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ANNEX 2

**AGREEMENT ESTABLISHING A FRAMEWORK FOR AN ECONOMIC
PARTNERSHIP AGREEMENT BETWEEN THE EAST AFRICAN
COMMUNITY PARTNER STATES, ON THE ONE PART, AND THE
EUROPEAN COMMUNITY AND ITS MEMBER STATES, ON THE OTHER
PART**



AGREEMENT ESTABLISHING A FRAMEWORK FOR AN ECONOMIC PARTNERSHIP

AGREEMENT

BETWEEN

THE EAST AFRICAN COMMUNITY PARTNER STATES

ON ONE PART

AND

THE EUROPEAN COMMUNITY AND ITS MEMBER STATES

ON THE OTHER PART

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AGREEMENT ESTABLISHING A FRAMEWORK FOR AN ECONOMIC PARTNERSHIP
AGREEMENT

BETWEEN

THE EAST AFRICAN COMMUNITY PARTNER STATES ON ONE PART AND

THE EUROPEAN COMMUNITY AND ITS MEMBER STATES

ON THE OTHER PART

THE REPUBLIC OF BURUNDI

THE REPUBLIC OF KENYA

THE REPUBLIC OF RWANDA

THE UNITED REPUBLIC OF TANZANIA

THE REPUBLIC OF UGANDA

hereinafter referred to as “the EAC Partner States” on 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 LUXEMBOURG,

THE REPUBLIC OF HUNGARY,
MALTA,
THE KINGDOM OF THE NETHERLANDS,
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,
THE REPUBLIC OF ROMANIA
AND THE EUROPEAN COMMUNITY, on the other part

Have decided to conclude this Agreement and to this end have designated their Plenipotentiaries:

PREAMBLE

HAVING REGARD TO the Agreement establishing the African, Caribbean and Pacific (ACP) Group of States, signed in Georgetown on 6 June 1975;

HAVING REGARD TO the Treaty establishing the East African Community signed on November 30, 1999 and its Protocol on the Establishment of the East African Community Customs Union;

REITERATING their desire for a wider unity of Africa and the achievement of the objectives of the Treaty Establishing the African Economic Community;

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 of the other part, signed in Cotonou on 23 June 2000, referred to as the “Cotonou Agreement”;

HAVING REGARD TO the Treaty Establishing the European Community (EC);

HAVING ALSO REGARD TO the decision of the EAC Summit held in Kampala, Uganda on 14th April 2002 on the EAC negotiating as a bloc for the purpose of negotiation of an

Economic Partnership Agreement (EPA) with the European Union and in the World Trade Organisation;

CONSIDERING that the EAC and the EC and its Member States are agreed that their trade and economic cooperation shall aim at fostering the smooth and gradual integration of the ACP states into the world economy with due regard to their political choices, levels of development and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the EAC;

REAFFIRMING also that the EPA shall be consistent with the objectives and principles of the Cotonou Agreement and, in particular, with the provisions of Part 3, Title II thereof;

REAFFIRMING that the EPA shall serve as an instrument of development and shall promote sustained growth, increase the production and supply-side capacity of the EAC, foster structural transformation of EAC economies and their diversification and competitiveness and lead to the development of trade, attraction of investment, technology and creation of employment in the EAC Partner States;

REITERATING the need to ensure that particular emphasis shall be placed on regional integration and the provision of special and differential treatment to all EAC Partner States, while maintaining special treatment for least developed EAC Partner States;

COGNIZANT that substantial investment is required to uplift the standards of living of the EAC Partner States;

RECALLING the commitments of the Parties within the framework of the World Trade Organisation (WTO);

HAVE AGREED AS FOLLOWS:

1. CHAPTER I: GENERAL PROVISIONS

Article 1

Scope of the Agreement

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

Article 2

General EPA objectives

The objectives of the Economic Partnership Agreement are:

- (a) Contributing to economic growth and development through the establishment of a strengthened and strategic trade and development partnership consistent with the objective of sustainable development;
- (b) Promoting regional integration, economic cooperation and good governance in the EAC;
- (c) Promoting the gradual integration of the EAC into the world economy, in conformity with its political choices and development priorities;
- (d) Fostering the structural transformation of EAC economies, and their diversification and competitiveness by enhancing their production, supply and trading capacity;
- (e) Improving EAC capacity in trade policy and trade related issues;
- (f) Establishing and implementing an effective, predictable and transparent regional regulatory framework for trade and investment in the EAC Partner States, thus supporting the conditions for increasing investment, and private sector initiative; and
- (g) Strengthening the existing relations between the Parties on the basis of solidarity and mutual interest. To this end, consistent with WTO obligations, the Agreement shall enhance commercial and economic relations, support a new trading dynamic between the Parties by means of the progressive, asymmetrical liberalisation of trade between them and reinforce, broaden and deepen cooperation in all areas relevant to trade and investment.

Article 3

Specific objectives of this Agreement

1. Consistent with Articles 34 and 35 of the Cotonou Agreement, the objectives of this Agreement are:
 - (a) to establish an agreement consistent with Article XXIV of General Agreement on Tariffs and Trade 1994 ("GATT 1994");

- (b) to facilitate continuation of trade by the EAC Partner States under terms no less favourable than those under the Cotonou Agreement;
 - (c) to establish the framework, scope and principles for further negotiation on trade in goods, including rules of origin, trade defence instruments, custom cooperation and trade facilitation, sanitary and phytosanitary (SPS) measures, technical barriers to trade, as well as on agriculture and economic and development cooperation;
 - (d) to establish the framework and scope of potential negotiation in relation to other issues including trade in services, trade related issues as identified in the Cotonou Agreement and any other areas of interest to both Parties;
2. The Parties undertake to continue the negotiations with a view to concluding a comprehensive EPA, which shall comprise the subject matters listed under Chapter V, no later than 31 July 2009.

