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**AGREEMENT ESTABLISHING A STEPPING STONE ECONOMIC  
PARTNERSHIP AGREEMENT**

**BETWEEN GHANA, ON THE ONE PART, AND THE EUROPEAN  
COMMUNITY AND ITS MEMBER STATES, ON THE OTHER PART**

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THE REPUBLIC OF GHANA

HEREINAFTER REFERRED TO AS "GHANA" OR AS "THE GHANAIAN PARTY",

of the one part,

and

THE KINGDOM OF BELGIUM,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBURG,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF HUNGARY,

THE REPUBLIC OF MALTA,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

THE REPUBLIC OF BULGARIA,

ROMANIA

and

THE EUROPEAN COMMUNITY

HEREINAFTER JOINTLY REFERRED TO AS "THE EC PARTY"

of the other part

HEREINAFTER JOINTLY REFERRED TO AS "THE PARTIES"

PREAMBLE:

**HAVING REGARD TO** the Partnership Agreement between the Members of the African, Caribbean and Pacific group of States of the one part, and the European Community and its Member States on the other part, signed in Cotonou on the 23rd of June 2000 and revised on 25 June 2005, hereafter referred to as "the Cotonou Agreement";

**HAVING REGARD TO** the fact that the trade preferences granted under the Cotonou Agreement will expire on the 31st of December 2007;

**HAVING REGARD TO** the possible negative impact on the trade between the Parties from the expiration of the Cotonou trade preferences in case no WTO compatible successor trade arrangement is in place by the 1st of January 2008;

**RECOGNISING** therefore the necessity to establish a stepping stone Agreement that would safeguard the economic and trade interests of the Parties;

**CONSIDERING** the Parties wish to further strengthen their economic and trade links and establish close and lasting relations based on partnership and cooperation;

**CONSIDERING** the importance attached by the Parties to the principles and rules which govern the multilateral trading system, in particular the rights and obligations in GATT 1994 and in other multilateral agreements annexed to the Agreement establishing the World Trade Organisation (WTO), and to the need to apply them in a transparent and non-discriminatory manner;

**REAFFIRMING** their commitment to the respect of human rights, to democratic principles and to the rule of law, which constitute the essential elements of the Cotonou Agreement, and to good governance, which constitutes the fundamental element of the Cotonou Agreement;

**CONSIDERING** the necessity to promote and accelerate economic, cultural and social development, with a view to contributing to peace and security and promoting a stable political and democratic framework;

**CONSIDERING** the importance attached by the Parties to development objectives agreed at international level and to the Millennium Development Goals of the United Nations;

**REAFFIRMING** their attachment to work together towards the achievement of the objectives of the Cotonou Agreement, notably towards poverty eradication, sustainable development and the gradual integration of ACP States into the world economy;

**WILLING** to create new opportunities for employment, for attracting investment and for improving the livelihood conditions in the territories of the Parties while promoting sustainable development;

**CONSIDERING** the importance of the traditional links existing between the European Community, its Member States and West African States, notably with regard to historical, political and economic links;

**RECOGNIZING** the difference of economic and social development levels between West African States and the European Community;

**CONVINCED** that this Agreement will create a new and more favourable environment for the relationship in the fields of economic governance, trade and investments and will open new perspectives for growth and development;

**RECOGNIZING** the importance of development cooperation for the implementation of this Agreement;

**WAITING FOR** the conclusion of a global Economic Partnership Agreement between West African States and the European Union;

**REAFFIRMING** their commitment to support regional integration within West Africa and in particular to promote regional economic integration as an essential instrument for their integration into the world economy, by assisting them to face challenges related to globalisation and to achieve the economic and social development that they aim at;

**HAVE AGREED** the following:

## 1. TITLE I: OBJECTIVES

### *Article 1*

#### **Framework Agreement**

This Agreement establishes an initial framework for an Economic Partnership Agreement (EPA).

### *Article 2*

#### **Objectives**

The objectives of this Agreement are the following:

- (a) Allowing Ghana to benefit from the enhanced market access granted by the EC Party within the framework of EPA negotiations and thereby avoiding trade disruption between Ghana and the European Community when the transitory trade regime of the Cotonou Agreement expires on the 31<sup>st</sup> of December 2007, while waiting for the conclusion of a full EPA;
- (b) Establishing the grounds for the negotiation of an EPA which contributes to poverty reduction, promotes regional integration, economic cooperation and good governance in West Africa and improves capacities of West Africa in the fields of trade policy and trade-related issues;
- (c) Promoting the harmonious and gradual integration of Ghana into the world economy in accordance with its political choices and its development priorities;
- (d) Strengthening existing links between the Parties on the basis of solidarity and mutual interest;
- (e) Creating an agreement compatible with Article XXIV of GATT 1994.

## 2. TITLE II: PARTNERSHIP FOR THE DEVELOPMENT

### *Article 3*

#### **Development cooperation in the framework of this Agreement**

The Parties commit themselves to cooperating in order to implement this Agreement and to contribute accompanying the Ghanaian Party in the achievement of the EPA objectives. This cooperation takes financial and non financial forms.

### *Article 4*

#### **Development finance cooperation in the framework of this Agreement**

1. Development cooperation for regional economic cooperation and integration, as provided for in the Cotonou Agreement, shall be carried out so as to maximise the expected benefits of this Agreement.
2. The European Community financing pertaining to development co-operation between the Ghanaian Party and the European Community supporting the implementation of this Agreement shall be carried out within the framework of the rules and relevant procedures provided for by the Cotonou Agreement, in particular the programming procedures of the European Development Fund and in the framework of the relevant financial instruments financed by the General Budget of the European Union. In this context, supporting the implementation of the current EPA shall be among the priorities.
3. The Member States of the European Community collectively undertake to support, by means of their respective development policies and instruments, development cooperation activities for regional economic cooperation and integration and for the implementation of this agreement, both at national and regional levels, in conformity with the complementarity and aid effectiveness principles.
4. The Parties shall cooperate to facilitate the participation of other donors willing to support the efforts of the Ghanaian Party in achieving the objectives of this Agreement.
5. The Parties recognize the usefulness of regional financing mechanisms such as a Regional EPA Fund established by and for the region in order to channel the financing at regional and national level and implement efficiently accompanying measures to the present Agreement. The European Community commits to channel its support either through the own financing mechanisms of the region or through those agreed upon by signatory parties of this Agreement in accordance with rules and procedures provided for by the Cotonou Agreement and in compliance with aid effectiveness principles established by the Paris Declaration, with a view to ensure a simple, efficient and quick implementation.



6. When implementing paragraphs 1 to 5 above, the Parties commit to cooperate in financial and non-financial ways in the areas defined in Articles 5, 6, 7 and 8.

*Article 5*

**Business climate**

The Parties agree that the business climate is an essential vector of economic development and, consequently, that the provisions of this Agreement aim at contributing to this common objective.

The Parties commit, in accordance with the provisions of the previous article, to constantly foster the improvement of business climate.

*Article 6*

**Support to the implementation of rules**

The Parties agree that the implementation of the trade-related rules, for which cooperation areas are detailed in the various chapters of this Agreement, constitute an essential element for achieving the objectives of this Agreement. Cooperation in this field will be implemented in accordance with the provisions detailed under Article 4.

*Article 7*

**Reinforcing and upgrading of productive sectors**

In the context of the implementation of this Agreement, the Parties underline their will to promote the upgrading of the competitiveness of productive sectors concerned by this Agreement in Ghana.

The Parties agree to cooperate through the cooperation instruments as defined under Article 4 and to support:

- the repositioning of the private sector vis-à-vis new economic opportunities created by the Present Agreement;
- the definition and the implementation of upgrading strategies;
- the improvement of the environment of the private sector and the business climate as defined in Articles 5 and 6;
- the promotion of a partnership between private sectors of both Parties.

*Article 8*

**Cooperation in respect to financial adjustment**

1. The Parties recognize the challenge that the elimination or substantial reduction of custom duties provided for in this Agreement can pose to Ghana, and they agree to establish a dialogue and cooperation in this field.
2. In the light of the liberalization schedule agreed by the Parties in this Agreement, the Parties agree to establish an in-depth dialogue on the fiscal adaptation measures to eventually ensure the budgetary balance of Ghana.
3. The Parties agree to cooperate, in the framework of the provisions of Article 4, notably through the facilitation of supporting measures in the following areas:
  - a) Contribution in significant proportions to the absorption of the net fiscal impact in full complementarity with fiscal reforms.
  - b) Support to fiscal reforms so as to accompany the dialogue in this area.

*Article 9*

**Cooperation in international fora**

The Parties shall endeavour to cooperate in all international fora where issues relevant to this partnership are discussed.

