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## PROPOSAL

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 16 September 2014

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
Union

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Subject: ANNEX to the Proposal for a Council Decision on the signing and  
provisional application of the Economic Partnership Agreement (EPA)  
between the West African States, ECOWAS and the UEMOA, of the one  
part, and the European Union and its Member States, of the other part

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Delegations will find attached document COM(2014) 576 final - ANNEX 2 - PART 1/2.

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Encl.: COM(2014) 576 final - ANNEX 2 - PART 1/2



EUROPEAN  
COMMISSION

Brussels, 15.9.2014  
COM(2014) 576 final

ANNEX 2 – PART 1/2

**ANNEX**

**to the**

**Proposal for a Council Decision**

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

## **ANNEX A (Part 1)**

Protocol defining the concept of 'originating products' and the methods of administrative cooperation

### **CONTENTS**

#### **TITLE I: General provisions**

##### **Articles**

1. Definitions

#### **TITLE II: Definition of the concept of 'originating products'**

##### **Articles**

2. General conditions

3. Wholly obtained products

4. Sufficiently worked or processed products

5. Insufficient working or processing operations

6. Working or processing of materials whose import into the European Union is free of duty

7. Cumulation of origin

8. Cumulation with other countries benefiting from duty-free quota-free access to the market of the European Union

9. Unit of qualification

10. Accessories, spare parts and tools

11. Sets of assorted articles

12. Neutral elements

13. Separation of accounts

#### **TITLE III: Territorial requirements**

##### **Articles**

14. Principle of territoriality

15. Direct transport

16. Exhibitions

25. Submission of proof of origin

26. Importation by instalments

27. Exemptions from proof of origin

28. Information procedure for cumulation purposes

29. Supporting documents

30. Preservation of proof of origin and supporting documents

31. Discrepancies and formal errors

32. Amounts expressed in euro

#### **TITLE V: Administrative cooperation**

##### **Articles**

33. Administrative conditions for products to benefit from the Agreement

34. Notification of customs authorities

35. Other methods of administrative co-operation

36. Verification of proofs of origin

37. Verification of suppliers' declarations

38. Dispute settlement

39. Penalties

40. Free zones

41. Derogations

#### **TITLE VI: Ceuta and Melilla**

##### **Articles**

42. Special conditions

43. Special conditions

#### **TITLE VII: Final provisions**

##### **Articles**

44. Revision and application of rules of origin

45. Annexes

## **TITLE IV: Proof of origin**

46. Implementation of the Protocol

47. Transitional provision for goods in transit or storage

### **Articles**

17. General conditions

18. Procedure for the issue of a movement certificate  
EUR.1

19. Movement certificates EUR.1 issued retrospectively

20. Issue of a duplicate movement certificate EUR.1

21. Issue of movement certificates EUR.1 on the basis of  
a proof of origin issued or made out previously

22. Conditions for making out an invoice declaration

23. Approved exporter

24. Validity of proof of origin

## **CONTENTS**

### **ANNEXES**

ANNEX I: Introductory notes to the list in Annex II

ANNEX II: List of working or processing required to be carried out on non-originating materials in order for the product manufactured to obtain originating status

ANNEX II(a): Derogations from the list of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status

ANNEX III: Form for movement certificate

ANNEX IV: Invoice declaration

ANNEX V A: Supplier's declaration for products having preferential origin status

ANNEX V B: Supplier's declaration for products not having preferential origin status

ANNEX VI: Information document

ANNEX VII: Form for application for a derogation

ANNEX VIII: Overseas Countries and Territories

ANNEX IX: Products referred to in Article 7(4)