Article 4

Principles

The principles of this Agreement and on the basis of which further negotiations between the Parties shall be held with a view to reaching a full and complete EPA are the following:

- (a) Building on the acquis of the Cotonou Agreement;
- (b) Strengthening regional integration in EAC;
- (c) Asymmetry, in favour of the EAC Party, in the liberalization of trade and in the application of trade related measures and trade defence instruments;
- (d) Allowing the EAC Partner States to maintain regional preferences with other African countries and regions without an obligation to extend them to the EC; and
- (e) Contributing to addressing the production, supply and trading capacity of EAC Partner States.

2. CHAPTER II: TRADE REGIME FOR GOODS

2.1. TITLE I: GENERAL PROVISIONS

Article 5

Objectives

The objectives of cooperation in the area of trade are:

- (a) The provision of full duty free and quota free market access conditions for goods originating in the EAC Partner States into the market of the EC Party on a secure, long term and predictable basis in accordance with the modalities established in this Agreement;
- (b) The progressive and gradual liberalisation of goods market in the EAC in accordance with the modalities established in this Agreement; and
- (c) Preservation and improvement of market access conditions to ensure that EAC Partner States are better and not worse off.

2.2. TITLE II: FREE MOVEMENT OF GOODS

Article 6

Customs duty

For the purposes of elimination of customs duties on imports, a customs duty shall include any duty or charge of any kind imposed on or in connection with the importation of goods, including any form of surtax or surcharge in connection with such importation, but does not include;

- (a) charges equivalent to internal taxes levied on both imported and locally produced goods consistent with the provisions of Article 18;
- (b) anti-dumping, countervailing or safeguard measures applied in accordance with the provisions of Title IV; and,
- (c) fees or other charges levied in accordance with the provisions of Article 9.

Article 7

Classification of goods

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

Article 8

Basic Duty

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 9

Fees and other charges

Fees and other charges referred to in Article 6(c), shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection for domestic products or a taxation of imports for fiscal purposes. Trade-related fees and charges shall not be imposed for consular services.

Article 10

Customs duties on products originating in the EAC Party

Products originating in the EAC Party shall be imported in the EC free of customs duties, under the conditions set out in Annex I.

Article 11

Customs duties on products originating in the EC Party

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

Article 12

Rules of origin

For the purposes of this Chapter, "originating" means qualifying under the rules of origin set out in Protocol 1 to this Agreement. For the purpose of the comprehensive EPA, and during the period between the entry into force of this Agreement and entry into force of the comprehensive EPA, the Parties shall review the provisions of this Protocol with a view to their further simplification. In such review the Parties shall take into account the development needs of the EAC Party and development of technologies, production processes and all other factors, including on-going reforms of rules of origin, which may require modifications to the provisions of this Protocol. Any such modifications shall be effected by a decision of the EPA Council.

Article 13

Standstill

Except for the measures adopted according to Articles 19 and 21, the Parties agree not to increase their applied customs duties in trade covered by this Agreement.

Article 14

Circulation of goods

1. Customs duties shall be levied only once for goods originating in the EC Party or in the EAC Party in the territory of the other Party.
2. Any duty paid upon importation in an EAC Partner State shall be refunded fully when the goods leave the EAC Partner State of first importation. Such products shall then pay the duty in the country of consumption.
3. The Parties agree to cooperate with a view to facilitating the circulation of goods and simplifying customs procedures.

Article 15

Duties and taxes on exports

1. The Parties shall not institute any new duties or taxes in connection with the exportation of goods to the other Party, on goods exported to the other Party that are in excess of those imposed on like products destined for internal sale.
2. Notwithstanding paragraph 1, the EAC Party can impose a duty or tax in connection with the exportation of goods, with the authorization of the EPA Council, under the following circumstances:
 - (a) to foster the development of domestic industry; or
 - (b) to maintain currency value stability, when the increase in the world price of an export commodity creates the risk of a currency value surge.
3. Such taxes should be enforced on a limited number of products for a limited period of time, and reviewed by the EPA Council after 24 months.

Article 16

More favourable treatment resulting from a free trade agreement

1. With respect to the subject matter covered by this Chapter, the EC Party shall accord to the EAC 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 subject matter covered by this Chapter, the EAC Party shall accord to the EC Party any more favourable treatment applicable as a result of EAC Party becoming party to a free trade agreement with any major trading country after the signature of this Agreement.

3. 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 one of them being Party to a free trade agreement with third Parties on the date of signature of this Agreement.
4. The provisions of paragraph 2 shall not apply in respect of trade agreements between the EAC Party with countries of the African, Caribbean and Pacific Groups, or other African countries and regions.
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 economy' 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 2.¹

2.3. TITLE III: NON-TARIFF MEASURES

Article 17

Prohibition of quantitative restrictions

1. Unless otherwise provided in this Agreement, all prohibitions or restrictions on the importation, exportation or sale for exports between the Parties, other than customs duties, taxes, fees and other charges provided for under Article 6, 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 in trade between the Parties. The provisions of this Article shall be without prejudice to the provisions of Title IV of this Chapter.
2. The provisions of paragraph 1 of this Article shall not extend to the following:
 - (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;
 - (b) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade.

