph 6, Annex D to the Decision of the WTO General Council of 1 August 2004 and, subject to the provisions contained in Part III, the Parties agree to set up appropriate technical and financial programmes of assistance to make it possible to implement the provisions of this Chapter, in particular concerning:
  - a) the development of appropriate, simplified legislative and regulatory provisions;
  - b) information and awareness-raising aimed at operators, including training for the staff concerned;;
  - c) building up capacities, modernisation and connectivity between customs authorities and related services.

#### *Article 44*

#### **Transitional measures**

1. The Parties recognize the need for transitional measures to ensure the smooth implementation of the provisions of this Chapter.
2. Without prejudice to its commitments under the WTO, the West Africa Party shall be granted a transitional period of five (5) years starting from the entry into force of this Agreement in which to comply with the obligations provided for in Article 38(1)(b) and (d). This period may be reviewed depending on the results of the reforms to be effected by the West African region in cooperation with the European Union.

#### *Article 45*

#### **Special Committee on Customs and Trade Facilitation**

1. The Parties shall establish a Special Committee on Customs and Trade Facilitation, which shall be made up of representatives of the Parties.
2. The functions of the Special Committee on Customs and Trade Facilitation shall be as follows:
  - a) to ensure that the implementation and management of this Chapter, the Protocol on rules of origin and the Protocol on mutual administrative assistance are monitored;
  - b) to act as a consultation and discussion forum for all matters relating to customs, in particular customs regimes and customs clearance procedures, rules of origin, customs value, tariff classification, customs cooperation and mutual administrative assistance;
  - c) to develop cooperation for the drawing- up, implementation and monitoring of customs regimes and customs clearance procedures, rules of origin and mutual administrative assistance.
3. The Special Committee on Customs and Trade Facilitation shall meet once a year, on a date and with an agenda to be agreed in advance by the Parties. The Parties may decide to call ad hoc meetings of the Committee if necessary.
4. The Special Committee on Customs and Trade Facilitation shall be chaired alternatively by each Party.
5. The Special Committee on Customs and Trade Facilitation shall report to the Joint Implementation Committee of the EPA.

### **CHAPTER 6**

#### **AGRICULTURE, FISHERIES AND FOOD SECURITY**

#### *Article 46*

#### **Objectives**

1. The Parties recognise that in the West African region, the agriculture, including livestock farming, and fisheries sectors account for a significant proportion of GDP, play a key role in the fight against food insecurity and provide an income and employment for most of the working population.
2. This Agreement, through its economic and trade effects, and actions in connection with the West Africa EPA Development Programme, should help to increase productivity, competitiveness and diversity of output in the agriculture and fisheries

sectors. It should also facilitate the development of the processing sector and increase trade in agricultural, food and fisheries products between the Parties in a way that is consistent with the sustainable development of natural resources.

3. The Parties recognise the as yet unexploited potential of the West African region and the need to support the implementation of its national and regional policies in connection with the cooperation policies implemented by both Parties in line with the provisions contained in Part III of this Agreement.
4. The Parties recognise that fisheries, biological and maritime resources are of great interest to the European Union and the West African region and that the real risk of stock exhaustion, in particular as a result of industrial fishing, make it necessary for them to promote the sustainable management of fish and aquatic resources.
5. The Parties also recognise that the fisheries and marine ecosystems of the West African States are complex, biologically diverse and fragile and that the way in which they are exploited must take account of this through conservation and the sustainable and efficient management of fisheries and the associated ecosystems on the basis of scientific advice and the precautionary principle defined by the Code of Conduct of the Food and Agriculture Organisation (FAO) of the United Nations for responsible fisheries practices.
6. The Parties also recognise the economic and social importance of activities relating to fisheries and the utilisation of the living marine resources of the West African States and the need to maximise their contribution to food security, employment, reducing poverty, increasing income and the social stability of fishing communities.
7. The Parties recognise that securing the food security of the population and raising the means of subsistence in a rural environment are essential for reducing poverty and must be viewed in the wider context of sustainable development and the Millennium Development Goals. They therefore agree to work together to avoid any breakdown in the agricultural and food products markets in West Africa.
8. The European Union undertakes to help the countries of West Africa to develop an effective Monitoring/Control/Surveillance (MCS) system for fisheries as part of its policies, including fisheries policy.
9. The Parties also agree on the importance for the region of establishing policies that will make it possible to increase the benefits from fisheries to the people of the West African region.
10. For the purpose of achieving the objectives referred to in this Article, the Parties take full account of the diversity of characteristics and economic, social and environmental needs and the development strategies of the West Africa Party.

#### *Article 47*

#### **Food security**

When the implementation of this Agreement results or seems likely to result in difficulties for the West Africa Party or a State of the West African region in obtaining or gaining access to the products necessary for ensuring food security, the West Africa Party or the State in the West African region may take appropriate measures in line with the procedures described in Article 22.

## Article 48

### Cooperation in the areas of agriculture and food security

1. Cooperation with regard to agriculture and food security is covered by Articles 53 and 69 of the Cotonou Agreement. The Parties agree that the provisions of the Cotonou Agreement relating to this Chapter and Agreement shall be implemented in a complementary manner through mutual reinforcement.
2. To enable the countries of the West African region to ensure the food security of their people and promote viable and sustainable agriculture, both Parties shall examine all the cooperation measures in accordance with the provisions of Part III, with a view, in particular, to:
  - a) promoting the performance of irrigation and water management programmes;
  - b) promoting technological progress, innovation and diversification in the agricultural sector;
  - c) popularising the use of agricultural inputs that are environmentally friendly;
  - d) developing research with a view to the production of improved seeds and their use by farming communities;
  - e) developing an integrated agricultural and livestock farming system;
  - f) improving the storage and preservation of agricultural products;
  - g) reinforcing the role of the State as a supporter and adviser of private operators;
  - h) strengthening the agricultural sectors;
  - i) managing tracks and roads serving rural communities to enhance the collection and movement of agricultural products;
  - (j) contributing to improving warning systems to prevent crises;
  - (k) contributing to the development of regional exchanges for greater centralisation of information regarding the regional availability of food products;
  - (l) promoting contract farming with partners from the European Union to supply organic products, for example;
  - (m) identifying new opportunities for the development and export of products for which there is a strong international demand;
  - (n) promoting land law reforms to increase the legal certainty of farmers and in so doing promote the development of efficient agriculture and raise credit to encourage private investment in the agricultural sector.
3. The Parties agree that special situations of food scarcity might necessitate the performance of specific ad hoc food aid programmes to help countries facing these situations. However, such programmes should not in any way pose a threat to the food security policies in force in the States receiving such aid.
4. To limit any harmful effects of the import of food aid into the West African region, both Parties undertake to favour triangular food aid arrangements that promote trading in local agricultural products.
5. The Parties emphasise the importance of the agricultural sector in the economy and for food security in West Africa and, in particular, the sensitive nature of the sectors

that depend on international markets. Each Party shall ensure transparency in its domestic support policies and measures. The European Union shall therefore send, by any appropriate means, regular reports to West Africa on such measures, including, in particular, the legal basis, the forms of measures and the associated sums. The Parties may exchange information concerning any agricultural policy measure at the request of either of the Parties.

6. The European Union Party undertakes to refrain from the use of export subsidies for agricultural products exported to West Africa.
7. With a view to implementing cooperation with regard to agriculture and food security, the Parties shall set up an arrangement for continuous dialogue concerning the areas referred to in this Article. The terms of this dialogue shall be specified by mutual agreement between the Parties.