JOINT DECLARATION concerning the Principality of Andorra

JOINT DECLARATION concerning the Republic of San Marino

**TITLE I**  
**GENERAL PROVISIONS**

*Article 1*

**Definitions**

For the purpose of this Protocol,

- a) 'manufacture' means any kind of working or processing including assembly or specific operations;
- b) 'material' means any ingredient, raw material, component or part, etc., used in the manufacture of the product;
- c) 'product' means the product being manufactured, even if it is intended for later use in another manufacturing operation;
- d) 'goods' means both materials and products;
- e) 'customs value' means the value as determined in accordance with the 1994 Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (WTO Agreement on customs valuation);
- f) 'ex-works price' means the price paid for the product ex works to the manufacturer in the European Union or West Africa in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes paid which are, or may be, repaid when the product obtained is exported;
- g) 'value of materials' means the customs value at the time of importation of the non-originating materials used, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the European Union or West Africa;
- h) 'value of originating materials' means the value of such materials as defined in (g) applied *mutatis mutandis*;
- i) 'added value' means the ex-works price minus the customs value of third country materials imported into the European Union, the ACP States which have at least provisionally applied an EPA or the Overseas Countries and Territories; if the customs value is not known or cannot be ascertained, the first ascertainable price paid for the materials in the European Union or West Africa is taken into account;
- j) 'chapters' and 'headings' mean the chapters and the headings (four-digit codes) used in the nomenclature which makes up the Harmonised Commodity Description and Coding System, referred to in this Protocol as 'the Harmonised System' or 'HS';
- k) 'classified' refers to the classification of a product or material under a particular heading;

- l) 'consignment' means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;
- m) 'territories' means territories, including territorial waters;
- n) 'OCTs' means the Overseas Countries and Territories as defined in Annex VIII.

## *TITLE II*

### **DEFINITION OF THE CONCEPT OF 'ORIGINATING PRODUCTS'**

#### *Article 2*

##### **General conditions**

1. For the purposes of the Economic Partnership Agreement between West Africa and the European Union, referred to hereafter in this Protocol as 'Agreement', the territories of the West African States shall be considered as one territory, hereafter referred to as 'West Africa'.
2. For the purposes of the Agreement the following products shall be considered as originating in the European Union:
  - a) products wholly obtained in the European Union within the meaning of Article 3 of this Protocol;
  - b) products obtained in the European Union incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the European Union within the meaning of Article 4.
3. For the purposes of the Agreement the following products shall be considered as originating in West Africa:
  - a) products wholly obtained in West Africa within the meaning of Article 3 of this Protocol;
  - b) products obtained in West Africa incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in West Africa within the meaning of Article 4.

#### *Article 3*

##### **Wholly obtained products**

1. The following shall be considered as wholly obtained in the West African region or the European Union:
  - a) live animals born and raised there;

- b) mineral products extracted from their soil or from their seabed or ocean floor;
- c) vegetable products harvested there;
- d) products from live animals raised there;
- e)
  - i) products obtained by hunting or fishing conducted there;
  - ii) products of aquaculture, including mariculture, where the animals are raised there from eggs, spawning, larvae or fry;
- f) products of sea fishing and other products taken from the sea outside the territorial waters of the European Union or of a West African State by their vessels;
- g) products made aboard their factory ships exclusively from products referred to in (f) above;
- h) used articles fit only for the recovery of raw materials;
- i) waste and scrap resulting from manufacturing operations conducted there;
- j) products extracted from marine soil or subsoil outside their territorial waters provided that they have sole rights to work that soil or subsoil;
- k) goods produced exclusively from the products specified in (a) to (j).

2. The terms ‘their vessels’ and ‘their factory ships’ in paragraph 1(f) and (g) shall apply only to vessels and factory ships:

- a) which are registered or recorded in a Member State of the European Union or a West African State; and
- b) which fly the flag of a Member State of the European Union or a West African State; and
- c) which meet one of the following conditions:
  - i) they are at least 50 % owned by nationals of the Member States of the European Union or of the West African States;
  - or
  - ii) they are owned by companies:
    - which have their head office and their main place of business in a Member State of the European Union or a West African State; and
    - which are at least 50 % owned by one or more Member States of the European Union or one or more West African States or by public entities or nationals of one or more of these States; and
- d) whose crew meets the conditions laid down in paragraph 3.