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

Article 18

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.
5. The provisions of this Article shall not apply to laws, regulations, procedures or practices governing public procurement.

2.4. TITLE IV: TRADE DEFENCE MEASURES

Article 19

Anti-dumping and countervailing measures

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the EC Party or EAC Partner States, whether individually or collectively, 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 in respect of products imported from EAC Partner States, the EC Party shall consider the possibility of constructive remedies as provided for in the relevant WTO agreements.

3. Where an anti-dumping or countervailing measure has been imposed on behalf of two or more EAC Partner States by a regional authority, there shall be one single forum of judicial review, including at the stage of appeals.
4. Where anti-dumping or countervailing measures can be imposed on a regional basis and on a national basis the Parties shall ensure that such measures are not applied simultaneously in respect of the same product by regional authorities on the one hand, and national authorities on the other.
5. The EC Party shall notify the exporting EAC Partner States of the receipt of a properly documented complaint before initiating any investigation.
6. The provisions of this Article shall be applicable in all investigations initiated after this Agreement enters into force.
7. The provisions of this Article shall not be subject to the Dispute Settlement provisions of this Agreement.

Article 20

Multilateral safeguards

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the EAC Partner States 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 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 economies of the EAC, exclude imports from any EAC Partner State from any measures taken pursuant to Article XIX of the GATT 1994, the WTO Agreement on Safeguards and Article 5 of the 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 Council shall review the operation of those provisions in the light of the development needs of the EAC, 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 21

Bilateral safeguards

1. After having examined alternative solutions, the EC or EAC Partner States may apply safeguard measures of limited duration, 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 agricultural like or directly competitive products² 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 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. Without prejudice to paragraphs 1, 2 and 3, where any product originating in one or more EAC State 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 paragraph 2 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) Without prejudice to paragraphs 1, 2 and 3, 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 paragraph 2 to a EAC Partner State, the EAC Partner State concerned may take surveillance or safeguard measures limited to its territory in accordance with the procedures laid down in paragraphs 6 to 9.

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

- (b) An EAC Partner State 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 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 procedures laid down in paragraphs 6 to 9.

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.
- (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 the EAC Party or an EAC Partner State 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 their elimination at the end of the set period, at the latest.
- (d) 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 since 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 Council for examination;
- (b) The EPA Council may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the EPA Council aimed at remedying the circumstances, or no other satisfactory solution has been reached within 30 days of the matter being referred to the EPA Council, 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, the Party or the EAC Partner State concerned shall supply the EPA Council 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 least disturb the operation of this Agreement;
 - (e) Any safeguard measure taken pursuant to this Article shall be notified in writing immediately to the EPA Council 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, EAC or an EAC Partner State 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 EAC or an EAC Partner State, 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 including their level of development. The importing party concerned shall inform the other party concerned and shall immediately refer the matter to the EPA Council 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 Council without delay.
10. The WTO Agreement shall not be invoked to preclude a Party from adopting safeguard measures in conformity with this Article.

2.5. TITLE V: ADMINISTRATIVE PROVISIONS

Article 22

Special provisions on administrative cooperation

1. The Parties agree that administrative cooperation is essential for the implementation and 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 the EC Party or the EAC Partner States have made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud, the Party concerned may temporarily suspend the relevant preferential treatment of the concerned in accordance with this Article.
3. For the purpose of this Article a failure to provide administrative cooperation 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 cooperation 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 cooperation and/or of irregularities or fraud shall without undue delay notify the EPA Council of its finding together with the objective information and enter into consultations within the EPA Council, 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 within the EPA Council 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 Council 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 Council. They shall be subject to periodic consultations within the EPA Council in particular with a view to their termination as soon as the conditions for their application no longer exist.

5. At the same time as the notification to the EPA Council under paragraph 4a) of this Article, the Party or 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 cooperation and/or of irregularities or fraud.

Article 23

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 of Protocol 1 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 Council to examine the possibilities of adopting all appropriate measures with a view to resolving the situation.

Article 24

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.

3. CHAPTER III: FISHERIES

3.1. TITLE I: GENERAL PROVISIONS

Article 25

1. The Parties recognise that fisheries constitute a key economic resource of the EAC Partner States, contribute significantly to the economies of the EAC Partner States and have great potential for future regional economic development and poverty reduction. It is also an important source of food and foreign exchange.
2. The Parties further recognise that fisheries resources are also of considerable interest to both the EC Party and the EAC Partner States, and agree to cooperate for the sustainable development and management of the fisheries sector in their mutual interests taking into account economic, environmental and social impacts.
3. The Parties agree that the appropriate strategy to promote the economic growth of the fisheries sector and to enhance its contribution to the economy of the EAC Partner States, while taking into consideration its long term sustainability, is through increasing value adding activities within the sector.

Article 26

Objectives

The objectives of cooperation in fisheries are to:

- (a) promote sustainable development and management of fisheries;
- (b) promote and develop regional and international trade based on best practices;
- (c) create an enabling environment, including infrastructure and capacity building, for the EAC Partner States to cope with the stringent market requirements for both industrial and small scale fisheries;
- (d) support national and regional policies aimed at increasing productivity and competitiveness of the fisheries sector;
- (e) build links with other economic sectors.