#### *Article 49*

#### **Fisheries cooperation**

1. With a view to developing and promoting cooperation with regard to fisheries, in accordance with the provisions contained in Part III, the Parties undertake to:
  - a) collaborate with a view to sustainable development of the fish resources of the West African region and apply the precautionary principle when determining the sustainable level of catches and defining the conditions for access to fish resources that must be observed to avoid overexploitation of stocks and any negative impact on the environment and the ecosystem;
  - b) promote the improvement of the supply capacity and competitiveness of fishery products. The European Union therefore undertakes to help the Member States of the region to meet the needs arising from the application of sanitary and phytosanitary (SPS) measures and to develop the regional market for fishery products;
  - c) promote investment and access to funding to increase the productivity of fishery enterprises in the region;
  - d) collaborate with a view to the sustainable management of small-scale fisheries and the preparation and implementation of a policy for the development of aquaculture in West Africa;
  - e) draw up and propose minimum measures to be observed by vessels, in order to improve the monitoring, control and surveillance of their activities;
  - f) coordinate efforts to enhance the means for preventing, discouraging and eliminating Illegal, Unreported and Unregulated Fishing (IUUF) and for taking appropriate measures for this purpose. In this regard, the Parties undertake to take any necessary measures to end illegal fishing and prevent its continuation, without prejudice to any other action they consider appropriate;
  - g) establish a vessel monitoring system (VMS) for all of West Africa, with all the West African States using a compatible VMS;
  - h) in addition to an obligatory compatible VMS, all of West Africa, together with the European Union Party, undertakes to develop other arrangements to ensure effective control and surveillance policies;

- i) lighten traceability and certification procedures and conditions for fishery products exported from the region to the market of the European Union;
- j) improve and reinforce fishery control, surveillance and monitoring mechanisms and arrangements in order to combat illegal, unregulated and unreported fishing, including the adoption of minimum measures to be observed by vessels to permit the monitoring, control and surveillance of their activities;
- k) authorise the taking of appropriate protection measures based on scientific recommendations and after having consulted the various interested parties, including the European Union, if there is a danger of the sustainable management of fish and aquatic resources of the region being compromised;
- l) strengthen scientific research into the state of fish resources in the West African region;
- m) improve and reinforce the information system and the system for processing fishery statistics, concerning migratory species in particular;
- n) strengthen cooperation in all areas of common interest with regard to fisheries.

#### *Article 50*

#### **Regional integration**

1. The Parties recognise that greater integration of the agricultural and food markets and sectors of the West African States through the progressive elimination of the remaining barriers and the adoption of an appropriate regulatory framework will help to deepen the process of regional integration and achieve the objectives referred to in this Chapter.
2. According to the provisions contained in Part III of the West Africa EPA Development Programme, they shall work on the preparation and implementation of regional policies for the agricultural and fisheries sectors and increase the efficiency of the regional markets in those sectors.

#### *Article 51*

#### **Exchange of information and consultation on matters relating to agriculture and fisheries**

1. The Parties agree to exchange experience, information and best practices and to consult one another concerning any area covered by the objectives of this Chapter and relevant to trade between the Parties.
2. The Parties agree that such a dialogue will be especially useful in the following areas in particular:
  - a) exchange of information on agricultural production, consumption and trade and on the respective market developments for agricultural and fish products;
  - b) exchange of information on agriculture, rural development and fisheries policies, laws and regulations;
  - c) discussion of policy and institutional changes needed to transform the agricultural and fisheries sectors as well as the formulation and implementation

- of regional policies on agriculture, food, rural development and fisheries in pursuit of regional integration;
- d) exchange of views on new technologies and quality control measures;
  - e) exchange of views for a better understanding and monitoring of private standards in force in the European Union.

### **PART III**

## **COOPERATION FOR IMPLEMENTATION OF DEVELOPMENT AND ACHIEVEMENT OF THE OBJECTIVES OF THE EPA**

### *Article 52*

#### **Objectives**

1. The Parties undertake, under this Agreement, to strengthen their cooperation and make a joint commitment to implement the EPA and achieve its objectives. The European Union Party undertakes to support the West Africa Party to implement an EPA that is conducive to development.
2. The joint commitment by the Parties is part of the vision for the development of the West African region and shall contribute to the achievement of the priorities laid down in Part I of this Agreement. The Parties therefore agree that improving access to the market of the European Union is not a sufficient condition for bringing about the profitable insertion of the West African region into world trade. They therefore undertake to take effective measures that should contribute to the establishment in the West African region of a solid, competitive and diversified economic base, the deepening of its economic integration and its adaptation to the new context created by this Agreement in order to benefit from the economic partnership.

### *Article 53*

#### **Principles**

1. The Parties agree to implement cooperation intended to back up, through technical and financial support, the efforts of West Africa to meet the commitments made under this Agreement. The cooperation is also intended to help the West African region to lift the constraints that are undermining efforts to diversify and increase its output, in order to increase intra-regional trade and benefit from the opening up of the European market. They undertake to implement the EPA Development Programme (PAPED) in order to ensure the achievement of the objectives of the Agreement. To this end, the provisions of the Cotonou Agreement concerning economic and regional cooperation and integration shall be implemented with a view to maximising the benefits of this Agreement.
2. The Parties undertake to ensure consistency between development cooperation and the international commitments of the Parties with regard to sustainable development and regional development strategies.
3. The new trade system established by this Agreement and the commitments made with regard to development cooperation shall complement one another and both together contribute to the development aspect of the Agreement. Under Article 2(4) of this Agreement, the new trade system shall be based on reciprocity, take account

of the difference in the level of development and introduce special and differential treatment and progressive asymmetric liberalisation for West Africa.

4. The Parties also agree that the provisions of this Part cannot be interpreted as preventing the West Africa Party from pursuing its growth and development objectives, implementing its policies and achieving its regional integration.

#### *Article 54*

#### **Financing arrangements**

1. The European Union undertakes to support the actions and projects linked to the development aspect of the Agreement. European Union funding<sup>2</sup> regarding development cooperation between West Africa and the European Union to support the implementation of this Agreement shall be provided through:
  - a) appropriate rules and procedures provided for by the Cotonou Agreement, in particular the programming procedures of the European Development Fund;
  - b) relevant instruments financed by the General Budget of the European Union;
  - c) other financial arrangements to be created in the event of the expiry of the Cotonou Agreement.
2. The Member States of the European Union collectively undertake to support, by means of their respective development policies and instruments, including in connection with aid for trade, development activities for regional economic cooperation and for the implementation of this Agreement, at both national and regional levels, in accordance with the principles of effectiveness, coordination and complementarity of aid.
3. The European Union and its Member States undertake to finance the development aspect of the Agreement for a period at least corresponding to the time it takes West Africa to liberalise trade under this Agreement, in accordance with the financial instruments, the legal provisions of the Parties and the principles laid down in Article 2 of this Agreement.
4. The European Union and its Member States undertake to assist West Africa in raising additional funding for the development aspect of the Agreement from other donors.

#### *Article 55*

#### **EPA Development Programme**

To support the autonomous efforts of the region to ensure its development, the Parties shall make the financial and technical arrangements necessary for implementation of the EPA Development Programme (PAPED) and achievement of its objectives, in accordance with the provisions of Article 54 above, in order to give concrete form to the development aspect of this Agreement.

#### *Article 56*

#### **The PAPED objectives**

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<sup>2</sup> Not including financing provided by the individual Member States.