3. For the purposes of Article 3(2)(d), at least 10 % of the crew shall be citizens of West Africa or the European Union. This percentage shall be reviewed by the Special Committee on Customs and Trade Facilitation every three (3) years or at the request of the European Union or West Africa, account being taken of the availability of qualified citizens of West Africa.
4. Notwithstanding the provisions of paragraph 2, upon request of a State or a group of States of West Africa, vessels chartered or leased by this State or these States shall be treated as 'their vessels' to undertake fisheries activities in its exclusive economic zone provided that an offer has been made beforehand to the economic operators of the European Union and that the implementing arrangements established beforehand by the Special Committee on Customs and Trade Facilitation are adhered to. The Special Committee on Customs and Trade Facilitation shall ensure that the conditions laid down in this paragraph are respected.
5. The conditions referred to in paragraph 2 may be met in various States of West Africa and the States that come under various economic partnership agreements with which cumulation is applicable. In these cases, the products shall be considered to originate from the Flag State.

#### *Article 4*

##### **Sufficiently worked or processed products**

1. For the purposes of Article 2, products which are not wholly obtained are considered to be sufficiently worked or processed when the conditions set out in the list in Annex II are fulfilled.
2. For the purposes of Article 2 and notwithstanding paragraph 1, the products which are listed in Annex II(a) can be considered to be sufficiently worked or processed when the conditions set out in that Annex are fulfilled. For a period of five (5) years from the date when the Agreement enters into force, Annex II(a) shall apply only to exports from West Africa, without prejudice to the provisions of Article 44(2).
3. The conditions referred to in paragraphs 1 and 2 indicate, for all products covered by this Agreement, the working or processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials. It follows that if a product which has acquired originating status by fulfilling the conditions set out in one of the lists is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture.
4. Notwithstanding paragraphs 1 and 2, non-originating materials which, in accordance with the conditions set out in Annex II and Annex II(a) should not be used in the manufacture of a given product may nevertheless be used, provided that:
  - a) their total value does not exceed 10 per cent of the ex-works price of the product for products from the European Union, and 15 per cent of the ex-works price of the product for products from West Africa;

- b) none of the percentages given in the list for the maximum value of non-originating materials are exceeded through the application of this paragraph.
- 5. The provisions of paragraph 4 shall not apply to products of Chapters 50 to 63 of the Harmonised System.
- 6. Paragraphs 1 to 5 shall apply subject to the provisions of Article 5.

#### *Article 5*

#### **Insufficient working or processing operations**

- 1. The following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 4 are satisfied:
  - a) preserving operations to ensure that the products remain in good condition during transport and storage;
  - b) simple operations consisting of the removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, cleaning, painting, polishing, cutting up;
  - c) removal of oxide, oil, paint or other coverings;
  - d)
    - i) changes of packaging and breaking up and assembly of packages;
    - ii) Simple placing in bottles, flasks, cans, bags, cases, boxes, fixing on cards or boards, etc., and all other simple packaging operations;
  - e) affixing marks, labels, logos and other like distinguishing signs on products or their packaging;
  - f) simple mixing of products, whether or not of different kinds; mixing of sugar with any material;
  - g) simple assembly of parts to constitute a complete product;
  - h) simple disassembly of products into parts;
  - i) ironing or pressing of textiles;
  - j) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
  - k) operations to colour or flavour sugar or form sugar lumps; partial or total milling of crystal sugar;
  - l) peeling, stoning and shelling, of fruits, nuts and vegetables;
  - m) sharpening, simple grinding or simple cutting;
  - n) a combination of two or more operations specified in subparagraphs (a) to (m);

- o) slaughter of animals.
2. All operations carried out either in the European Union or in West Africa on a given product shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.