Article 27

Scope

The cooperation in fisheries trade and development shall cover marine, inland fisheries and aquaculture.

Article 28

Principles

1. The principles of cooperation in fisheries include;
 - (a) support for the development and strengthening of regional integration,
 - (b) preservation of the *acquis* of the Cotonou Agreement;
 - (c) provision of special and differential treatment
 - (d) the need to take into account the best available scientific information for the resource assessment and management;
 - (e) functioning monitoring system of the environmental, economic and social impacts in the EAC Partner States
 - (f) conformity with existing national laws and relevant international instruments including UNCLOS, regional and sub-regional agreements
 - (g) preservation and priority of particular needs of the artisanal/subsistence fishery.
2. These guiding principles should contribute to sustainable and responsible development of the living inland, marine resources, aquaculture and to optimising the benefits of this sector for present and future generations, through increased investment, capacity building and improved market access.

Article 29

Preferential access

The Parties shall cooperate to ensure that financial and other support will be provided to improve the competitiveness and production capacity of the processing factories, the diversification of the fishing industry and development and improvement of port facilities.

3.2. TITLE II: MARINE FISHERIES

Article 30

Scope

The scope of this Title is the utilisation, conservation and management of marine fisheries resources to optimise the benefits from fisheries for the EAC region through investment capacity building and improved market access.

Article 31

Objectives

The objectives of cooperation are to:

- (a) Strengthen cooperation in order to ensure the sustainable exploitation and management of fisheries resources as a strong basis for regional integration, given the straddling and migratory species which are shared among coastal EAC Partner States and given that no individual EAC Partner State has the capacity to ensure sustainability of the resource;
- (b) Ensure a more equitable share of the benefits derived from the fisheries sector;
- (c) Ensure effective monitoring control and surveillance (MCS) necessary for combating illegal, unreported & unregulated (IUU) fishing; and
- (d) Promote effective exploitation, conservation and management of the living marine resource in the Exclusive Economic Zone (EEZ) and waters in which the EAC Partner States has jurisdiction based on international instruments, including UNCLOS (United Nations Convention on the Law Of the Sea), for the mutual social and economic benefit of the EAC Partner States and the EC Party.

Article 32

Areas of cooperation

1. To achieve the objectives of cooperation in fisheries within the described principles, cooperation will include fisheries management and conservation issues, vessel management and post harvest arrangements and financial and trade measures and development of fisheries and fisheries products and marine aquaculture.
2. The EC Party will contribute to the mobilisation of the resources for the implementation of the identified areas of cooperation at national and regional levels, which will also include support for regional capacity building. Furthermore, the EC Party contributes to the measures as described in the section concerning financial and trade measures, and on infrastructure development specific for fisheries and marine aquaculture.

(a) Fisheries Management and Conservation Issues

3. A precautionary approach shall be applied in determining levels of sustainable catch, fishing capacity and other management strategies to avoid or reverse undesirable outcomes such as over-capacity and over-fishing, as well as undesirable impacts on the ecosystems and artisanal fisheries.

4. Each EAC Partner state may take appropriate measures, including seasonal and gear restrictions in order to protect its territorial waters and ensure the sustainability of the artisanal and coastal fishery.
5. The Parties would promote the membership of all the concerned EAC Partner States to IOTC (Indian Ocean Tuna Commission) and other relevant fisheries organisations. These countries, with the EC Party, should co-ordinate action to ensure the management and conservation of all fish species, including tuna and tuna-like resources and facilitate relevant scientific research.
6. Where there is insufficient scientific evidence for the competent national management authority to determine limits and target levels of sustainable catch in an EAC Exclusive Economic Zone (EEZ), both parties in consultation with the competent national authority and together with IOTC and, where relevant, other regional fisheries organisations, shall support such scientific analysis.
7. The Parties agree to take appropriate measures where an increase in effort results in catch levels above the target sustainable level established by the competent national authority.
8. In order to conserve and manage straddling stocks and highly migratory fish stocks, the EC Party and the EAC coastal States shall ensure compliance by vessels flying their flags with relevant national, regional and sub- regional fisheries management measures and related national laws and regulations.

b) Vessel Management and Post Harvest Arrangements

9. Vessel Management and post harvest arrangements emerging from IOTC and any other relevant regional fisheries organisations will be observed. EAC Partner States and the EC Party shall set out minimum terms and conditions with respect to monitoring, control and surveillance of EU fishing vessels operating in the waters of EAC Partner States, which should include the following:
 - i) A Vessel Monitoring System (VMS) will be set up for all EAC coastal Partner States, and all EAC Partner States will use a compatible VMS. Those EAC Partner States which do not have a VMS will be assisted by the EC Party to set up a compatible VMS.
 - ii) In addition to a compulsory compatible VMS system, all EAC coastal Partner States, in conjunction with the EC Party, will develop other mechanisms to ensure effective Monitoring, Control and Surveillance (MCS) and the EC Party will support EAC Partner States to put such an agreed system in place and assist in implementation.
 - iii) The EC Party and EAC Partner States shall have the right of placing observers, whether in national or international waters, with the procedures concerning the deployment of observers being well stipulated. Observers are to be paid by the national governments but all costs on board are to be met by the ship-owner. The EC Party will support the costs of training observers.
 - iv) Common systems of reporting of fishing will be developed and used throughout the region, with minimum terms set for reporting.