1. The EPA Development Programme is part of a long-term vision for the achievement of the development objectives of the Agreement. Its overall objective is to build a regional economy that is competitive, harmoniously integrated with the world economy and stimulates growth and sustainable development. Consistency shall be established between the PAPED and the aid for trade programme for the West African region and regional strategies for the regional economic and sectoral development of this region.
2. The specific objective to be attained by the EPA Development Programme is to enable the West African region to fully benefit from the opportunities offered by the EPA and to meet the adjustment costs and face the challenges associated with implementation of the Agreement.
3. To this end, the programme must contribute to:
  - a) the achievement of rapid, sustained economic growth that creates jobs and contributes to sustainable development and reducing poverty in the West African region;
  - b) increasing the diversity and competitiveness of the economies of the West African region;
  - c) increasing the population's output and income;
  - d) deepening the process of regional integration and increasing intra-regional trade;
  - e) increasing the market shares of the West African region on the European market through such measures as improving access to the said market;
  - f) promoting investment in West Africa, partnership between the private sectors of the European Union and West Africa and improving the business environment in the West African region.

#### *Article 57*

#### **The goals of PAPED**

The areas for action covered by the EPA Development Programme are based on five goals:

- a) diversifying and increasing production capacities;
- b) developing intra-regional trade and facilitating access to international markets;
- c) improving and reinforcing national and regional infrastructures linked to trade;
- d) making essential adjustments and taking account of other needs linked to trade;
- e) implementation and monitoring/evaluation of the EPA by the West African region.

#### *Article 58*

#### **PAPED implementation arrangements**

1. The EPA Development Programme is subject to a Protocol that is an integral part of the Agreement and is contained in Annex F. The arrangements for the implementation of this programme shall be defined in the Protocol.
2. The PAPED shall be implemented through a matrix of activities combined with a financial assessment, a schedule and indicators for monitoring implementation. The

matrix of activities shall be covered by a financial commitment by the European Union and its Member States to implement it, in accordance with the provisions of Article 54 above.

3. The PAPED shall be subject to assessment at intervals agreed between the Parties. The PAPED shall be revised regularly on the basis of the results of its implementation and the impact of the Agreement. To this end, an arrangement based on jointly defined indicators shall make it possible to continuously monitor implementation of the programme and assess its impact.
4. As part of the joint assessment referred to in paragraph 3, the Parties shall look for synergies between the rate of implementation of the commitments made by the West African region and the progress made in carrying out the activities and programmes of the PAPED, in particular the raising of funding for it, and in increasing the region's competitiveness and production capacities. In accordance with the provisions of this Agreement, in particular Article 54, the Parties shall take measures to reinforce these synergies in the Joint Council of the EPA. . .

#### *Article 59*

#### **Support for implementation of the rules**

The Parties agree that the implementation of trade rules, including the areas of cooperation detailed in the various chapters of this Agreement, is fundamental to achieving the objectives of this Agreement. Cooperation in this field shall be organised in accordance with the arrangements specified in Article 54.

#### *Article 60*

#### **Taxation adjustment**

1. The Parties recognise the challenges that the elimination or substantial reduction of customs duties provided for in this Agreement can pose for the West African region and they agree to establish dialogue and cooperation in this field.
2. In light of the tariff dismantling schedule adopted by the Parties as part of this Agreement, the Parties agree to establish in-depth dialogue on fiscal adjustment reforms and measures in order to reduce the budget deficit and ultimately ensure a balanced budget for the countries of the West African region.
3. West Africa undertakes to establish tax reforms as part of the change in taxation resulting from liberalisation. The European Union undertakes to help West Africa to implement these reforms. In view of these reforms, the European Union undertakes to provide funding to cover the fiscal impact agreed by the Parties for the period of tariff dismantling.

#### *Article 61*

#### **Instruments**

1. As part of the implementation of the provisions of Part III of this Agreement, the Parties agree to establish the following instruments:
  - a) the Competitiveness Observatory;
  - b) the Regional EPA Fund.

2. The Competitiveness Observatory shall be one of the instruments for monitoring and assessing implementation of the Agreement. It shall have clear monitoring and assessment indicators for evaluating the impact of the EPA. The indicators shall be established as soon as the Agreement has been signed.
3. The Parties recognise the usefulness of regional financing mechanisms. The Regional EPA Fund shall be the main financing instrument of the EPA Development Programme. It shall be a preferred instrument for channelling support from the European Union and its Member States.
4. The Regional EPA Fund shall be established by and for the region in order to channel funding at regional and, if necessary, national level and to effectively implement supporting measures for this Agreement.
5. The European Union and its Member States undertake to channel their support either through financing mechanisms specific to the region or through those selected by the countries that are signatories to this Agreement. The mechanisms shall be implemented in accordance with the principles of aid effectiveness outlined in the Paris Declaration in order to ensure simple, efficient and rapid implementation. The Parties may reach agreement on any other financing mechanism or arrangement.
6. The operating arrangements for the two instruments referred to in paragraph 1 of this Article shall be determined by the Joint Council of the EPA.

**PART IV**  
**DISPUTE AVOIDANCE AND SETTLEMENT**

**CHAPTER 1**

**OBJECTIVE, SCOPE AND PARTIES**

*Article 62*

**Objective**

The objective of this Part of the Agreement is to establish methods for avoiding and settling any disputes that may arise between the Parties in order to arrive at a mutually satisfactory solution.

*Article 63*

**Scope**

1. This Part applies to any dispute regarding the interpretation or application of this Agreement, subject to the provisions of Articles 20 and 21.
2. Notwithstanding paragraph 1, the procedure set out in Article 98 of the Cotonou Agreement shall apply in the event of disputes concerning the financing of development cooperation.

## *Article 64*

### **The Parties to the dispute**

1. The European Union and its Member States are considered to be a single Party for the purposes of preventing and settling disputes arising from the application of this Agreement.
2. ECOWAS, the UEMOA and all the West African States, including Mauritania, are also considered to be a single Party for the purpose of preventing and settling disputes arising from the application of this Agreement.

## **CHAPTER 2**

### **DISPUTE AVOIDANCE: CONSULTATION AND MEDIATION**

## *Article 65*

### **Consultation**

1. The Parties shall endeavour to settle disputes covered by Article 63 by entering into consultations in good faith in order to reach a mutually satisfactory solution.
2. Any Party wishing to enter into consultations shall do so by presenting a request in writing to the other Party with a copy to the Joint Implementation Committee of the EPA, specifying the measure in question and the provisions of the Agreement with which, in its opinion, the measure fails to comply.
3. The consultations shall be initiated within forty (40) days of the date on which the request was submitted. They shall be considered closed within sixty (60) days of the date on which the request was submitted unless the two Parties agree to pursue them. The information exchanged during the consultations shall remain confidential.
4. In urgent situations, in particular those involving perishable or seasonal foodstuffs, the consultations shall be initiated within fifteen (15) days of the date on which the request was submitted and considered closed within thirty (30) days of the date on which the request was submitted.
5. At all stages in the avoidance and settlement of disputes, the European Union Party shall devote special attention to the situation and to the particular concerns and interests of the States and the West African region.
6. If the consultations are not initiated within the time limits specified in paragraph 3 or paragraph 4 or if the consultations are closed without reaching agreement on a mutually satisfactory solution, the applicant shall have the option of invoking the arbitration procedure provided for in this Agreement.