### **3. TITLE III: TRADE REGIME FOR GOODS**

#### **3.1. CHAPTER 1: CUSTOM DUTIES AND NON-TARIF MEASURES**

##### *Article 10*

##### **Customs duty**

1. A customs duty includes any duty or charge of any kind, including any form of surtax or surcharge, imposed on or in connection with the importation or exportation of goods, but does not include any:
  - (a) charges equivalent to internal taxes or other internal charges imposed consistently with article 19;
  - (b) antidumping, countervailing or safeguards measure imposed consistently with Chapter 2;
  - (c) fees or other charges imposed consistently with Article 11.
2. For each product, the basic customs duty to which the successive reductions are to be applied shall be that specified in each Party's Tariff Schedule.

##### *Article 11*

##### **Fees and other charges**

1. The Parties reaffirm their commitment to respect the provisions of Article VIII of GATT 1994.
2. However, fees and other charges related to legal obligations existing at the signature of this Agreement, as referred to in Annex 3, shall continue to apply for a maximum period of ten years. This period may be extended by decision of the EPA Committee if this is necessary to respect these legal obligations.

##### *Article 12*

##### **Customs duties on products originating in Ghana**

Products originating in Ghana shall be imported in the EC Party free of customs duties, except for the product indicated, and under the conditions defined, in Annex 1.

##### *Article 13*

##### **Customs duties on products originating in the EC Party**

Customs duties on imports into Ghana of products originating in the EC Party shall be reduced or eliminated in accordance with the schedule of tariff liberalization in Annex 2.

#### *Article 14*

##### **Rules of origin**

For the purposes of this Chapter, "originating" applies to goods fulfilling the preferential rules of origin in force on the 1<sup>st</sup> January 2008 between the Parties.

The parties will establish a common and reciprocal regime governing rules of origin at the latest on 30/06/2008, that will enter into force no later than the first day of provisional application of this Agreement, based on the rules of origin as defined by the Cotonou Agreement and providing for the improvement while taking into account the development objectives of Ghana. This new regime will be annexed to this Agreement by the EPA Committee.

No later than 3 years after the entry into force of this Agreement, the Parties will review the provisions in force governing rules of origin with the objective to simplify the concepts and methods used to determine the origin taking into account the development objectives of Ghana. Within this revision process, the Parties will take into account technological development, production processes and any other factor including the ongoing reforms with regard to rules of origin which might require amendment of the reciprocal negotiated regime. Any amendment or replacement will be made by decision of the EPA Committee.

#### *Article 15*

##### **Standstill**

1. Notwithstanding Articles 23 and 24, no new customs duty on imports shall be introduced on trade between the Parties and those currently applied on trade between the Parties shall not be increased as from the date of entry into force of this Agreement.
2. Notwithstanding paragraph 1, in the context of the finalisation of the implementation of ECOWAS common external tariff, Ghana may revise until 31st December 2011 its basic custom duties applying to goods originating in the European Community as long as the general incidence of those duties is not higher than the one of duties specified in Annex 2.

#### *Article 16*

##### **Customs duties on exports**

No new customs duty on exports or equivalent charges shall be introduced on trade between the Parties, nor those currently applied increased as from the date of entry into force of this Agreement.

In exceptional circumstances, if the Ghanaian Party can demonstrate specific needs in terms of revenue, protection of infant industry or environment protection, temporary customs duties on exports or equivalent charges may be introduced, and the incidence of those existing could increase, after consultation of the EC Party, on a limited numbers of additional goods.

The Parties agree to revisit the provisions of this Article within the EPA Committee no later than 3 years after the date of entry into force of this Agreement, fully taking into consideration their impact on the development and economic diversification of the Ghanaian Party.

#### *Article 17*

##### **More favourable treatment resulting from free trade agreements**

1. With respect to matters covered by this Chapter, the EC Party shall accord to the Ghanaian Party any more favourable treatment applicable as a result of the EC Party becoming party to a free trade agreement with third parties after the signature of this Agreement.
2. With respect to the matters covered by this Chapter, the Ghanaian Party shall accord to the EC Party any more favourable treatment applicable as a result of the Ghanaian Party becoming party to a free trade agreement with any major trading partner after the signature of this Agreement.
3. If the Ghanaian Party obtains from a major trading partner a substantially more favourable treatment than the one offered by the EC Party, the Parties will enter in consultations and jointly decide the implementation of the provisions of paragraph 2.
4. The provisions of this Chapter shall not be so construed as to oblige the Parties to extend reciprocally any preferential treatment applicable as a result of the one of them being party to a free trade agreement with third parties on the date of signature of this Agreement.
5. For the purposes of this article, 'free trade agreement' means an agreement substantially liberalizing trade and providing for the absence or elimination of substantially all discrimination between or among parties thereto through the elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures, either at the entry into force of that agreement or on the basis of a reasonable time frame.
6. For the purposes of this article, 'major trading partner' means any developed country, or any country accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the free trade agreement referred to in paragraph 2, or any group of countries acting individually, collectively or through a free trade agreement accounting collectively for a share of world merchandise exports above 1.5 percent in the

year before the entry into force of the free trade agreement referred to in paragraph 2.<sup>1</sup>

#### *Article 18*

### **Prohibition of quantitative restrictions**

Notwithstanding the provisions of Articles 23, 24 and 25, all prohibitions or restrictions on import or export between the Parties, other than customs duties, taxes, fees and other charges provided for under article 11, whether made effective through quotas, import or export licenses or other measures, shall be eliminated upon the entry into force of this Agreement. No new such measures shall be introduced.

#### *Article 19*

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

1. Imported products originating in the other 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 like national products. Moreover, the Parties shall not otherwise apply internal taxes or other internal charges so as to afford protection to national production.
2. Imported products originating in the other Party shall be accorded treatment no less favourable than that accorded to like national products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.
3. No Party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no Party shall otherwise apply internal quantitative regulations so as to afford protection to national production.
4. The provisions of this Article shall not prevent the payment of subsidies exclusively to national producers, including payments to national producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of national products or for their benefit.
5. The provisions of this Article shall not apply to laws, regulations, procedures or practices governing public procurement.

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<sup>1</sup> For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used.

6. The provisions of this Article are without prejudice of the provisions of the Chapter of this Agreement on trade defence instruments.

#### *Article 20*

#### **Food security**

Where compliance with the provisions of this Agreement leads to problems with the availability of, or access to, foodstuffs or other products essential to ensure food security, and where this situation gives rise or is likely to give rise to major difficulties for the Ghanaian Party, it may take appropriate measures in accordance with the procedures laid down in Article 25.

#### *Article 21*

#### **Special provision on administrative cooperation**

1. The Parties agree that administrative co-operation is essential for the implementation and the control of the preferential treatment granted under this Title and underline their commitment to combat irregularities and fraud in customs and related matters.
2. Where a Party has made a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud, the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned in accordance with this Article.
3. For the purpose of this Article a failure to provide administrative co-operation shall mean, *inter alia*:
  - a) a repeated failure to respect the obligations to verify the originating status of the product(s) concerned;
  - b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin;
  - c) a repeated refusal or undue delay in obtaining authorisation to conduct administrative co-operation missions to verify the authenticity of documents or accuracy of information relevant to the granting of the preferential treatment in question.

For the purpose of this Article a finding of irregularities or fraud may be made, *inter alia*, where there is a rapid increase, without satisfactory explanation, in imports of goods exceeding the usual level of production and export capacity of the other Party, that is linked to objective information concerning irregularities or fraud.

4. The application of a temporary suspension shall be subject to the following conditions:

- a) The Party which has made a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud shall without undue delay notify the EPA Committee of its finding together with the objective information and enter into consultations with the EPA Committee, on the basis of all relevant information and objective findings, with a view to reaching a solution acceptable to both Parties.
  - b) Where the Parties have entered into consultations with the EPA Committee as above and have failed to agree on an acceptable solution within 3 months following the notification, the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned. A temporary suspension shall be notified to the EPA Committee without undue delay.
  - c) Temporary suspensions under this article shall be limited to that necessary to protect the financial interests of the Party concerned. They shall not exceed a period of six months, which may be renewed. Temporary suspensions shall be notified immediately after their adoption to the EPA Committee. They shall be subject to periodic consultations within the EPA Committee in particular with a view to their termination as soon as the conditions for their application are no longer met.
5. At the same time as the notification to the EPA Committee under paragraph 4 a) of this Article, the Party concerned should publish a notice to importers in its Official Journal. The notice to importers should indicate for the product concerned that there is a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud.

#### *Article 22*

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

In case of error by the competent authorities in the proper management of the preferential system of export, and in particular in the application of the provisions concerning the definition of the concept of "originating products" and methods of administrative cooperation, where this error leads to consequences in terms of import duties, the Party facing such consequences may request the EPA Committee to examine the possibilities of adopting all appropriate measures with a view to resolving the situation.