- v) All vessels that land or tranship their catch within an EAC Partner State shall do so in ports or outer-port areas. No transhipment shall be allowed at sea, except on particular condition foreseen by the relevant Regional Fisheries Monitoring Organisation (RFMO) under special conditions. Both parties shall cooperate to develop and modernise landing or transhipment infrastructure in ports of EAC Partner States, including development capacity of fish products
 - vi) All vessels shall endeavour to use the facilities of the EAC Partner States and to make use of local supplies.
 - vii) Discards reporting shall be compulsory. Priority should be given to avoid discards through the use of selective fishing methods in line with principles of the IOTC and relevant regional fisheries organisations. As far as possible, by-catch shall be brought ashore.
10. The parties agree to cooperate in developing and implementing national/regional training programmes for EAC nationals in order to facilitate their effective participation in the fishing industry. Where the EC Party has negotiated bilateral fisheries agreement, employment of EAC nationals shall be encouraged. The ILO (International Labour Organisation) declaration on fundamental principles and rights at work shall apply as of right to seamen signed on Community vessels.
11. Both parties shall undertake coordinated efforts to improve the means for preventing, deterring, and eliminating IUU (Illegal Unregulated and Unreported) fishing and to this end take appropriate measures. Fishing vessels involved in IUU fishing should be confiscated and the owners prosecuted by the competent authorities and should not be allowed to fish again in EAC Partner States' waters, unless prior authorisation has been obtained from both the flag State and the concerned EAC Partner States as well as, where relevant, the concerned RFMO.

c) Financial and Trade Measures and Development issues

12. The Parties undertake to cooperate in promoting the setting up of joint ventures in fishing operations, fish processing, port services, enhance production capacity, improve competitiveness of fishing and related industries and services, downstream processing, development and improvement of port facilities, diversification of the fishery to include non-tuna species which are under-exploited or not exploited.

3.3. TITLE III: INLAND FISHERIES AND AQUACULTURE DEVELOPMENT

Article 33

Scope

The scope of this Title shall cover inland fisheries, coastal and aquaculture development in the EAC Partner States with respect to capacity building, technology transfer, SPS standards, investment and investment finance, environmental protection as well as legal and regulatory frameworks.

Article 34

Objectives

The objectives of cooperation in inland fisheries and aquaculture development will be to promote sustainable exploitation of inland fisheries resources, and enhance aquaculture production, remove supply side constraints, improve fish and fish products quality to meet SPS standards in the market of the EC Party, improve access to the market of the EC Party, address intra regional trade barriers, attract capital inflows and investment into the sector, build capacity and enhance access to financial support for the private investors for inland fisheries and aquaculture development.

Article 35

Areas of cooperation

The areas of cooperation shall include EC Party contributions to the following:

(a) Capacity building and export market development through:

- i) Building capacity in industrial and artisanal production, processing and product diversification that strengthen the competitiveness of the region's inland fisheries and aquaculture. This could, for example, be achieved by the creation of R&D centres including the development of aquaculture for commercial fishing farms;
- ii) Building capacity for managing export market chains, including the introduction and management of certification schemes for specific product lines; and implementation of market promotion, value addition and reduction in post harvest losses in fisheries products;
- iii) Increasing capacity in the region through for example improving fisheries competent authorities, traders and fishermen's associations in order to participate in fisheries trade with the EC Party and training programs in product development and branding.

(b) Infrastructure

- i) Development and improvement of infrastructure for inland fisheries and aquaculture;
- ii) Facilitation of access to funding for infrastructure, including all type of equipment.

(c) Technology

- i) Both parties shall contribute to the development of technical capabilities, including value adding technology promotion, for example through fisheries technology transfer from the EC Party to the EAC Partner States;
- ii) Fisheries management capacity in the region to be enhanced, for example through research and data collection systems and contribution towards appropriate technologies on harvesting and post harvest management.

(d) Legal and regulatory

- i) Support towards development of inland fisheries and aquaculture regulations and monitoring control and surveillance systems;
- ii) Support to EAC Partner States in developing appropriate legal and regulatory instruments on Intellectual Property Rights and build capacity for their implementation in international trade;
- iii) Eco-labelling and intellectual property protection.

(e) *Investment and finance*

- i) Promotion of joint ventures and other forms of mixed investments between stakeholders in EAC Partner States and the EC Party, for example for the setting up of modalities for identifying investors for joint venture operations in inland fisheries and aquaculture;
- ii) Contribute to providing access to credit facilities for the development of small to medium scale enterprises as well as industrial scale inland fisheries.

(f) *Environmental and Stocks Conservation in Fisheries*

- i) Both Parties shall contribute to measures to ensure that fish trade supports environmental conservation, and safeguards against stock depletion and the maintenance of biodiversity and cautious introduction of exotic species for aquaculture; for example, through the cautious introduction of exotic species to be introduced only in managed/closed spaces in consultation with all concerned neighbouring countries.

(g) *Socioeconomic and poverty alleviation measures*

- i) The Parties shall contribute to the promotion of small and medium scale fishers, processors, and fish traders by building the capacity of EAC Partner States to participate in trade with the EC Party.
- ii) Participation of marginal groups in the fishing industry will be encouraged for example through the promotion of gender equity in fisheries, and particularly developing capacity of women traders involved and intending to engage in fisheries. Other disadvantaged groups with the potential to engage in fisheries for sustainable social economic development will also be involved in such processes.