## *Article 66*

### **Mediation**

1. If the consultations do not lead to a mutually satisfactory solution, the Parties may, by amicable agreement, resort to a mediator. Unless the Parties decide otherwise, the terms of reference of the mediation shall be as set out in the consultation request.
2. Unless the Parties to the dispute agree on a choice of mediator within ten (10) days of the mediation request being submitted, the Chairperson of the Joint Implementation Committee of the EPA or his/her delegate, on being requested to do

so by either of the Parties, shall choose by lot a mediator from among the persons on the list referred to in Article 83 and who are not citizens of the Parties. The selection shall be made within twenty (20) days of the mediation request being submitted, in the presence of a representative from each of the Parties.

3. The mediator shall convene a meeting of the Parties at the latest thirty (30) days after being appointed. The mediator shall receive the submissions of each Party no later than fifteen (15) days before the meeting and give an opinion no later than forty-five (45) days after having been selected.
4. The mediator's opinion may include one or more recommendations on how to resolve the dispute consistent with the provisions referred to in Article 63. The mediator's opinion shall not be binding.
5. The Parties may agree to modify the time limits referred to in paragraph 3. The mediator may also decide to modify these time limits at the request of either Party or on his/her own initiative, depending on the particular difficulties affecting the Party concerned or the complexities of the case.
6. The mediation procedures and in particular the information exchanged and the positions adopted by the Parties during these procedures shall remain confidential.

### **CHAPTER 3**

## **DISPUTE SETTLEMENT PROCEDURES**

### Section I – Arbitration procedure

#### *Article 67*

#### **Initiation of the arbitration procedure**

1. Where the Parties do not succeed in settling their dispute after having recourse to the consultations provided for in Article 65 or after engaging in the mediation referred to in Article 66, the applicant may request the establishment of an arbitration panel.
2. A request for an arbitration panel to be formed shall be sent in writing to the respondent and the Joint Implementation Committee of the EPA. In its request, the applicant shall describe the specific situation and/or the measure in question and set out the reasons why the situation and/or measure violates the provisions of this Agreement.

#### *Article 68*

#### **Setting up an arbitration panel**

1. The arbitration panel shall be composed of three arbitrators.
2. Within ten (10) days of the request for the establishment of an arbitration panel being submitted to the Joint Implementation Committee of the EPA, the Parties shall consult one another in order to reach an agreement on the composition of the arbitration panel.
3. In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame laid down in paragraph 2, either Party may request the Chairperson of the Joint Implementation Committee of the EPA, or his/her delegate, to select all three members of the panel by lot from the list established under Article

83: one from among the persons proposed by the applicant, one from among the persons proposed by the respondent and the third from among those selected by both Parties to chair the meetings. If the Parties have agreed on the selection of one or more of the members of the arbitration panel, the remaining member(s) shall be selected according to the same procedure.

4. The Chairperson of the Joint Implementation Committee of the EPA or his/her delegate shall select the arbitrators by lot within five (5) days of receiving the request referred to in paragraph 3 in the presence of a representative of each Party. The time and date of the selection shall be communicated to the Parties. No failure by either of the Parties to send their representative following an invitation shall in any way affect the validity of the selection.
5. The date on which the arbitration panel is established shall be the date on which the three arbitrators are deemed to have been selected.
6. The arrangements for responsibility for the arbitration fees are defined in the procedural rules.

#### *Article 69*

#### **Interim report by the arbitration panel**

The arbitration panel shall submit to the Parties an interim report containing both the descriptive sections and its observations and conclusions, generally within one hundred and twenty (120) days at the latest from the date on which the panel was established. In the fifteen (15) days following the presentation of the interim report by the arbitration panel, each Party shall have the option of submitting remarks in writing to the panel concerning specific aspects of the interim report.

#### *Article 70*

#### **Arbitration panel ruling**

1. The arbitration panel shall transmit its ruling to the Parties and the Joint Implementation Committee of the EPA at the latest one hundred and fifty (150) days following the establishment of the arbitration panel. If it considers that this time limit cannot be respected, the Chairperson of the panel shall inform the Parties and the Joint Implementation Committee of the EPA in writing, giving reasons for the delay and stating the date on which the panel plans to conclude its work. The arbitration ruling should under no circumstances be delivered any later than one hundred and eighty (180) days from the date on which the arbitration panel was established.
2. In urgent situations, including those involving perishable and seasonal foodstuffs, the panel shall endeavour to deliver its ruling within seventy-five (75) days of being established. Under no circumstance shall it take longer than ninety (90) days from the date of its establishment. The panel may deliver a preliminary ruling on whether the case is urgent within ten (10) days of being formed.
3. Each Party may ask an arbitration panel to recommend ways in which the respondent could achieve compliance.

#### Section II – Achieving compliance

## *Article 71*

### **Compliance with the arbitration panel ruling**

Each Party shall take all the measures necessary to comply with the arbitration panel ruling. The Parties shall endeavour to agree on a time limit for compliance with the ruling.

## *Article 72*

### **Reasonable time limit for compliance**

1. At the latest thirty (30) days after the Parties have been informed of the panel ruling, the respondent shall inform the applicant and the Joint Implementation Committee of the EPA in writing of the time it will need to achieve compliance ("reasonable time limit").
2. In the event of a disagreement between the Parties regarding what constitutes a reasonable time limit within which to comply with the panel ruling, the applicant shall, within twenty (20) days of the notification provided for in paragraph 1, send a written request to the panel asking it to determine such a time limit. Such a request shall be reported simultaneously to the other Party and the Joint Implementation Committee of the EPA. The panel shall announce its decision to the Parties and to the Joint Implementation Committee of the EPA within thirty (30) days of the request being submitted.
3. The arbitration panel shall, in determining the reasonable time limit, take into consideration the length of time that it would normally take the respondent to adopt comparable legislative or administrative measures to those identified by the respondent as being necessary to ensure compliance. Either Party may submit its estimates concerning the time normally needed to adopt such measures. The panel may also take account of demonstrable capacity constraints that might affect the adoption of the necessary measures by the respondent.
4. Where the arbitration panel or some of its members are unable to attend further meetings, the procedures set out in Article 68 shall be applied. The time limit for delivering a ruling shall be forty-five (45) days from the date on which the request referred to in paragraph 2 was submitted.
5. The reasonable time limit may be extended by mutual agreement between the Parties.

## *Article 73*

### **Review of measures taken to comply with the arbitration panel ruling**

1. The respondent shall notify the other Party and the Joint Implementation Committee of the EPA before expiry of the reasonable time limit of any measures it has taken to comply with the arbitration ruling.
2. In the event of a disagreement between the Parties concerning the compatibility of the measures notified under paragraph 1 with the provisions of this Agreement, the applicant may make a written request for a ruling by the panel on the matter. The request shall indicate the specific measures in question and state why they are incompatible with the provisions of this Agreement. The panel shall communicate its ruling within ninety (90) days of the date on which the request was submitted. In urgent situations, including cases in which perishable and seasonal foodstuffs are in

question, the panel shall deliver its ruling within forty-five (45) days of the request being submitted.

3. Where the arbitration panel or some of its members are unable to attend further meetings, the procedures set out in Article 68 shall be applied. The time limit for delivering a ruling shall be one hundred and five (105) days from the date on which the request referred to in paragraph 2 was submitted.