### **3.2. CHAPTER 2: TRADE DEFENCE MEASURES**

#### *Article 23*

#### **Anti-dumping and countervailing measures**

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the EC Party or the Ghanaian Party from adopting anti-dumping or countervailing measures in accordance with the relevant WTO agreements. For the purpose of this Article, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.



2. Before imposing definitive anti-dumping or countervailing duties the Parties shall consider the possibility of constructive remedies as provided for in the relevant WTO agreements. To this end, the Parties may hold appropriate consultations.
3. The EC Party shall notify the Ghanaian Party of the receipt of a properly documented complaint before initiating any investigation.
4. The provisions of this Article shall be applicable in all investigations initiated after this Agreement enters into force.
5. The provisions of this Article shall not be subject to the Dispute Settlement provisions of this Agreement.

#### *Article 24*

#### **Multilateral safeguards**

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the Ghanaian Party and the EC Party from adopting measures in accordance with Article XIX of the General Agreement on Tariffs and Trade 1994, the Agreement on Safeguards, and Article 5 of the WTO Agreement on Agriculture. For the purpose of this Article, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.
2. Notwithstanding paragraph 1, the EC Party shall, in the light of the overall development objectives of this Agreement and the small size of the economy of Ghana, exclude imports from Ghana from any measures taken pursuant to Article XIX of the GATT 1994, the WTO Agreement on Safeguards and Article 5 of the WTO Agreement on Agriculture.
3. The provisions of paragraph 2 shall apply for a period of five years, beginning with the date of entry into force of the Agreement. Not later than 120 days before the end of this period, the EPA Committee shall review the operation of those provisions in the light of the development needs of the Ghanaian Party, with a view to determining whether to extend their application for a further period.
4. The provisions of paragraph 1 shall not be subject to the Dispute Settlement provisions of this Agreement.

#### *Article 25*

#### **Bilateral safeguards**

1. After having examined alternative solutions, a Party may apply safeguard measures of limited duration which derogate from the provisions of Articles 12 and 13 of chapter 1, under the conditions and in accordance with the procedures laid down in this Article.

2. Safeguard measures referred to in paragraph 1 above may be taken where a product originating in one Party is being 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 producing like or directly competitive products in the territory of the importing Party, or
  - (b) disturbances in a sector of the economy, particularly where these disturbances produce major social problems, or difficulties which could bring about serious deterioration in the economic situation of the importing Party, or
  - (c) disturbances in the markets of like or directly competitive agricultural products<sup>2</sup> or mechanisms regulating those markets.
3. Safeguard measures referred to in this Article shall not exceed what is necessary to remedy or prevent the serious injury or disturbances, as defined in paragraph 2, 4 and 5(b). Those safeguard measures of the importing Party may only consist of one or more of the following:
  - (a) suspension of the further reduction of the rate of import duty for the product concerned, as provided for under this Agreement,
  - (b) increase in the customs duty on the product concerned up to a level which does not exceed the customs duty applied to other WTO Members, and
  - (c) introduction of tariff quotas on the product concerned.
4. Notwithstanding the provisions of paragraphs 1, 2 and 3 above, where any product originating in Ghana is being imported in such increased quantities and under such conditions as to cause or threaten to cause one of the situations referred to under paragraphs 2(a), (b) and (c) above to one or several of the EC Party's outermost regions, the EC Party may take surveillance or safeguard measures limited to the region or regions concerned in accordance with the procedures laid down in paragraphs 6 to 9.
5.
  - (a) Notwithstanding the provisions of paragraphs 1, 2 and 3 above, where any product originating in the EC Party is being imported in such increased quantities and under such conditions as to cause or threaten to cause one of the situations referred to under 2(a), (b) and (c) above, the Ghanaian Party may take surveillance or safeguard measures limited to its territory in accordance with the procedures laid down in paragraphs 6 to 9.
  - (b) The Ghanaian Party may take safeguard measures where a product originating in the EC Party as a result of the reduction of duties is being imported into its territory in such increased quantities and under such conditions as to cause or threaten to cause disturbances to an infant industry producing like

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<sup>2</sup> For the purpose of this article agricultural products are those covered by Annex I of the WTO Agreement on Agriculture.

or directly competitive products. Such provision is only applicable for a period of ten years from the date of entry into force of this Agreement. Measures must be taken in accordance with the provisions of paragraphs 6 to 9.

However, if agreed by both Parties, this period may be extended if, despite the industrial development potential and the efforts actually undertaken, this objective has not been achieved due to the world economic situation or serious troubles affecting Ghana.

6. (a) Safeguard measures referred to in this Article shall only be maintained for such a time as may be necessary to prevent or remedy serious injury or disturbances as defined in paragraphs 2, 4 and 5 above.

(b) Safeguard measures referred to in this Article shall not be applied for a period exceeding two years. Where the circumstances warranting imposition of safeguard measures continue to exist, such measures may be extended for a further period of no more than two years. Where Ghana applies a safeguard measure, or where the EC Party applies a measure limited to the territory of one or more of its outermost regions, such measure may however be applied for a period not exceeding four years and, where the circumstances warranting imposition of safeguard measures continue to exist, extended for a further period of four years.

(c) Safeguard measures referred to in this Article that exceed one year shall contain clear elements progressively leading to the elimination of the causes and measures at the end of the set period, at the latest.

(d) Except in exceptional circumstances submitted for the approval of the EPA Committee, no safeguard measure referred to in this Article shall be applied to the import of a product that has previously been subject to such a measure, for a period of at least one year from the expiry of the measure.

7. For the implementation of the above paragraphs, the following provisions shall apply:

(a) Where a Party takes the view that one of the circumstances set out in paragraphs 2, 4 and/or 5 exists, it shall immediately refer the matter to the EPA Committee for examination.

(b) The EPA Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the EPA Committee aimed at remedying the circumstances, or no other satisfactory solution has been reached within 30 days of the matter being referred to the EPA Committee, the importing Party may adopt the appropriate measures to remedy the circumstances in accordance with this Article.

(c) Before taking any measure provided for in this Article or, in the cases to which paragraph 8 of this Article applies, as soon as possible, Ghana shall supply the EPA Committee with all relevant information required for a thorough examination of the situation, with a view to seeking a solution acceptable to the Parties concerned.

- (d) In the selection of safeguard measures pursuant to this Article, priority must be given to those which permits to correct efficiently and quickly the problem in question while disturbing to the least extent possible the good operation of this Agreement.
- (e) Any safeguard measure taken pursuant to this Article shall be notified immediately to the EPA Committee 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.
8. Where exceptional circumstances require immediate action, the importing Party concerned, whether the EC Party or the Ghanaian Party as the case may be, may take the measures provided for in paragraph 3, 4 and/or 5 on a provisional basis without complying with the requirements of paragraph 7. Such action may be taken for a maximum period of 180 days where measures are taken by the EC Party and 200 days where measures are taken by the Ghanaian Party, or where measures taken by the EC Party are limited to the territory of one or more of its outermost regions. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraph 6. In the taking of such provisional measures, the interest of all parties involved shall be taken into account. The importing Party concerned shall inform the other Party concerned and it shall immediately refer the matter to the EPA Committee for examination.
9. 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 EPA Committee without delay.
10. The WTO Agreement shall not be invoked to preclude a Party from adopting safeguard measures in conformity with this Article.

## *Article 26*

### **Cooperation**

1. The Parties recognize the importance of cooperation in the field of trade defence measures.
2. The Parties agree to cooperate, in accordance with the provisions of Article 4, including by facilitating assistance measures, notably in the following fields:
- a) development of regulation and institutions to ensure trade defence;
  - b) capacity building for the use of trade defence measures provided for by the present Agreement.

### 3.3. CHAPTER 3: CUSTOMS AND TRADE FACILITATION

#### *Article 27*

##### **Objectives**

1. The Parties acknowledge the importance of customs and trade facilitation matters in the evolving global trading environment. The Parties agree to reinforce cooperation in this area with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations, fulfil the objectives of effective control and the promotion of trade facilitation, and help promote the development and regional integration of signatory countries.
2. The Parties recognize that legitimate public policy objectives, including in relation to security and the prevention of fraud, shall not be compromised in any way.
3. The Parties undertake to ensure the free circulation of goods covered by this Agreement, within their respective territories.

#### *Article 28*

##### **Customs and administrative cooperation**

1. In order to ensure compliance with the provisions of this Title, and effectively respond to the objectives laid down in Article 27, the Parties shall:
  - (a) exchange information concerning customs legislation and procedures;
  - (b) develop joint initiatives relating to import, export and transit procedures, as well as towards ensuring an effective service to the business community;
  - (c) cooperate on the automation of customs and other trade procedures and collaborate, where appropriate towards the establishment of common standards for the exchange of data;
  - (d) establish as far as possible, common positions in international organisations in the field of customs such as the WTO, WCO, UN and UNCTAD;
  - (e) cooperate in the planning and delivery of technical assistance, notably to facilitate customs and Trade Facilitation reforms in line with the provisions of this agreement; and
  - (f) promote co-ordination between all related agencies, both internally and across borders.