4. CHAPTER IV: ECONOMIC AND DEVELOPMENT COOPERATION

Article 36

The EC Party and the EAC party reaffirm their recognition of development needs of the EAC region, and their commitment to ensure that EPA is a tool for development which will, promote and consolidate regional integration, and aid the integration of EAC into the global economy. The Parties agree to work together to define and address the development needs associated with the EPA in order to promote sustained growth, strengthen regional integration

and foster structural transformation and competitiveness to increase production, supply capacity and value addition of the countries concerned.

The EC Party confirms it will contribute towards the resources required for development under the 10th EDF Regional Indicative Programme, Aid for Trade and the EU budget.

5. CHAPTER V: AREAS FOR FUTURE NEGOTIATIONS

Article 37

Rendez-vous Clause

Building on the Cotonou Agreement and taking account of the progress made in the negotiations of a comprehensive EPA text the parties agree to continue negotiations in the following areas;

- (a) Customs and trade facilitation;
- (b) Outstanding trade and market access issues including Rules of Origin;
- (c) Technical barriers to trade and SPS measures;
- (d) Trade in services;
- (e) Trade related issues namely:
 - i) Competition policy;
 - ii) Investment and private sector development;
 - iii) Trade, environment and sustainable development;
 - iv) Intellectual property rights;
 - v) Transparency in public procurement;
- (f) Agriculture;
- (g) An elaborated dispute settlement mechanism and institutional arrangements;
- (h) Economic and Development Cooperation; and
- (i) Any other areas that the Parties find necessary.

6. CHAPTER VI: DISPUTE AVOIDANCE AND SETTLEMENT, INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

6.1. TITLE I: DISPUTE AVOIDANCE AND SETTLEMENT

Article 38

Consultations

1. The Parties shall endeavour to resolve any dispute concerning the interpretation and application of this Agreement by entering into consultations in good faith with the aim of reaching an agreed solution.
2. A Party shall seek consultations by means of a written request to the other Party, 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 take place under the auspices of the EPA Council and 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.

Article 39

Dispute settlement

1. If consultations do not succeed in settling the dispute within the 60 days referred to in the Article 38, either Party may request settlement of the dispute by arbitration by notifying the other Party and the EPA Council. The request for arbitration shall identify the measure at issue and the provisions of the Agreement that the complaining Party considers the measure not to be in conformity with. To this end, each party shall appoint an arbitrator within thirty days of the request for arbitration. In the event of failure to do so, either party may ask the Secretary General of the Permanent Court of Arbitration to appoint the second arbitrator.
2. The two arbitrators shall in turn appoint a third arbitrator within thirty days. In the event of failure to appoint the third arbitrator, either party may ask the Secretary General of the Permanent Court of Arbitration to appoint the third arbitrator.
3. Unless the arbitrators decide otherwise, the procedure applied shall be laid down in the optional arbitration regulation of the Permanent Court of Arbitration for International organizations and States. The arbitrators' decisions shall be taken by majority vote within three months.

4. Each party to the dispute shall be bound to take the measures necessary to carry out the decision of the arbitrators.

6.2. TITLE II: GENERAL EXCEPTIONS

Article 40

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 international trade nothing in this Agreement shall be construed to prevent the adoption or enforcement by the EC Party, EAC Party or an EAC Partner State of measures which:

- (a) are necessary to protect public morals or to maintain public order or public security;
- (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;
- (h) are inconsistent with Articles 17 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 EC Party or an EAC Partner State; or

- (i) are essential to the acquisition or distribution of products in general or local short supply, provided that any such measures shall be consistent with the principle that all parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

Article 41

Security exceptions

1. Nothing in this Agreement shall be construed:
 - (a) to require the EC Party or an EAC Partner State to furnish any information the disclosure of which it considers contrary to its essential security interests;
 - (b) to prevent the EC Party or an EAC Partner State 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 EC Party or an EAC Partner State 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 42

Taxation

1. Nothing in this Agreement or in any arrangement adopted under this Agreement shall be construed to prevent the EC Party or an EAC Partner State 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 EC Party or an EAC Partner State 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.

6.3. TITLE III: INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

Article 43

Relations between this Agreement and the comprehensive Economic Partnership Agreement

This Agreement shall remain in force until the comprehensive EPA enters into force.

Article 44

Definition of the Parties and fulfilment of obligations

1. Contracting Parties of this Agreement shall be the Republic of Burundi, Republic of Kenya, Republic of Rwanda, United Republic of Tanzania, Republic of Uganda, contracting parties to the Treaty establishing the East African Community, hereinafter referred to as the "EAC Party", on the one part, and the European Community and its Member States or the European Community or its Member States in their respective areas of competency as derived from the Treaty establishing the EC, and hereinafter referred to as the "EC Party", on the other part.
2. For the purpose of this agreement, unless otherwise expressly provided, the EAC Partner States agree to act collectively. Where individual action is provided for or required to exercise the rights and or comply with obligations under this Agreement reference is made to "EAC Partner State".

Article 45

Entry into force and denunciation

1. This Agreement shall be signed, ratified or approved in accordance with the applicable constitutional or internal rules and procedures of the respective Parties.
2. This Agreement shall enter into force the first day of the month following the deposit of the last instrument of ratification, acceptance or approval.
3. Notifications shall be sent to the Secretary Generals of the Council of the European Union and the East African Community Secretariat, who shall be the depositories of this Agreement.