#### *Article 74*

##### **Temporary remedies in the event of non-compliance**

1. If the respondent fails to report measures it has taken to comply with the arbitration panel ruling before expiry of the reasonable time limit, or if the arbitration panel rules that the measures notified under Article 73(1) are not compatible with its obligations under the provisions of Article 71, the respondent shall, if so requested by the applicant, submit to the applicant an offer for temporary compensation.
2. If the Parties do not agree on compensation within thirty (30) days of the reasonable time limit or of the ruling by the arbitration panel referred to in Article 73 that the compliance measures that have been taken are not compatible with the provisions referred to in Article 71, the applicant shall be authorised, after having informed the other Party, to take appropriate measures. In taking such measures, the applicant shall endeavour to select measures that as little as possible affect the achievement of the objectives of this Agreement. If applicable, the temporary measures shall take account of their impact on the economies of the West African States and should not affect the provision of development aid for the West African region.
3. The European Union Party shall show moderation in its requests for compensation or when adopting the appropriate measures in accordance with paragraphs 1 and 2 of this Article and shall take account of the status of the West African States as developing countries.
4. The appropriate measures or compensation shall be temporary and shall cease to be applied when the measure recognised as being incompatible has been withdrawn or amended in such a way as to make it comply with the provisions of Article 71 or when the Parties agree to terminate the dispute settlement procedure.

#### *Article 75*

##### **Examination of the compliance measures following the adoption of appropriate measures**

1. The respondent shall inform the other Party and the Joint Implementation Committee of the EPA of the measures it has taken to comply with the ruling of the arbitration panel and request that the measures taken by the applicant shall cease to be applied.
2. If the Parties do not reach an agreement on the compatibility of the notified measures with the provisions of this Agreement within thirty (30) days of the notification being submitted, the applicant shall make a request in writing for the arbitration panel to rule on the matter. Such a request shall be reported simultaneously to the other Party and the Joint Implementation Committee of the EPA. The ruling of the arbitration panel shall be delivered within forty-five (45) days of submission of the request and shall be reported to the Parties and the Joint Implementation Committee of the EPA. If the arbitration panel rules that the measures taken are not in conformity with the

relevant provisions of this Agreement, it shall consider whether it is appropriate for the applicant to continue to apply the measures taken. If it considers that the measures are not in conformity, it shall terminate the application of the measures taken by the applicant.

3. Where the arbitration panel or some of its members are unable to attend further meetings, the procedures set out in Article 68 shall be applied. The time limit for delivering a ruling shall be sixty (60) days from the date on which the request referred to in paragraph 2 was submitted.

### Section III – Common and transitional provisions

#### *Article 76*

##### **Mutually satisfactory solution**

The Parties may agree on a solution to a dispute any time. They shall inform the Joint Implementation Committee of the EPA of their agreement. The adoption of a mutually satisfactory solution shall terminate the procedure.

#### *Article 77*

##### **Procedural rules**

Procedural rules shall be adopted by the Joint Implementation Committee of the EPA within three (3) months of it being set up.

#### *Article 78*

##### **General and technical information**

At the request of a Party or on its own initiative, the arbitration panel may obtain information from any source, including the Parties concerned by the dispute, if it deems this to be appropriate for the arbitration proceedings. The panel shall also be authorised to obtain the opinion of experts if it considers this appropriate. Information obtained in this manner must be disclosed to each of the Parties and submitted for their comments.

#### *Article 79*

##### **Languages of submission**

1. The common working languages of the Parties for procedures for the prevention and settlement of disputes shall be English, French or Portuguese.
2. The Parties shall make their written or oral submissions in one of these three official languages.

#### *Article 80*

##### **Rules of interpretation**

The arbitration panel shall interpret the provisions of this Agreement in accordance with the customary rules of interpretation of public international law, including those set out in the Vienna Convention on the Law of Treaties. The rulings of the arbitration panel shall neither add to nor diminish the rights and obligations set out in this Agreement.

### *Article 81*

#### **Arbitration panel rulings**

1. The arbitration panel shall make its rulings by consensus. Where a ruling cannot be made by consensus, it shall be made by majority vote.
2. The ruling shall set out the substantive findings, the applicability of the relevant provisions of this Agreement and the reasoning underpinning the findings and conclusions reached by the arbitration panel. The Joint Implementation Committee of the EPA shall make the arbitration ruling known to the public, unless it decides otherwise.
3. The ruling of the arbitration panel shall expressly state the way in which account has been taken of the flexibility, including the special and differential treatment, provided for in this Agreement if it has been invoked by either of the Parties.
4. Notwithstanding the provisions of Article 64, the measures taken to comply with the ruling of the arbitration panel shall specifically apply to the State or States whose measures have been ruled to be contrary to this Agreement. Consequently, no State may be made subject to a penalty if no fault can be attached to it for failure to meet an obligation arising from this Agreement.

### *Article 82*

#### **Transitional provision**

To take account of the special situation of West Africa, the Parties agree that, for a transitional period of ten (10) years following the entry into force of this Agreement, the European Union Party shall give full preference to consultation and mediation as ways of settling disputes and shall display moderation in its demands.

### **CHAPTER 4**

#### **GENERAL PROVISIONS**

### *Article 83*

#### **List of arbitrators**

1. The Joint Implementation Committee of the EPA shall prepare a list of fifteen (15) arbitrators within three (3) months at the latest of being set up. . Each Party shall appoint one third of the arbitrators. The two Parties shall agree on the choice of the remaining third of arbitrators, who shall not be nationals of either Party and could be called upon to chair the arbitration panel. The Joint Implementation Panel of the EPA shall ensure that the said list is always complete and that the different specialisms of international trade and economic and trade partnership between the two regions are represented.
2. The arbitrators shall have specialised knowledge or experience of law and international trade. They shall be independent, act individually and not under the instructions of any organisation or government, shall not be affiliated to the administration of either Party, and shall observe the Code of Conduct appended to the Procedural Rules.

#### *Article 84*

##### **Links with the WTO obligations**

1. The arbitration bodies set up under this Agreement shall not be authorised to rule on disputes relating to the rights and obligations of each Party pursuant to the Agreement establishing the World Trade Organisation (WTO).
2. Recourse to the dispute settlement provisions of this Agreement shall be without prejudice to any action in connection with the WTO, including dispute settlement action. However, when a Party has initiated a dispute settlement procedure with regard to a given measure either under Article 67(1) of this Agreement or under the WTO Agreement, it may not initiate a dispute settlement procedure for the same measure with the other forum before concluding the first procedure. For the purposes of this paragraph, a Party shall be considered to have initiated a dispute settlement procedure under the WTO Agreement once it has requested the establishment of a panel pursuant to Article 6 of the WTO Dispute Settlement Understanding.
3. This Agreement cannot prevent a Party from applying the suspension of obligations authorised by the WTO Dispute Settlement Body. The WTO Agreement cannot prevent the Parties from suspending the benefits granted under this Agreement.

#### *Article 85*

##### **Time limits**

1. All the limitation periods laid down in this Part, including the times by which the arbitration panels must deliver their rulings, shall be expressed in calendar days from the day following the act or fact to which it refers. If the last day is a non-working day, the time limit shall be deemed to fall on the next working day.
2. Any time limit provided for in this Part of the Agreement may be extended by mutual agreement between the Parties.

#### *Article 86*

##### **Cooperation**

The Parties agree to cooperate, including financially, in accordance with the provisions laid down in Part III, with regard to legal aid and in particular with regard to building up capacities in order to make possible the use by the West Africa Party of the dispute settlement mechanism provided for in this Agreement.