2. Notwithstanding paragraph 1, the administrations of both Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of Protocol 1.

### *Article 29*

#### **Customs legislation and procedures**

1. The Parties agree that their respective trade and customs legislation, provisions and procedures shall be based upon the international instruments and standards applicable in the field of customs and trade, including the substantive elements of the revised Kyoto Convention on the simplification and harmonisation of customs procedures, the WCO Framework of Standards to Secure and Facilitate Global Trade, the WCO data set and the Harmonised Commodity Description and Coding System ("HS Convention").

The Parties shall ensure freedom of transit through their territory via the route most convenient for transit.

Any restrictions, controls or requirements must pursue a legitimate public policy objective, be non-discriminatory be proportionate and be applied uniformly.

Without prejudice to legitimate customs control and supervision of goods in transit, the Parties shall accord to traffic in transit to or from the territory of any Party, treatment not less favourable than that accorded to domestic goods, exports and imports, and their movement.

The Parties shall operate bonded transport regimes that allow the transit of goods without payment of customs duties or other charges subject to the provision of an appropriate guarantee.

The Parties shall promote and implement regional transit arrangements with a view to reducing trade barriers.

The Parties shall draw upon and use international standards and instruments relevant to transit.

The Parties shall ensure co-operation and co-ordination between all concerned authorities and agencies in their territory to facilitate traffic in transit and promote co-operation across borders.

2. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, the Parties shall:
  - (a) take further steps towards the reduction, simplification and standardisation of data and documentation required by customs and other agencies;
  - (b) simplify requirements and formalities wherever possible, in respect of the rapid release and clearance of goods;

(c) provide effective, prompt and non-discriminatory procedures enabling the right of appeal, against customs and other agency administrative actions, rulings and decisions affecting imports, exports or goods in transit. Procedures for appeal shall be easily accessible, including to small or medium enterprises and any costs shall be reasonable and commensurate with costs in providing for appeals;

(d) ensure that the highest standards of integrity be maintained, through the application of measures reflecting the principles of the relevant international conventions and instruments in this field.

### *Article 30*

#### **Relations with the Business Community**

The Parties agree:

- (a) to ensure that all legislation, procedures and fees and charges are made publicly available, as far as possible through electronic means, together with the justification for them;
- (b) on the need for timely and regular consultation with trade representatives on legislative proposals and procedures related to customs and trade issues. To this end, appropriate and regular consultation mechanisms between administrations and the business community, shall be established by each Party;
- (c) there should be reasonable time period between the publication of new or amended legislation, procedures and fees or charges and their entry into force.

The Parties shall make publicly available relevant notices of an administrative nature, including agency requirements and entry procedures, hours of operation and operating procedures for customs offices at ports and border crossing points, and points of contact for information enquiries;

- (d) to foster co-operation between operators and relevant administrations via the use of non-arbitrary and publicly accessible procedures, such as Memoranda of Understanding, based on those promulgated by the WCO;
- (e) to ensure that their respective customs and related requirements and procedures continue to meet the needs of the trading community, follow best practices, and remain as little trade-restrictive as possible.

### *Article 31*

#### **Customs valuation**

1. Article VII of the GATT (1994) and the Agreement on the Implementation of Article VII of the GATT (1994) shall govern customs valuation rules applied to reciprocal trade between the Parties.

2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

*Article 32*

**Regional integration in the West Africa region**

The Parties agree to facilitate progress of custom reforms within the West African region.

*Article 33*

**Continuation of negotiations in the field of trade and customs facilitation**

Within the negotiations of a full EPA, the Parties agree to continue negotiations on this chapter in order to complement it in a regional framework.

*Article 34*

**Special committee for trade and customs facilitation**

Within the EPA Committee, the Parties will set up a Special Committee on customs and trade facilitation, comprising representatives of the Parties. This committee will report to the EPA Committee. It will discuss all customs issues meant to facilitate trade between the Parties and monitor the implementation and the application of this chapter as well as the operation of rules of origin.

*Article 35*

**Cooperation**

1. The Parties recognise the importance of cooperation as regards customs and trade facilitation measures for the implementation of this Agreement.
2. The Parties agree to cooperate, in accordance with the provisions of the Article 4 of the present Agreement, including by facilitating support, notably in the following areas:
  - a) elaboration of appropriate simplified legal and regulatory provisions;
  - b) information and sensitization of operators, including training of staff concerned;
  - c) capacity-building, modernization and interconnection of custom administrations.



### **3.4. CHAPTER 4: TECHNICAL BARRIERS TO TRADE AND SANITARY AND PHYTOSANITARY MEASURES**

#### *Article 36*

##### **Multilateral obligations and general context**

The Parties reaffirm their rights and obligations under the WTO Agreement and, in particular, the WTO Agreements on Sanitary and Phytosanitary Measures (SPS Agreement) and on Technical Barriers to Trade (TBT Agreement). The Parties also reaffirm their rights and obligations under the International Plant Protection Convention (IPPC), CODEX Alimentarius and the World Animal Health Organisation (OIE).

The Parties reaffirm their commitment to enhance public health in Ghana, in particular through the strengthening of capacities to identify non compliant products.

These commitments, rights and obligations shall underline the activities of the Parties under this Chapter.

#### *Article 37*

##### **Objectives**

The objectives of this Chapter are to facilitate trade in goods between the Parties, to increase the capacity of the Parties to identify, prevent and eliminate unnecessary obstacles to trade between the Parties as a result of technical regulations, standards and conformity assessment procedures applied by either Party while not affecting the capacity of the Parties to protect public, plant and animal health.

#### *Article 38*

##### **Scope and definition**

1. The provisions of this Chapter shall apply to technical regulations, standards and conformity assessment procedures as defined in the WTO TBT Agreement and to sanitary and phytosanitary measures (hereinafter SPS measures) as defined in the WTO SPS Agreement, in so far as they affect trade between the Parties.
2. For the purposes of this Chapter, unless specified otherwise, the definitions used by the WTO TBT and SPS Agreements, the CODEX Alimentarius, the International Plant Protection Convention (IPPC) and the World Animal Health Organisation shall apply, including where reference is made to "products" in this chapter.

#### *Article 39*

##### **Competent authorities**

The Competent Authorities of the Parties for the implementation of the measures referred to in this Chapter are described in Appendix II.

The Parties shall, in accordance with Article 41, inform each other of any significant changes to the competent authorities listed in Appendix II. In such a case, the EPA Committee will adopt an amendment to Appendix II.

#### *Article 40*

### **Sanitary and phytosanitary zoning**

In respect of import conditions, the Parties may propose and identify on a case by case basis zones of defined sanitary and phytosanitary status, taking into account Article 6 of the SPS agreement.

#### *Article 41*

### **Transparency of trade conditions and Information Exchange**

1. The Parties shall inform each other of any changes to their technical import requirements for products (including live animals and plants).
2. The Parties agree to inform each other in writing of measures taken to prohibit the importation of any good to address a problem relating to health (public, animal or plant health), safety and the environment as soon as possible in accordance with SPS recommendations.
3. The Parties agree to exchange information with a view to collaborating so that their products meet technical regulations and standards required to access their respective markets.
4. The Parties shall also directly exchange information on other topics agreed by both Parties to be of potential importance for their trade relations, including food safety issues, animal and plant disease outbreaks, scientific opinions and other significant product safety related events. In particular, the Parties undertake to inform each other when applying the principle of sanitary and phytosanitary zoning as set out in Article 6 of the SPS Agreement.
5. The Parties agree to exchange information in epidemiological surveillance on animal disease. Also in the domain of plant health, the Parties will exchange information on the occurrence of pests of known and immediate danger to the other Party.
6. The Parties agree to cooperate with a view to alert each other early when new regional rules might impact trade between them.

#### *Article 42*

### **Cooperation in international bodies**

The Parties agree to cooperate in international standard setting bodies, including by facilitating the participation by representatives of the Ghanaian Party in the meeting of these bodies.

### *Article 43*

#### **Cooperation**

1. The Parties recognise the importance of cooperation in the areas of technical regulations, standards and conformity assessment as well as regards sanitary and phytosanitary measures for the implementation of this Agreement.
2. The Parties agree to cooperate, in accordance with the provisions of Article 4, with the aim of improving the quality and the competitiveness of priority products for Ghana and the access to the EC market, including by facilitating support, notably financially, in the following areas:
  - a) Set-up of an appropriate framework for the exchange of information and expertise among the Parties.
  - b) Adoption of technical standards and regulations, conformity assessment procedures, and harmonized sanitary and phytosanitary measures at regional level, based on relevant international standards.
  - c) Building the capacity of the public and private actors, including information and training, with the aim of helping exporters to conform to EC rules and standards, and of participating in international organisations.
  - d) Development of national capacities for the assessment of product compliance and the access to the EC market.