4. Pending entry into force of the Agreement, the EC Party and the EAC Partner States agree to apply the provisions of this Agreement which fall within their respective competences ("provisional application"). This may be effected either by provisional application where possible or by ratification of the Agreement.
5. Provisional application shall be notified to the depositories. The Agreement shall be applied provisionally 10 days after the latter of the receipt of notification of provisional application from the EC Party or from all the EAC Partner States.
6. Notwithstanding paragraph 4, the EC Party and EAC Partner States may unilaterally take steps to apply the agreement, before provisional application, to the extent feasible.
7. The EC Party or the EAC Party may give written notice to the other of its intention to denounce this Agreement.
8. Denunciation shall take effect one month after notification to the other Party.

Article 46

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 the territories of the EAC Partner States.

Article 47

EPA Council

1. The Parties hereby establish an EPA Council.
2. The EPA Council shall be responsible for the administration of all matters under this Agreement and for the fulfilment of any of the tasks mentioned in this Agreement.
3. The EPA Council shall be composed of representatives of the Parties. Each Party determines the organisation of its representation.

Article 48

Special Committee on Customs Cooperation

1. The Parties hereby establish a Special Committee on Customs Cooperation, composed of the representatives of the Parties. The Special Committee shall meet on a date and with an agenda agreed in advance by the Parties. The office of Chairperson of the Special Committee shall be held alternately by each of the Parties. The Special Committee shall report to the EPA Council established in Article 47.
2. The functions of the Special Committee shall, inter alia, be as follows:

- (a) monitoring the implementation and administration of the Protocol concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation;
- (b) providing a forum to consult and discuss on all issues concerning customs, including rules of origin, general customs procedures, customs valuation, tariff classification and mutual administrative assistance in customs matters;
- (c) enhancing cooperation on the development, application and enforcement of rules of origin and related customs procedures, general customs procedures and mutual administrative assistance in customs matters;
- (d) Any other issues agreed by the Parties.

Article 49

Relationship with other agreements

1. Nothing in this Agreement shall be construed so as to prevent the adoption by the EC Party, the EAC Party or an EAC Partner State of any measures including trade related measures under this Agreement deemed appropriate as provided for under articles 11b, 96 and 97 of the Cotonou Agreement and according to procedures set by these articles.
2. With the exception of development cooperation provisions contained therein, 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.
3. The Parties agree that nothing in this agreement requires them or the EAC Partner States to act in a manner inconsistent with their WTO obligations.

Article 50

Accession of new Members to the East African Community

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

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

Article 51

Accession of new Members to the European Union

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

Article 52

Outermost regions of the European Community

1. Taking account of the geographical proximity of the outermost regions of the European Community and the EAC and in order to reinforce economic and social links between these regions and the EAC Partner States, the Parties shall endeavour to facilitate cooperation 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 the EAC Partner States.
2. The objectives enunciated in paragraph 1 shall also be pursued, wherever possible, through fostering the joint participation of the EAC Partner States 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 EAC Partner States 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 53

Authentic texts

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

Article 54

Annexes

The Annexes and Protocols to this Agreement shall form an integral part thereof and may be reviewed and or amended by the EPA Council.

Annex I CUSTOMS DUTIES ON PRODUCTS ORIGINATING IN THE EAC
PARTNER STATES

Annex II CUSTOMS DUTIES ON PRODUCTS ORIGINATING IN THE EC PARTY

Protocol 1 CONCERNING THE DEFINITION OF THE CONCEPT OF
"ORIGINATING PRODUCTS" AND METHODS OF ADMINISTRATIVE
COOPERATION

Protocol 2 ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS
MATTERS

7. ANNEX I: CUSTOMS DUTIES ON PRODUCTS ORIGINATING IN THE EAC PARTNER STATES

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 an EAC Partner State on the date of entry into force of this Agreement. For products of Chapter 93 the EC Party shall continue to impose the applied Most Favoured Nation duties. For indicative purposes the schedule of EC customs duties applicable to products originating in an EAC Partner State is appended to this Annex.
2. EC customs duties on the products of tariff heading 1006 originating in EAC Partner States 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 EC Party and the EAC Partner States 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 the EAC Partner States concerned 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 an EAC Partner State shall be eliminated as from 1 October 2009. Until EC customs duties are entirely eliminated, and in addition to the allocations of tariff rate quotas at zero duty set out in the Sugar Protocol, a tariff rate quota at zero duty of 15,000 tonnes shall be opened for marketing year³ 2008/2009 for products of subheading 1701 11 10, white sugar equivalent, originating in the EAC Partner States. No import license shall be granted with regard to products to be imported under this additional tariff rate quota, 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 EAC Partner States of tariff heading 1701 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:

³ For the purpose of paragraphs 4, 5, 6 and 7 "marketing year" means the period between 1 October and 30 September.

- 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 1.38 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 EAC Partner 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 21.⁴
 - (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 Council 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 21, 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 EAC Partner States 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 EAC Partner States. 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 Combined Nomenclature code 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.

⁴ For this purpose and by derogation to article 21, individual State recognised by the United Nations as a least developed country may be subject to safeguard measures.

9. Paragraph 1, 3 and 4 shall not apply to products of tariff heading 1701 and 0803 0019 originating in EAC Partner States and released for free circulation in the French overseas 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.