#### **PART V**

##### **GENERAL EXCEPTIONS**

#### *Article 87*

##### **General exception clause**

Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in goods or services or on establishment, nothing in this Agreement shall be construed to prevent the adoption or application by either Party of measures:

- a) necessary to protect public morals, order or safety;

- b) necessary to protect the life or health of humans, animals or plants;
- c) necessary to secure compliance with laws or regulations that are not inconsistent with the provisions of this Agreement including those relating to:
  - i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contractual payments;
  - ii) protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - iii) security;
  - (iv) customs enforcement; or
  - (v) the protection of intellectual property rights;
- d) relating to the import or export of gold or silver;
- e) concerning the protection of national treasures of artistic, historic or archaeological value;
- f) relating to the conservation of non-renewable natural resources if such measures imply restrictions on domestic production or consumption of goods, domestic supply or consumption of services or domestic investors;
- g) relating to the products of prison labour;
- h) essential for the acquisition or distribution of products of which there is a general or local scarcity. However, these measures should be compatible with the principle that the Parties are entitled to a fair share of the international supply of the products in question. All the measures referred to above that are incompatible with the other provisions of this Agreement shall be eliminated as soon as the circumstances giving rise to them have ceased to exist.

#### *Article 88*

#### **Security exceptions**

1. Nothing in this Agreement shall be construed:
  - a) as requiring either Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;
  - b) as preventing the Parties from taking any action deemed necessary for the protection of their essential security interests:
    - i) relating to fissile or fissionable materials or the materials from which they are derived;
    - ii) relating to economic activities carried out directly or indirectly for the purpose of supplying or provisioning a military establishment;
    - iii) connected with the production of or trade in arms, munitions and war material;
    - (iv) relating to government contracts essential for national security or for national defence purposes;
    - (v) taken in time of war or other emergency in international relations;

- c) as preventing the Parties from taking any action in order to honour their obligations for the purpose of maintaining international peace and security.
2. The Joint Implementation Committee of the EPA shall be informed to the fullest extent possible of measures taken under paragraph 1(b) and (c) and of their termination dates.

#### *Article 89*

#### **Balance of payments difficulties**

1. Where a Party is in serious balance of payments and external financial difficulties, or under threat thereof, it may take or maintain restrictive measures with regard to trade in goods and in services and with regard to payments and capital movements, including measures relating to direct investment.
2. The Parties shall endeavour, as far as possible, to avoid the application of the restrictive measures referred to in paragraph 1.
3. Restrictive measures adopted or maintained under this Article shall be non-discriminatory and of limited duration and shall not go beyond what is necessary to remedy the difficulties relating to the balance of payments and external financial situation. They should be in accordance with the conditions established in the WTO Agreements and consistent with the Articles of Agreement of the International Monetary Fund, as applicable.
4. Any Party that is maintaining or has taken restrictive measures or is modifying such measures shall immediately inform the other Parties and as soon as possible submit a schedule for them to be dismantled.
5. Consultation shall be carried out without delay in the Joint Implementation Committee of the EPA. The purpose of such consultation shall be to assess the balance of payments situation of the Party or Parties concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:
  - a) the nature and extent of the balance of payments difficulties and the external financial difficulties;
  - b) the external economic and trade environment;
  - c) alternative corrective measures that may be available.
6. The extent to which restrictive measures comply with paragraphs 3 and 4 of this Article shall be examined during the consultation. Findings of statistical or other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments shall be accepted and conclusions shall be based on the assessment by the International Monetary Fund of the balance of payments and the external financial situation of the Party in question.

#### *Article 90*

#### **Taxation**

1. Nothing in this Agreement or any accommodation or arrangement adopted in connection with it shall be construed as preventing the Parties from distinguishing, in the application of the relevant provisions of their fiscal legislation, between

taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

2. Nothing in this Agreement or any accommodation or arrangement adopted under this Agreement shall be construed as preventing the adoption or enforcement of any measure aimed at preventing tax fraud or evasion under agreements intended to avoid double taxation or other tax arrangements or domestic fiscal legislation.
3. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention. In the event of any inconsistency between this Agreement and such a convention, the convention shall prevail to the extent of the inconsistency.

## **PART VI**

### **INSTITUTIONAL PROVISIONS**

#### *Article 91*

##### **Joint bodies of the EPA**

An institutional framework has been set up for the supervision and implementation of the Economic Partnership Agreement between the West Africa Party and the European Union Party, including the following bodies:

- a) The Joint Council of the West Africa - European Union EPA ;
- b) The Joint Implementation Committee of the West Africa - European Union EPA;
- c) The Joint West Africa - European Union Parliamentary Committee;
- d) The Joint West Africa-European Union Consultative Committee;

#### *Article 92*

##### **Joint Council of the West Africa - European Union EPA**

1. The Joint Council of the West Africa – European Union EPA shall be responsible for supervising the implementation of this Agreement. It shall meet at ministerial level.
2. Without prejudice to the functions of the ACP-EU Council of Ministers as defined in Article 15 of the Cotonou Agreement, the Joint Council of the West Africa - European Union EPA shall ensure the operation of the institutional architecture of this Agreement and its implementation and shall monitor the achievement of its objectives. It shall also examine any major issue arising within the framework of this Agreement, as well as any other bilateral, multilateral or international question of common interest affecting this economic and trade partnership between the Parties.
3. The Joint Council of the West Africa – European Union EPA shall also examine the proposals and recommendations of the Parties with regard to the review of this Agreement in line with the procedures set out in Article 111.
4. The Joint Council of the West Africa – European Union EPA shall meet once every two (2) years. It may also meet in extraordinary sessions if circumstances so require.

#### *Article 93*

##### **Composition and rules of procedure**

1. The Joint Council of the West Africa - European Union EPA shall be composed, on the one hand, of Members of the Council of the European Union and Members of the European Commission and, on the other hand, of Members of the Ministerial Monitoring Committee of the West Africa – European Union EPA and the Presidents of the ECOWAS and UEMOA Commissions.
2. The Joint Council of the West Africa – European Union EPA shall adopt its rules of procedure;
3. The Presidency of the Joint Council of the West Africa – European Union EPA shall be held in turn by a representative of the European Union Party and by a representative of the West Africa Party in accordance with the conditions laid down by its rules of procedure.
4. The Joint Council of the West Africa - European Union EPA shall submit periodic reports on the operation of this Agreement to the Council of Ministers established in accordance with Article 15 of the Cotonou Agreement.
5. The Members of the Joint Council of the West Africa – European Union EPA may arrange to be represented in accordance with the conditions laid down in its rules of procedure.

#### *Article 94*

##### **Decision-making powers and procedures**

1. In order to attain the objectives of this Agreement, the Joint Council of the West Africa – European Union EPA shall have the power to take decisions in respect of the matters covered by the Agreement.
2. The decisions taken shall be binding on the Parties, which shall take any measures necessary to apply them in accordance with their domestic legal systems.
3. The Joint Council of the West Africa – European Union EPA may also make recommendations.
4. The Joint Council of the West Africa – European Union EPA shall adopt its decisions and recommendations by mutual agreement between the Parties.