#### **4. APPENDICES**

##### **4.1. Appendix I**

###### **Priority products for export from Ghana to the EC**

These products will be identified by Ghana and notified to the EPA Committee no later than 3 months from the date of signature of the present Agreement. The EPA Committee will adopt the list of products.

##### **4.2. Appendix II**

###### **Competent Authorities**

###### **A. Competent authorities of the European Community**

Control is shared between the national services of the Member States and the European Commission. In this respect the following applies:

- As regards exports to Ghana, the EC Member States are responsible for control of the production circumstances and requirements, including statutory

inspections and issuing health (or animal welfare) certifications attesting to the agreed standards and requirements.

- As regards imports from Ghana, the Member States are responsible for control of the compliance of the imports with the Community's import conditions.
- The European Commission is responsible for overall co-ordination, inspection/audits of inspection systems and the necessary legislative action to ensure uniform application of standards and requirements within the internal EC market.

**B. Competent authorities of Ghana**

These authorities will be designated by Ghana and notified to the EPA Committee no later than 3 months from the date of signature of the present Agreement. The EPA Committee will adopt an amended appendix.

## **5. TITLE IV: SERVICES, INVESTMENT AND TRADE RELATED RULES**

### **Article 44**

Building on the Cotonou Agreement, the Parties will cooperate to facilitate all the necessary measures leading to the conclusion as soon as possible of a global Economic Partnership Agreement between the whole West African Region and the EC in the following:

- a) trade in services and electronic commerce;
- b) investments;
- c) competition;
- d) intellectual property.

The Parties will take all necessary measures to endeavour to conclude a global EPA between the West Africa region and the EC before the end of 2008.

On these issues, as well as on any other issues the Parties may agree on, the Parties support the negotiations of the global EPA on the basis of the EC-West Africa Road Map and subsequent developments since its adoption. They welcome a two step approach starting first with formulating and implementing regional policies and building regional capacity, and in a second step, deepening the EC-West Africa trade provisions mutually agreed on these issues.

This Article does not prejudge the position of the regional organisations on the above issues.

## **6. TITLE V: DISPUTE AVOIDANCE AND SETTLEMENT**

### **6.1. CHAPTER 1: OBJECTIVE AND SCOPE**

#### *Article 45*

##### **Objective**

The objective of this Title is to avoid and settle any dispute between the Parties with a view to arriving, where possible, at a mutually agreed solution.

#### *Article 46*

##### **Scope**

1. This Title shall apply to any dispute concerning the interpretation and application of this Agreement, with the exception of the Title II of this Agreement and except otherwise provided for.
2. Notwithstanding paragraph 1, the procedure set out in Article 98 of the Cotonou Agreement, shall be applicable in the event of a dispute concerning development finance cooperation as provided for by the Cotonou Agreement.

### **6.2. CHAPTER 2: CONSULTATIONS AND MEDIATION**

#### *Article 47*

##### **Consultations**

1. The Parties shall endeavour to resolve any dispute referred to in Article 46 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request to the other Party, copied to the EPA Committee, identifying the measure at issue and the provisions of the Agreement that it considers the measure not to be in conformity with.
3. Consultations shall be held within 40 days of the date of the submission of the request. The consultations shall be deemed concluded within 60 days of the date of the submission of the request, unless both Parties agree to continue consultations. All information disclosed during the consultations shall remain confidential.
4. Consultations on matters of urgency, including those regarding perishable or seasonal goods shall be held within 15 days of the date of the submission of the request, and shall be deemed concluded within 30 days of the date of the submission of the request.

5. If consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if consultations have been concluded and no agreement has been reached on a mutually agreed solution, the complaining Party may request the establishment of an arbitration panel in accordance with Article 49.

#### *Article 48*

#### **Mediation**

1. If consultations fail to produce a mutually agreed solution, the Parties may, by agreement, seek recourse to a mediator. Unless the Parties agree otherwise, the terms of reference for the mediation shall be the matter referred to in the request for consultations.
2. Unless the Parties agree on a mediator within 10 days of the date of the agreement to request mediation, the chairperson of the EPA Committee, or his or her delegate, shall select by lot a mediator from the pool of individuals who are on the list referred to in Article 20 and are not nationals of either Party. The selection shall be made within 20 days of the date of the submission of agreement to request mediation and in the presence of a representative of each Party. The mediator will convene a meeting with the Parties no later than 30 days after being selected. The mediator shall receive the submissions of each Party no later than 15 days before the meeting and notify an opinion no later than 45 days after having been selected.
3. The mediator's opinion may include a recommendation on how to resolve the dispute consistent with the provisions referred to in Article 53. The mediator's opinion is non-binding.
4. The Parties may agree to amend the time limits referred to in paragraph 2. The mediator may also decide to amend these time limits upon request of any of the Parties or on his own initiative, given the particular difficulties experienced by the Party concerned or the complexities of the case.
5. The proceedings involving mediation, in particular all information disclosed and positions taken by the Parties during these proceedings shall remain confidential.

### **6.3. CHAPTER 3: DISPUTE SETTLEMENT PROCEDURES**

#### *Section I – Arbitration Procedure*

#### *Article 49*

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

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 47, or by recourse to mediation as provided for in

Article 48, the complaining Party may request the establishment of an arbitration panel.

2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and the EPA Committee. The complaining Party shall identify in its request the specific measures at issue, and it shall explain how such measure constitutes a breach of the provisions of this Agreement.

#### *Article 50*

##### **Establishment of the arbitration panel**

1. An arbitration panel shall be composed of three arbitrators.
2. Within 10 days of the date of the submission of the request for the establishment of an arbitration panel to the EPA Committee, the Parties shall consult 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 its composition within the time frame laid down in paragraph 2, either Party may request the chairperson of the EPA Committee, or her or his delegate, to select all three members by lot from the list established under Article 64, one among the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against and one among the individuals selected by the Parties to act as chairperson. Where the Parties agree on one or more of the members of the arbitration panel, any remaining members shall be selected by the same procedure.
4. The chairperson of the EPA Committee, or her or his delegate, shall select the arbitrators within five days of the request referred to in paragraph 3 by either Party and in the presence of a representative of each Party.
5. The date of establishment of the arbitration panel shall be the date on which the three arbitrators are selected.

#### *Article 51*

##### **Interim panel report**

The arbitration panel shall notify to the Parties an interim report containing both the descriptive section and its findings and conclusions, as a general rule not later than 120 days from the date of establishment of the arbitration panel. Any Party may submit written comments to the arbitration panel on precise aspects of its interim report within 15 days of the notification of the report.

#### *Article 52*

##### **Arbitration panel ruling**



1. The arbitration panel shall notify its ruling to the Parties and to the EPA Committee within 150 days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the EPA Committee in writing, stating the reasons for the delay and the date on which the panel plans to conclude its work. Under no circumstances should the ruling be notified later than 180 days from the date of the establishment of the arbitration panel.
2. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel shall make every effort to notify its ruling within 75 days from the date its establishment. Under no circumstance should it take longer than 90 days from its establishment. The arbitration panel may give a preliminary ruling within 10 days of its establishment on whether it deems the case to be urgent.
3. Either Party may request the arbitration panel to provide a recommendation as to how the Party complained against could bring itself into compliance.

## *Section II – Compliance*

### *Article 53*

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

Each Party shall take any measure necessary to comply with the arbitration panel ruling, and the Parties will endeavour to agree on the period of time to comply with the ruling.

### *Article 54*

#### **The reasonable period of time for compliance**

1. No later than 30 days after the notification of the arbitration panel ruling to the Parties, the Party complained against shall notify the complaining Party and the EPA Committee of the time it will require for compliance (reasonable period of time).
2. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within 20 days of the notification made by the Party complained against, request in writing the arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other party and to the EPA Committee. The arbitration panel shall notify its ruling to the Parties and to the EPA Committee within 30 days from the date of the submission of the request.
3. The arbitration panel will, in determining the length of the reasonable period of time, take into consideration the length of time that it will normally take the Party complained against to adopt comparable legislative or administrative measures to those identified by the complaining Party as being necessary to ensure compliance. The arbitration panel may also take into consideration

constraints which may affect the adoption by the Party complained against of the necessary measures.

4. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 50 shall apply. The time limit for notifying the ruling shall be 45 days from the date of the submission of the request referred to in paragraph 2.
5. The reasonable period of time may be extended by agreement of the Parties.