8. ANNEX II: CUSTOMS DUTIES ON PRODUCTS ORIGINATING IN THE EC PARTY

1. Customs duties applicable to products originating in the EC Party imported into the territory of the EAC Partner States for goods listed in Annex II(a), shall be eliminated two years after the entry into force of this agreement
2. Customs duties applicable to products originating into the territory of the EAC Partner States for goods listed in Annex II(b) shall be progressively abolished in accordance with the following schedule:
 - Seven years after the entry into force of this agreement each duty shall be reduced to 80% of the basic duty;
 - Eight years after the entry into force of this agreement each duty shall be reduced to 70% of the basic duty;
 - Nine years after the entry into force of this agreement each duty shall be reduced to 60% of the basic duty;
 - Ten years after the entry into force of this agreement each duty shall be reduced to 50% of the basic duty;
 - Eleven years after the entry into force of this agreement each duty shall be reduced to 40% of the basic duty;
 - Twelve years after the entry into force of this agreement each duty shall be reduced to 30% of the basic duty;
 - Thirteen years after the entry into force of this agreement each duty shall be reduced to 20% of the basic duty;
 - Fourteen years after the entry into force of this agreement each duty shall be reduced to 10% of the basic duty;
 - Fifteen years after the entry into force of this agreement the remaining duties shall be abolished.
3. Customs duties applicable to products originating in the EC Party imported into the territory of the EAC Partner States for goods listed in Annex II(c) shall be progressively abolished in accordance with the following schedule:
 - Twelve years after the entry into force of this agreement each duty shall be reduced to 95% of the basic duty;
 - Thirteen years after the entry into force of this agreement each duty shall be reduced to 90% of the basic duty;

- Fourteen years after the entry into force of this agreement each duty shall be reduced to 85% of the basic duty;
- Fifteen years after the entry into force of this agreement each duty shall be reduced to 80% of the basic duty;
- Sixteen years after the entry into force of this agreement each duty shall be reduced to 70% of the basic duty;
- Seventeen years after the entry into force of this agreement each duty shall be reduced to 65% of the basic duty;
- Eighteen years after the entry into force of this agreement each duty shall be reduced to 60% of the basic duty;
- Nineteen years after the entry into force of this agreement each duty shall be reduced to 55% of the basic duty;
- Twenty years after the entry into force of this agreement each duty shall be reduced to 50% of the basic duty;
- Twenty-one years after the entry into force of this agreement each duty shall be reduced to 40% of the basic duty;
- Twenty-two years after the entry into force of this agreement each duty shall be reduced to 30% of the basic duty;
- Twenty-three years after the entry into force of this agreement each duty shall be reduced to 20% of the basic duty;
- Twenty-four years after the entry into force of this agreement each duty shall be reduced to 10% of the basic duty;
- Twenty-five years after the entry into force of this agreement the remaining duties shall be abolished.

9. PROTOCOL 1: CONCERNING THE DEFINITION OF THE CONCEPT OF 'ORIGINATING PRODUCTS' AND METHODS OF ADMINISTRATIVE COOPERATION

See separate document for Protocol 1

10. PROTOCOL 2: ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

Article 1

Definitions

For the purposes of this Protocol:

- (a) 'Goods' means all goods falling within the scope of the Harmonized System, irrespective of the scope of this Agreement;
- (b) 'Customs legislation' means any legal or regulatory provisions applicable in the territories of the Parties or the EAC Partner States as the case may be, 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;
- (c) 'Applicant Authority' means a competent administrative authority which has been designated by the Parties or the EAC Partner States as the case may be for this purpose and which makes a request for assistance on the basis of this Protocol;
- (d) 'Requested Authority' means a competent administrative authority which has been designated by the Parties or the EAC Partner States as the case may be for this purpose and which receives a request for assistance on the basis of this Protocol;
- (e) 'Personal data' means all information relating to an identified or identifiable individual;
- (f) '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 or the EAC Partner States as the case may be 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 has the prior authorisation of that authority.
3. Assistance in recovery proceedings regarding 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 the Party or the EAC Partner States as the case may be have been lawfully 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 or the EAC Partner States as the case may be have been lawfully 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:

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

- (b) new means or methods employed in carrying out operations in breach of customs legislation,
- (c) goods known to be subject to operations in breach of customs legislation,
- (d) 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
- (e) 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

1. 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:
 - (a) to deliver any documents 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, and, where appropriate;
 - (b) 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.
2. 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. Requests may also be communicated in electronic form.
2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the name of 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 or the EAC Partner States as the case may be, 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 or the EAC Partner States as the case may be, with the agreement of the other Party involved and subject to the conditions laid down by the latter:
 - (a) 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.
 - (b) 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. If requested, the information provided for in paragraph 1 may be in electronic 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 a Party or the EAC Partner States as the case may be concerned is of the opinion that assistance under this Protocol would:
 - (a) be likely to prejudice the sovereignty of a EAC State 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 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 or the EAC Partner States as the case may be. 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 agrees to ensure an adequate level of protection of 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 EAC Partner States 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.
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

Amendments

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

Article 15

Final Provisions

1. This Protocol shall complement and not impede application of any agreements on mutual administrative assistance which have been concluded or may be concluded between the Parties nor shall it preclude more extensive mutual assistance granted under such agreements.
2. The provisions of this Protocol shall not affect the obligations of the Parties under any other international Agreement or Convention.
3. The provisions of this Protocol 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.
4. 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 any EAC Partner State in so far as the provisions of the latter are incompatible with those of this Protocol.
5. 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 Special Committee on Customs Cooperation.