#### *Article 95*

##### **Joint Implementation Committee of the West Africa– European Union EPA**

1. In the performance of its mission, the Joint Council of the West Africa – European Union EPA shall be assisted by the Joint Implementation Committee of the EPA, comprising senior officials or their representatives duly appointed by the Parties. Either Party may submit to the Joint Implementation Committee of the EPA any question concerning the application of the Agreement or the pursuit of its objectives.
2. The Joint Council of the EPA shall establish and adopt the rules of procedure of the Joint Implementation Committee of the EPA. The Joint Implementation Committee of the EPA shall be chaired in turn for one (1) year by a representative of one or other of the Parties. It shall submit an annual report to the Joint Council of the West Africa - European Union EPA.
3. The Joint Implementation Committee of the EPA shall perform the following functions in particular;

- a) In the area of trade:
  - i) ensure the implementation and correct application of the provisions of the Agreement and examine and recommend cooperation priorities in this regard;
  - ii) supervise the further elaboration of the provisions of this Agreement and evaluate the results obtained in its application;
  - iii) take action to avoid disputes and to resolve disputes that may arise regarding the interpretation or application of the Agreement, in accordance with the provisions of Part IV;
  - (iv) assist the Joint Council of the West Africa - European Union EPA in the performance of its functions;
  - (v) monitor the development of regional integration and economic and trade relations between the Parties;
  - vi) monitor and assess the impact of the implementation of this Agreement on the sustainable development of the Parties;
  - (vii) discuss and take action that may facilitate trade, investment and business opportunities between the Parties;
  - (viii) discuss any matters relating to this Agreement and any issue liable to affect the attainment of its objectives;
- b) in the area of development:
  - i) assist the Joint Council of the West Africa – European Union EPA in the performance of its functions regarding development cooperation matters falling under this Agreement;
  - ii) monitor the implementation of the cooperation provisions laid down in this Agreement and coordinate such action with third party donors;
  - iii) make recommendations on trade-related cooperation between the Parties;
  - (iv) keep under periodic review the cooperation priorities set out in this Agreement, and to make recommendations on the inclusion of new priorities, as appropriate;
  - (v) review and discuss cooperation issues pertaining to regional integration and implementation of this Agreement.

4. In the performance of its functions, the Joint Implementation Committee of the EPA may:

- a) set up and supervise special committees or bodies to deal with matters falling within its competence, and determine their composition and duties, and their rules of procedure;
- b) consider any issues arising from this Agreement and take appropriate action in the performance of its functions;
- c) take decisions or make recommendations in the cases provided for in this Agreement or where such implementing power has been delegated to it by the Joint Council of the West Africa - European Union EPA. In such cases, the Joint Implementation Committee of the EPA shall take decisions and make recommendations by mutual agreement between the Parties.

5. The Joint Implementation Committee of the EPA shall meet once a year to generally examine the implementation of this Agreement at a date and with an agenda agreed in advance by the Parties, in each of the regions in turn. The Joint Implementation Committee of the EPA may, if necessary, meet in extraordinary sessions to perform the functions provided for in paragraph 3(a) and (b).

#### *Article 96*

##### **Joint West Africa - European Union Parliamentary Committee**

1. The Joint West Africa - European Union Parliamentary Committee shall provide a framework for consultation and dialogue between Members of the European Parliament and Members of the Parliaments of ECOWAS and the UEMOA. It shall meet at intervals that it shall itself determine. It shall cooperate with the Joint Parliamentary Assembly referred to in Article 17 of the Cotonou Agreement.
2. The Joint West Africa - European Union Parliamentary Committee shall be composed, on the one hand, of Members of the European Parliament and, on the other hand, by Members of the regional Parliaments of West Africa. The representatives of the Parties may attend meetings of the Joint West Africa - European Union Parliamentary Committee.
3. The Joint West Africa - European Union Parliamentary Committee shall adopt its rules of procedure and inform the Joint Council of the EPA West Africa – European Union of this.
4. The Joint West Africa - European Union Parliamentary Committee shall be chaired in turn by a Member of the European Parliament and by a Member of the Parliaments of ECOWAS and the UEMOA in accordance with the conditions laid down by its rules of procedure.
5. The Joint West Africa - European Union Parliamentary Committee may request the Joint Council of the West Africa – European Union EPA to supply it with any useful information concerning the implementation of this Agreement and the Joint Council of the West Africa – European Union EPA shall supply it with the requested information.
6. The Joint West Africa - European Union Parliamentary Committee shall be kept informed of the decisions and recommendations of the Joint Council of the West Africa – European Union EPA .
7. The Joint West Africa - European Union Parliamentary Committee may make recommendations for the attention of the Joint Council of the West Africa – European Union EPA and the Joint Implementation Committee of the EPA.

#### *Article 97*

##### **Joint West Africa-European Union Consultative Committee**

1. The Joint West Africa-European Union Consultative Committee is responsible for helping the Joint Council of the West Africa – European Union EPA promote dialogue and cooperation between the economic and social partners of the two Parties. Such dialogue and cooperation shall encompass all economic, social and environmental aspects of relations between the Parties as they arise in the context of the implementation of this Agreement.

2. The Joint Council of the West Africa – European Union EPA shall determine participation in the Joint West Africa-European Union Consultative Committee, while ensuring wide representation of all the interested parties.
3. The Joint West Africa-European Union Consultative Committee shall perform its activities in consultation with the Joint Council of the West Africa – European Union EPA or on its own initiative and make recommendations for the attention of the Joint Council of the West Africa – European Union EPA . Representatives of the Parties shall attend the meetings of the Joint Consultative Committee.
4. The Joint West Africa-European Union Consultative Committee shall adopt its rules of procedure in agreement with the Joint Council of the West Africa – European Union EPA. It shall meet at intervals that it shall itself determine.
5. The Joint West Africa-European Union Consultative Committee may submit recommendations to the Joint Council of the West Africa – European Union EPA and the Joint Implementation Committee of the EPA.

*Article 98*

**Financing the operation of the institutional architecture**

The Parties agree to cooperate with a view to financing the bodies provided for in Article 91 in accordance with the provisions contained in Part III of this Agreement. The financing terms and conditions shall be laid down by the rules of procedure of these bodies in agreement with the Joint Council of the EPA.

**PART VII**

**FINAL PROVISIONS**

*Article 99*

**Definition of the Parties and fulfilment of obligations**

1. The Parties to this Agreement are the European Union Party and the West Africa Party.
2. The European Union Party comprises the European Union and its Member States or the European Union or its Member States within their respective areas of competence as derived from the Treaty on European Union and the Treaty on the Functioning of the European Union.
3. The West Africa Party comprises the Economic Community of West African States (ECOWAS), the West African Economic and Monetary Union (UEMOA) and their Member States within their respective areas of competence as derived from the ECOWAS and UEMOA Treaties and Mauritania.
4. The Parties shall take any general or specific measures necessary for them to fulfil their obligations and shall ensure that they comply with the objectives laid down in this Agreement.

*Article 100*

**Contact points and exchange of information**

1. In order to facilitate communication and ensure the effective implementation of this Agreement, the Parties shall each designate a contact point upon this Agreement's

entry into force. The designation of contact points shall be without prejudice to the specific designation of competent authorities under specific provisions of this Agreement.

2. At the request of either Party, the contact point of the other Party shall indicate the office or official responsible for any matter pertaining to the implementation of the Agreement and provide the support necessary to facilitate communication with the requesting Party.
3. At the request of either Party, and to the extent legally possible, each Party through its contact point shall provide information and reply promptly to any question from the other Party relating to an actual or proposed measure that might affect trade between the Parties.

#### *Article 101*

##### **Transparency**

1. The Parties shall ensure that any laws, regulations, procedures and administrative rulings of general application as well as any international commitments relating to any trade matter covered by this Agreement are promptly published or made publicly available and brought to the attention of the other Party.
2. Without prejudice to specific transparency provisions in this Agreement, the information referred to under this Article shall be considered to have been provided when the information has been communicated by appropriate notification to the WTO or when the information has been distributed on the official, public and fee-free website of the Party concerned.