#### *Article 55*

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

1. The Party complained against shall notify the other Party and the EPA Committee before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.
2. In the event that there is disagreement between the Parties concerning the compatibility of any measure notified under paragraph 1, with the provisions of this Agreement, the complaining Party may request in writing the arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and it shall explain how such measure is incompatible with the provisions of this Agreement. The arbitration panel shall notify its ruling within 90 days of the date of the submission of the request. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel shall notify its ruling within 45 days of the date of the submission of the request.
3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 50 shall apply. The time limit for notifying the ruling shall be 105 days from the date of the submission of the request referred to in paragraph 2.

#### *Article 56*

#### **Temporary remedies in case of non-compliance**

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 55 paragraph 1 is not compatible with that Party's obligations under the provisions referred to in Article 53, the Party complained against shall, if so requested by the complaining Party, present an offer for temporary compensation.
2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of the arbitration panel's ruling under Article 55 that a measure taken to comply is not compatible with the provisions referred to in Article 53, the complaining Party shall be entitled, upon notification to the other Party, to adopt appropriate measures. In adopting such measures the

complaining Party shall endeavour to select measures that least affects the attainment of the objectives of this Agreement and shall take into consideration their impact on the economy of the Party complained against.

Under no circumstance will the appropriate measures referred to in the present paragraph affect development assistance to Ghana.

3. The EC Party shall exercise due restraint in asking for compensation or adopting appropriate measures pursuant to paragraphs 1 or 2 of this Article and will take account of the situation of developing country of the Ghanaian Party.
4. The appropriate measures or compensation shall be temporary and shall be applied only until any measure found to violate the provisions referred to in Article 53 has been withdrawn or amended so as to bring it into conformity with those provisions or until the Parties have agreed to settle the dispute.

#### *Article 57*

##### **Review of any measure taken to comply after the adoption of appropriate measures**

1. The Party complained against shall notify the other Party and the EPA Committee of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to application of appropriate measures by the complaining Party.
2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions of this Agreement within 30 days of the date of the submission of the notification, the complaining Party shall request in writing the arbitration panel to rule on the matter. Such request shall be notified to the other Party and to the EPA Committee. The arbitration panel ruling shall be notified to the Parties and to the EPA Committee within 45 days of the date of the submission of the request. If the arbitration panel rules that any measure taken to comply is not in conformity with the provisions of this Agreement, the arbitration panel will determine whether the complaining Party can continue to apply appropriate measures. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions of this Agreement, the appropriate measures shall be terminated.
3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 50 shall apply. The period for notifying the ruling shall be 60 days from the date of the submission of the request referred to in paragraph 2.

#### *Section III – Common Provisions*

#### *Article 58*

##### **Mutually agreed solution**

Within the present Title, the Parties may reach a mutually agreed solution to a dispute under this Title at any time. They shall notify the EPA Committee of any such solution. Upon adoption of the mutually agreed solution, the procedure shall be terminated.

#### *Article 59*

##### **Rules of procedure**

1. Dispute settlement procedures under Chapter III of this Title shall be governed by the Rules of Procedure which shall be adopted by the Joint EPA Council within three month after its establishment.
2. Any meeting of the arbitration panel shall be open to the public in accordance with the Rules of Procedure, unless otherwise decided by the Special Group on its own initiative or further to the request of Parties.

#### *Article 60*

##### **Information and technical advice**

At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source, including the Parties involved in the dispute, it deems appropriate for the arbitration panel proceeding. The arbitration panel shall also have the right to seek the relevant opinion of experts as it deems appropriate. Interested parties are authorised to submit amicus curiae briefs to the arbitration panel in accordance with the Rules of Procedure. Any information obtained in this manner must be disclosed to each of the Parties and submitted for their comments.

#### *Article 61*

##### **Languages of the submissions**

The written and oral submissions shall be made in any official language of the Parties. The Parties will however endeavour to the extent possible to adopt an official language common to both Parties as a working language and will notably take into account the situation of developing country of the Ghanaian Party, particularly as regards translation difficulties.

#### *Article 62*

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

Any arbitration panel shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law, including the Vienna Convention on the Law of Treaties. The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided in the provisions of this Agreement.

### *Article 63*

#### **Arbitration panel rulings**

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case dissenting opinions of arbitrators shall be published.
2. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the reasoning behind any findings and conclusions that it makes. The EPA Committee shall make the arbitration panel rulings publicly available unless it decides not to do so.

#### **6.4. CHAPTER 4: GENERAL PROVISIONS**

### *Article 64*

#### **List of arbitrators**

1. The EPA Committee shall, no later than three months after the provisional application of this Agreement, establish a list of 15 individuals who are willing and able to serve as arbitrators. Each of the Parties shall select five individuals to serve as arbitrators. The two Parties shall also agree on five individuals that are not nationals of either Party and who shall act as chairperson to the arbitration panel. The EPA Committee will ensure that the list is always maintained at this level.
2. Arbitrators shall have specialised knowledge or experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct annexed to the Rules of Procedures.
3. The EPA Committee may establish an additional list of 15 individuals having a sectoral expertise in specific matters covered by the stepping stone EPA. When recourse is made to the selection procedure of Article 50 paragraph 2, the chairperson of the EPA Committee may use such a sectoral list upon agreement of both Parties.

### *Article 65*

#### **Relation with WTO obligations**

1. Arbitration bodies set up under this Agreement shall not be adjudicated disputes on each Party rights and obligations under 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 the WTO framework, including dispute settlement

action. However, where a Party has, with regard to a particular measure, instituted a dispute settlement proceeding, either under Article 49(1) of this Title or under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. For purposes of this paragraph, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO.

3. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO.

#### *Article 66*

##### **Time limits**

1. All time limits laid down in this Title, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days from the day following the act or fact to which they refer.
2. Any time limit referred to in this Title may be extended by mutual agreement of the Parties.

#### *Article 67*

##### **Modification of Title V**

The EPA Committee and each Party may both take the initiative to request an amendment of this Title. The amendment requests will be examined by the EPA Committee. The amendment will enter into force only after approval by both Parties.

## 7. TITLE VI: GENERAL EXCEPTIONS

### *Article 68*

#### **General exception clause**

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

- (a) are necessary to protect public security, public morals or to maintain public order;
- (b) are necessary to protect human, animal or plant life or health;
- (c) are necessary to secure compliance with laws or regulations which 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 contracts;
  - (ii) the 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) safety;
  - (iv) customs enforcement; or
  - (v) protection of intellectual property rights;
- (d) relate to the importation or exportation of gold or silver;
- (e) are necessary to the protection of national treasures of artistic, historic or archaeological value;
- (f) relate to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption of goods, domestic supply or consumption of services and on domestic investors;
- (g) relate to the products of prison labour; or
- (h) are inconsistent with Article 19 on National Treatment, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, investors or service suppliers of the other Party.

## *Article 69*

### **Security exceptions**

1. Nothing in this Agreement shall be construed:
  - (a) to require the Parties to furnish any information the disclosure of which it considers contrary to its essential security interests;
  - (b) to prevent the Parties from taking any action which it considers necessary for the protection of its essential security interests:
    - (i) relating to fissionable and fusionable 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 materials;
    - (iv) relating to government procurement indispensable for national security or for national defence purposes; or
    - (v) taken in time of war or other emergency in international relations; or
  - (c) to prevent the Parties from taking any action in order to carry out obligations it has accepted for the purpose of maintaining international peace and security.
2. The Parties shall inform each other to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

## *Article 70*

### **Taxation**

1. Nothing in this Agreement or in any arrangement adopted under this Agreement shall be construed to prevent 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 in any arrangement adopted under this Agreement shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements 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 any such convention, that convention shall prevail to the extent of the inconsistency.

## **8. TITLE VII: INSTITUTIONAL, GENERAL AND FINAL PROVISIONS**

### *Article 71*

#### **Modalities for the continuation of negotiations**

1. The Parties will continue negotiations according to the provisions of the present Agreement.
2. When negotiations are complete, the resulting draft amendments shall be submitted for approval to the relevant domestic authorities.

### *Article 72*

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

1. Contracting Parties of this Agreement shall be the Republic of Ghana, referred to as the "Ghanaian Party" or "Ghana", on the one part, and the European Community or its Member States or the European Community and its Member States, within their respective areas of competence as derived from the Treaty establishing the European Community, referred to as the "EC Party" or the European Community, on the other part.
2. For the purposes of this Agreement, the term "Party" shall refer to the Ghanaian Party or to the EC Party as the case may be. The term "Parties" shall refer to the Ghanaian Party and the EC Party.
3. The Parties shall adopt any general or specific measures required for them to fulfil their obligations under this Agreement and shall ensure that they comply with the objectives laid down in this Agreement.

### *Article 73*

#### **EPA Committee**

1. For the purposes of implementing this Agreement, an EPA Committee will be established within 3 months from the date of signature of this Agreement.
2. The Parties agree that the composition, organisation and operation of this EPA Committee will respect the principle of equality. The Committee will determine its organisation and functioning rules.
3. The EPA Committee is responsible for the administration in all fields covered by this Agreement and the achievement of all tasks mentioned in this Agreement.

4. In order to ease communication and ensure an effective implementation of the present Agreement, each Party will designate a focal point within the Committee.
5. The EPA Committee meetings may be open to third parties. ECOWAS Commission may be invited to the EPA Committee meetings, according to its internal procedures.

#### *Article 74*

#### **Outermost regions of the European Community**

1. Taking account of the geographical proximity of the outermost regions of the European Community and Ghana and in order to reinforce economic and social links between these regions and Ghana, the Parties shall endeavour to facilitate co-operation in all areas covered by this Agreement as well as facilitate trade and goods and services, promote investments and encourage transport and communication links between the outermost regions and Ghana.
2. The objectives enunciated in paragraph 1 shall also be pursued, wherever possible, through fostering the joint participation of Ghana and the outermost regions in framework and specific programmes of the European Community in areas covered by this Agreement.
3. The EC Party shall endeavour to ensure coordination between the different financial instruments of the European Community's cohesion and development policies in order to foster cooperation between Ghana and the outermost regions of the European Community in the areas covered by this Agreement.
4. Nothing in this Agreement shall prevent the EC Party from applying existing measures aimed at addressing the structural social and economic situation of the Outermost region pursuant to article 299(2) of the Treaty establishing the European Community.

#### *Article 75*

#### **Entry into force and duration**

1. This Agreement shall be signed, ratified or approved according to applicable constitutional rules specific to each Party or, as far as the EC Party is concerned, to internal rules and procedures.
2. This Agreement shall enter into force the first day of the month following that in which the Ghanaian Party and the EC Party have notified each other of the completion of the procedures necessary for this purpose.
3. Notifications shall be sent to the Secretary General of the Council of the European Union, who shall be the depository of this Agreement.

4. Pending entry into force of the Agreement, the Parties shall agree to apply it provisionally in accordance with their respective laws or by ratification of the Agreement.
5. Provisional application shall be notified to the depositary. The Agreement shall be applied provisionally 10 days after the latter of the receipt of notification of provisional application by the European Community or the Ghanaian Party.
6. Notwithstanding paragraph 4, the EC Party and Ghana may apply the agreement, in whole or in part, before provisional application, to the extent that this is possible under their domestic law.
7. Either Party may give written notice to the other of its intention to denounce this Agreement. Denunciation takes effect six months after notification by the other party.
8. This Agreement will be superseded by a global EPA concluded at regional level with the EC Party at its date of its entry into force. In this case, the parties will endeavor to ensure that the Economic Partnership Agreement at regional level preserves most of the benefits obtained by Ghana through this Agreement.

#### *Article 76*

#### **Territorial application**

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, and, on the other hand, to Ghana.

#### *Article 77*

#### **Accession of new EU Member States**

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

3. The Parties shall review the effects of the accession of new EU Member States on this Agreement. The EPA Committee may decide on any transitional or amending measures that might be necessary.

#### *Article 78*

### **Dialogue on finance issues**

The Parties agree to foster dialogue, transparency and to share best practices in the area of tax policy and administration.

#### *Article 79*

### **Collaboration in the fight against illegal financial activities**

The EC Party and Ghana are committed to prevent and fight against illegal, fraudulent and corrupt activities, money laundering and terrorist financing and shall take the necessary legislative and administrative measures to comply with international standards, including those laid down in the United Nations Convention against Corruption, the United Nations Convention on Transnational Organised Crime and its Protocols, the United Nations Convention for the Suppression of Terrorist Financing and the Financial Action Task Force recommendations. The EC Party and Ghana agree to exchange information and cooperate in these areas.

#### *Article 80*

### **Relations with other agreements**

1. With the exception of development cooperation provided for in Title II of Part III of the Cotonou Agreement, in case of any inconsistency between the provisions of this Agreement and the provisions of Title II of Part III of the Cotonou Agreement the provisions of this Agreement shall prevail.
2. Nothing in this Agreement shall be construed so as to prevent the adoption by the European Community or by Ghana of any measures, including trade and trade-related measures, deemed appropriate as provided for under Articles 11b, 96 and 97 of the Cotonou Agreement.
3. The Parties agree that nothing in this Agreement requires them to act in a manner inconsistent with their WTO obligations.

#### *Article 81*

### **Authentic texts**

This Agreement is drawn up in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian,

Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

In case of contradiction, reference will be made to the language in which the Agreement has been negotiated, in English in this case.

*Article 82*

**Annexes**

The Annex and Protocol to this Agreement shall form an integral part thereof.

**9. ANNEX 1: CUSTOMS DUTIES ON PRODUCTS ORIGINATING IN GHANA**

1. Without prejudice to paragraphs 2, 4, 5, 6 and 7 customs duties of the EC Party (hereinafter "EC customs duties") shall be entirely eliminated on all products of Chapters 1 to 97 of the Harmonized System, except those of Chapter 93 thereof, originating in Ghana upon the entry into force of this Agreement. For products of Chapter 93 the EC Party shall continue to impose the applied MFN duties.
2. EC customs duties on the products of tariff heading 1006 originating in Ghana shall be eliminated as from 1 January 2010, with the exception of EC customs duties on the products of subheading 1006 10 10 which shall be eliminated as from the entry into force of this Agreement.
3. The Parties agree that the provisions of Protocol 3 of the Cotonou Agreement (hereinafter the "Sugar Protocol") shall remain applicable until 30 September 2009. After that date the EC Party and Ghana agree that the Sugar Protocol shall no longer be in force between them. For the purposes of Article 4(1) of the Sugar Protocol, the delivery period 2008/9 will last from 1 July 2008 to 30 September 2009. The guaranteed price for 1 July-30 September 2009 shall be decided following the negotiation provided for in Article 5(4).
4. EC Customs duties on products of tariff heading 1701 originating in Ghana shall be eliminated as from 1 October 2009. No import license shall be granted with regard to products to be imported, unless the importer undertakes to purchase such products at a price at least equal to the guaranteed prices fixed for sugar imported into the EC Party under Sugar Protocol.
5. (a) The EC Party may, during the period between 1 October 2009 and 30 September 2015 impose the applied Most Favoured Nation duty on the products originating in Ghana of tariff heading 1701 [sugar] imported in excess of the following levels expressed in white sugar equivalent, which are deemed to cause a disturbance in the EC Party sugar market:
  - (i) 3.5 million tonnes in a marketing year of such products originating in States members of the African, Caribbean and Pacific Group of States (ACP States) signatory to the Cotonou Agreement, and
  - (ii) 1.38 million tonnes in marketing year 2009/2010 of such products originating in ACP States that are not recognised by the United Nations as least developed countries. The figure of 1.3 million tonnes shall increase to 1.45 million tonnes in marketing year 2010/2011, and 1.6 million tonnes in the following four marketing years.
- (b) The importation of products of tariff heading 1701 originating in any Signatory West African State that is recognised by the United Nations as a least developed country shall not be subject to the provisions of sub-paragraph 5(a).

However, such imports shall remain subject to the provisions of article 3 of Chapter 2 of Title III (safeguard clause).<sup>3</sup>

- (c) The imposition of the applied Most Favoured Nation duty shall cease at the end of the marketing year during which it was introduced.
- (d) Any measure taken pursuant to this paragraph shall be notified immediately to the EPA Committee and shall be the subject of periodic consultations within that body.
6. As of 1 October 2015, for the purpose of the application of the provisions of article 25 (safeguard clause), disturbances in the markets of products of tariff heading 1701 may be deemed to arise in situations where the European Community market price of white sugar falls during two consecutive months below 80 percent of the European Community market price for white sugar prevailing during the previous marketing year.
7. From 1 January 2008 until 30 September 2015 products of tariff heading 1704 90 99, 1806 10 30, 1806 10 90, 2106 90 59 and 2106 90 98 shall be subject to a special surveillance mechanism in order to ensure the arrangements provided for in paragraph 4 and 5 are not circumvented. In the event of a cumulative increase of imports of such products originating in Ghana by more than 20 percent in volume during a period of 12 consecutive months compared to the average of the yearly imports over the three previous 12 month periods, the EC Party shall analyse the pattern of trade, the economic justification and the sugar content of such imports and, if it considers that such imports are used to circumvent the arrangements provided for in paragraphs 4 and 5, it may suspend the preferential treatment and introduce the specific MFN duty applied to imports pursuant to the European Community Common Customs Tariff for products of tariff heading 1704 90 99, 1806 10 30, 1806 10 90, 2106 90 59 and 2106 90 98 originating in Ghana. Sub-paragraphs 5(b), (c) and (d) shall apply *mutatis mutandis* to action under this paragraph.
8. Between 1 October 2009 and 30 September 2012 with regard to the products of tariff heading 1701, no preferential import license shall be granted unless the importer undertakes to purchase such products at a price not lower than 90 percent of the reference price set by the EC Party for the relevant marketing year.
9. Paragraph 1, shall not apply to products 08030019 originated in Ghana and released for free circulation in the Outermost Regions of the EC. Paragraph 1, 3 and 4 shall not apply to 1701 originating in Ghana and released for free circulation in the French Over Seas Departments. This provision shall be applicable for a period of 10 years. This period shall be extended for a further period of 10 years unless the Parties agree otherwise.