#### *Article 102*

##### **Confidentiality**

Nothing in this Agreement shall require either Party to provide confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or that would prejudice legitimate commercial interests of particular enterprises, public or private, except where its disclosure is necessary in connection with a dispute settlement proceeding under Part IV of this Agreement. Where such disclosure is considered necessary by a panel established under Article 68, the panel shall ensure that confidentiality is fully protected.

#### *Article 103*

##### **Regional preference**

1. Nothing in this Agreement shall oblige a Party to extend to the other Party of this Agreement any more favourable treatment than is applied within each of the Parties as part of its respective regional integration process.
2. If more favourable treatment or any benefit is granted to the European Union or one of its Member States by a West African State or its economic communities under this Agreement or vice versa, each signatory to this Agreement shall also immediately and unconditionally benefit from it.
3. The provisions of this Agreement cannot be interpreted as meaning that the European Union or the West Africa Party are obliged to mutually grant one another preferential

treatment that would be applicable owing to the European Union or the Economic Community of West African States and Mauritania being party to a regional economic integration agreement at the time of entry into force of this Agreement.

#### *Article 104*

##### **Outermost regions of the European Union**

1. Taking account of the geographical proximity of the outermost regions of the European Union and the West Africa Party, and in order to strengthen economic and social links between these regions and the West Africa Party, the Parties shall endeavour to facilitate cooperation in all the areas covered by this Agreement and facilitate trade in goods and services, promote investments and encourage transport and communication links between the outermost regions and the West Africa Party.
2. The objectives enunciated in paragraph 1 shall be pursued, wherever possible, while encouraging the joint participation of the West African States and the outermost regions in framework and specific programmes of the European Union in areas covered by this Agreement.
3. The European Union Party shall endeavour to ensure coordination between the different financial instruments of the European Union's cohesion and development policies in order to promote cooperation between the West Africa Party and the outermost regions of the European Union in the areas covered by this Agreement.
4. Nothing in this Agreement shall prevent the European Union Party from applying existing measures aimed at addressing the structural social and economic situation of the outermost regions pursuant to Article 349 of the Treaty on the Functioning of the European Union.

#### *Article 105*

##### **Relationships with other agreements**

1. Nothing in this Agreement may be interpreted as preventing the taking by the European Union Party or any of the West African States of any measure deemed appropriate concerning this Agreement in accordance with the relevant provisions of the Cotonou Agreement.
2. The Parties agree that nothing in this Agreement requires them to act in a manner inconsistent with their obligations in connection with the WTO.

#### *Article 106*

##### **Rendez-vous clause**

1. The Parties agree to continue negotiations in order to arrive at a full regional Agreement.
2. Without prejudice to the following topics and without prejudging the results of these negotiations, the Parties mutually undertake to enter into discussions concerning:
  - a) services;
  - b) intellectual property and innovation, including traditional knowledge and genetic resources;
  - c) current payments and capital movements;

- d) protection of personal data;
  - e) investment;
  - f) competition;
  - g) consumer protection;
  - h) sustainable development;
  - i) public contracts.
3. For the purposes referred to in paragraph 1 of this Article, within six (6) months of the conclusion of this Agreement, the Parties shall reach agreement on a roadmap setting out the schedule and arrangements for these negotiations.

#### *Article 107*

##### **Ratification and entry into force**

1. This Agreement shall be ratified or approved by the signatory Parties in accordance with their respective constitutional rules and procedures.
2. This Agreement shall enter into force on the first day of the first month following the date on which are lodged the ratification instruments of all the Member States of the European Union and at least two thirds of the States of the West African region and the instrument of approval of this Agreement by the European Union.
3. Pending the entry into force of the Agreement, West Africa and the European Union shall agree, by notification, to provisionally apply the Agreement, in whole or in part. Provisional application shall be notified to the depositary. The Agreement shall apply on a provisional basis one (1) month after receipt of the final notice of provisional application.
4. If, pending the entry into force of the Agreement, the Parties decide to apply it provisionally, all references to the date of entry into force shall be deemed to refer to the date such provisional application takes effect.
5. Notwithstanding paragraph 3, West Africa and the European Union may take measures to apply the Agreement, in whole or in part, before provisional application, to the extent feasible.

#### *Article 108*

##### **Depositaries**

The instruments of ratification or approval shall be lodged, in the case of the European Union Party and its Member States, with the General Secretariat of the Council of the European Union and, in the case of the West African States, with the Commission of the Economic Community of West African States. The ECOWAS Commission and the General Secretariat of the Council of the European Union shall immediately inform the signatory Parties of this.

#### *Article 109*

##### **Duration**

1. This Agreement shall be valid indefinitely.

2. Either Party may give written notice to the other of its intention to terminate the Agreement.
3. Termination shall take effect six (6) months after notification to the other Party.

#### *Article 110*

##### **Territorial application**

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Union is applied and under the conditions laid down in that Treaty, and, on the other hand, to the West African States. References in the Agreement to "territory" shall be understood in this sense.

#### *Article 111*

##### **Revision clause**

1. The Parties agree, as appropriate and in accordance with the provisions of Article 92, to assess or review this Agreement every five (5) years from the date of entry into force.
2. Twelve (12) months before the end of each five-year period at the latest, the Parties shall inform one another of the provisions of the Agreement that they wish to review with a view to eventual amendment. Ten (10) months before the end of the current five-year period, the Parties shall enter into negotiations in order to discuss any amendments to be made to the Agreement. It shall be reviewed in the light of the experience acquired by the Parties during its implementation.
3. Notwithstanding this timing, the Parties may consider reviewing this Agreement as required, in particular on expiry of the Cotonou Agreement.
4. If one Party requests the review of any provisions of the Agreement, the other Party shall have a period of two (2) months in which to request the extension of the review to include other provisions related to those that were the subject of the initial request.

#### *Article 112*

##### **Accession of new Member States to the European Union**

1. The Joint Council of the West Africa-European Union EPA shall be advised of any request made by a third State to become a member of the European Union. During the negotiations between the European Union and the applicant State, the European Union Party shall provide the West Africa Party with any relevant information and the West Africa Party shall convey in turn its concerns to the European Union Party so that it can take them fully into account. Any accession to the European Union shall be reported by the European Union Party to the West Africa Party.
2. Any new Member State of the European Union shall become Party to this Agreement from the date of its accession by means of a clause to that effect in the act of accession. If the act of accession to the European Union does not provide for such automatic accession of the EU Member State to this Agreement, the EU Member State concerned shall accede to it by lodging an act of accession with the General Secretariat of the Council of the European Union, which shall send a certified copy of it to the West Africa Party.

3. The Parties shall review the effects of the accession of new EU Member States on this Agreement. The Joint Council of the West Africa - European Union EPA may decide on any adjustment or transitional measures that may be necessary.

*Article 113*

**Authentic Texts**

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovakian, Slovenian, Spanish and Swedish languages, all texts being equally authentic.

*Article 114*

**Annexes**

The Annexes, Protocols and Declarations shall form an integral part of this Agreement.

**SIGNATURES OF THE PARTIES**

## LIST OF ANNEXES

- Annex A: Protocol defining the concept of "originating products" and methods of administrative cooperation
- Annex B: Customs duties on products originating in West Africa
- Annex C: Customs duties on products originating in the European Union
- Annex D: Appendices to Chapter 3 concerning technical barriers to trade, sanitary and phytosanitary measures
- Annex E: Protocol on mutual administrative assistance in customs matters
- Annex F: Protocol on the EPA Development Programme (PAPED)