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<sup>3</sup> For this purpose and by derogation to article 25, individual West African State recognised by the United Nations as a least developed country may be subject to safeguard measures.



**10. ANNEX 2: CUSTOMS DUTIES ON PRODUCTS ORIGINATING IN THE EC PARTY**

Ghana establishes a liberalisation schedule for products originating in the EC imported in Ghana territory which comprises 4 groups of products:

- for the Group A, the liberalisation will be completed by the 1<sup>st</sup> of January 2013;
- for the Group B, which includes mainly raw material and equipment for existing and infant industries, the liberalisation will start on the 1<sup>st</sup> of January 2013 to be completed by the 31<sup>st</sup> of December 2017;
- for the Group C, which includes goods with a high fiscal revenue value, the liberalisation will start on the 1<sup>st</sup> of January 2018 to be completed by the 31<sup>st</sup> of December 2022;
- the products of Group D will be excluded from the scope of liberalisation. Any further liberalization will be implemented in line with Ghana's development objectives after a period of not less than 25 years. Sensitive products in this category relates to livelihoods, food security, rural development particularly in agriculture and agro processing as well as infant industries products, high revenues goods to mitigate the potential net fiscal impact and luxury goods.

The Export Development and Investment Fund (EDIF) Levy is backed by The Export Development and Investment Fund Act 582 of 2000. It is imposed on all imports at the rate of 0.5% CIF with the objective of generating funds to stimulate the export sector and support trade in general. This levy is not included in the base duties listed in the liberalisation schedule hereafter. The Ghanaian Party may maintain this levy until the 31<sup>st</sup> December 2017 and shall therefore eliminate it on the 1<sup>st</sup> January 2018 at the latest. Cooperation in respect to financial adjustment in Article 8 of this Agreement shall also apply to the elimination of this levy.

**11. ANNEX 3: LIST OF FEES AND OTHER CHARGES OF THE GHANAIAN PARTY REFERRED TO IN ARTICLE 11.2**

**Destination Inspection Fee**

This is a fee charged by inspection companies for services rendered, and it emanates from the Implementation of the WTO Agreement on Customs Valuation and Destination Schemes. It is Commissioner's Orders number 4 of 2000. Its rate is of 1% of CIF.

**12. ANNEX 4: LIST OF OUTERMOST REGIONS OF THE EC PARTY CONCERNED BY ARTICLE 74**

- French overseas departments (Guadeloupe, Martinique, French Guyana, Réunion)
- the Azores,
- Madeira
- the Canary Islands

### **13. PROTOCOL 1: ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS**

#### *Article 1*

##### **Definitions**

For the purposes of this Protocol:

- (a) ‘customs legislation’ means any legal or regulatory provisions applicable in the territories of the Parties, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;
- (b) ‘applicant authority’ means a competent administrative authority which has been designated by the Parties for this purpose and which makes a request for assistance on the basis of this Protocol;
- (c) ‘requested authority’ means a competent administrative authority which has been designated by a Parties for this purpose and which receives a request for assistance on the basis of this Protocol;
- (d) ‘personal data’ means all information relating to an identified or identifiable individual;
- (e) ‘operation in breach of customs legislation’ means any violation or attempted violation of customs legislation.

#### *Article 2*

##### **Scope**

1. The Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of the customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.
2. Assistance in customs matters, as provided for in this Protocol, shall apply to any administrative authority of the Parties which is competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.
3. Assistance to recover duties, taxes or fines is not covered by this Protocol.

### *Article 3*

#### **Assistance on request**

1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.
2. At the request of the applicant authority, the requested authority shall inform it:
  - (a) whether goods exported from the territory of one of the Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;
  - (b) whether goods imported into the territory of the Party have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.
3. At the request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:
  - (a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
  - (b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation;
  - (c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation; and
  - (d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

### *Article 4*

#### **Spontaneous assistance**

The Parties shall assist each other, at their own initiative and in accordance with their legal or regulatory provisions, if they consider that to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:

- activities which are or appear to be operations in breach of customs legislation and which may be of interest to the other Party,

- new means or methods employed in carrying out operations in breach of customs legislation,
- goods known to be subject to operations in breach of customs legislation,
- natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation, and
- means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

#### *Article 5*

### **Delivery and notification**

At the request of the applicant authority, the requested authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order:

- to deliver any documents, or
- to notify any decisions,

emanating from the applicant authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.

Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority.

#### *Article 6*

### **Form and substance of requests for assistance**

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.
2. Requests pursuant to paragraph 1 shall include the following information:
  - (a) the applicant authority;
  - (b) the measure requested;
  - (c) the object of and the reason for the request;
  - (d) the legal or regulatory provisions and other legal elements involved;

- (e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations; and
  - (f) a summary of the relevant facts and of the enquiries already carried out.
3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.
  4. If a request does not meet the formal requirements set out above, its correction or completion may be requested; in the meantime precautionary measures may be ordered.

#### *Article 7*

#### **Execution of requests**

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the requested authority when the latter cannot act on its own.
2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.
3. Duly authorised officials of a Party may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present to obtain in the offices of the requested authority or any other concerned authority in accordance with paragraph 1, information relating to activities that are or may be operations in breach of customs legislation which the applicant authority needs for the purposes of this Protocol.
4. Duly authorised officials of a Party involved may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

#### *Article 8*

#### **Form in which information is to be communicated**

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents, certified copies or other items.
2. This information may be in computerised form.

3. Original documents shall be transmitted only upon request in cases where certified copies would be insufficient. These originals shall be returned at the earliest opportunity.

#### *Article 9*

##### **Exceptions to the obligation to provide assistance**

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where one Party is of the opinion that assistance under this Protocol would:
  - (a) be likely to prejudice the sovereignty of Ghana or that of a Member State of the European Community which has been requested to provide assistance under this Protocol; or
  - (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10(2); or
  - (c) violate an industrial, commercial or professional secret.
2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.
3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.
4. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons thereof must be communicated to the applicant authority without delay.

#### *Article 10*

##### **Information exchange and confidentiality**

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Parties. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party that received it and the corresponding provisions applying to the European Community authorities.
2. Personal data may be exchanged only where the Party which may receive them undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party that may supply them. To that end, the Parties shall communicate to each other information on their applicable



rules, including, where appropriate, legal provisions in force in the Member States of the European Community.

3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Protocol, is considered to be for the purposes of this Protocol. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol. The competent authority which supplied that information or gave access to those documents shall be notified of such use.
4. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

#### *Article 11*

##### **Experts and witnesses**

An official of a requested authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

#### *Article 12*

##### **Assistance expenses**

The Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses to experts and witnesses, and those to interpreters and translators who are not public service employees.

#### *Article 13*

##### **Implementation**

1. The implementation of this Protocol shall be entrusted on the one hand to the customs authorities of the Ghanaian Party and on the other hand to the competent services of the Commission of the European Communities and the customs authorities of the Member States as appropriate. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in particular in the field of data protection. They

may recommend to the competent bodies amendments which they consider should be made to this Protocol.

2. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

#### *Article 14*

#### **Other agreements**

1. Taking into account the respective competences of the European Community and the Member States, the provisions of this Protocol shall:
  - not affect the obligations of the Parties under any other international Agreement or Convention,
  - be deemed complementary to Agreements on mutual assistance which have been or may be concluded between individual Member States of the European Community and Ghanaian countries,and shall
  - not affect the European Community provisions governing the communication between the competent services of the Commission of the European Communities and the customs authorities of the Member States of the European Community of any information obtained under this Protocol which could be of interest to the European Community.
2. Notwithstanding the provisions of paragraph 1, the provisions of this Protocol shall take precedence over the provisions of any bilateral Agreement on mutual assistance which has been or may be concluded between individual Member States of the European Community and Ghana in so far as the provisions of the latter are incompatible with those of this Protocol.
3. In respect of questions relating to the applicability of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the EPA Committee set up under Article 73 of the stepping stone Economic Partnership Agreement between Ghana and the European Community and its Member States.