#### Article 6

#### **Working or processing of materials whose import into the European Union is free of duty**

1. Without prejudice to the provisions of Article 2, non-originating materials which at importation to the European Union are free of customs duties by means of application of conventional rates of the most-favoured nation tariff in accordance with its Common Customs Tariff<sup>1</sup> shall be considered as materials originating in a West African State when incorporated into a product obtained there, provided that they have undergone working or processing there which goes beyond the operations referred to in Article 5(1).
2. Movement certificates EUR.1 (in Box 7) or invoice declarations issued by application of paragraph 1 shall bear one of the following entries:
- 'Application of art. 6.1 of Protocol 1 to the WA-EU EPA';
  - 'Application de l'art. 6.1 du protocole n° 1 de l'APE AO-UE'.
  - 'Aplicação do artigo 6.1 do Protocolo 1 do APE AO-UE'.
3. The EU shall notify yearly to the Special Committee on Customs and Trade Facilitation the list of materials to which the provisions of this Article shall apply. After notification, the list shall be published by the European Commission in the *Official Journal of the European Union* (C series) and by the West African States in accordance with their own procedures.
4. The cumulation provided for in this Article shall not apply to materials which at importation to the European Union are subject to antidumping or countervailing duties when originating from a country which is subject to these antidumping or countervailing duties.

#### Article 7

#### **Cumulation of origin**

1. Without prejudice to the provisions of Article 2, materials originating in one of the Parties, in other ACP States which have at least provisionally applied an EPA, in the Republic of South Africa or the OCTs shall be considered as originating in the other Party when incorporated into a product obtained there, when the working or

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<sup>1</sup> Cf. Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff and subsequent amending and corresponding legal acts.

processing carried out in that Party goes beyond the operations referred to in Article 5(1).

Where the working or processing carried out in the Party concerned does not go beyond the operations referred to in Article 5(1) the product obtained shall be considered as originating in that Party only where the value added there is greater than the value of the materials used originating in any of the other countries or territories. If this is not so, the product obtained shall be considered as originating in the country or territory which accounts for the highest value of originating materials used in the manufacture of the final product.

The origin of materials originating in other ACP States which have at least provisionally applied an EPA and the OCTs shall be determined in accordance with the rules of origin applicable under the European Union's preferential arrangements with those countries and in accordance with Article 28.

2. Without prejudice to the provisions of Article 2, working and processing carried out in one of the Parties, in other ACP States which have at least provisionally applied an EPA or in the OCTs shall be considered as having been carried out in the other Party, when the materials undergo subsequent working or processing going beyond that referred to in Article 5(1).

Where the working or processing carried out in one of the Parties does not go beyond the operations referred to in Article 5(1), the product obtained shall be considered as originating in that Party only where the value added there is greater than the value of the materials used in any one of these countries or territories. If this is not so, the product obtained shall be considered as originating in the country or territory which accounts for the highest value of materials used in the manufacture of the final product.

The origin of the final product shall be determined according to the rules of origin of this Protocol and in accordance with Article 28.

3. The cumulation provided for in paragraphs 1 and 2 may only be applied with respect to other ACP States which have at least provisionally applied an EPA and the OCTs if:
  - a) all the countries or territories involved in the acquisition of the originating status and the Party of destination have entered into an arrangement or agreement on administrative cooperation which ensures correct implementation of this Article and includes a reference to the use of appropriate proofs of origin;
  - b) West Africa and the European Union supply each other, through the European Commission and the ECOWAS Commission, with the details of the administrative cooperation agreements with the other countries or territories referred to in this Article. The European Commission shall publish in the Official Journal of the European Union (C series) and the West African States shall publish according to their own procedures the date on which the cumulation provided for in this Article may be applied with those countries and territories listed in this Article which have fulfilled the necessary requirements.

4. The cumulation provided for in this Article may only be applied after 1 October 2015 for the products listed in Annex IX when the materials used in the manufacture of such products are originating, or the working or processing is carried out in another ACP State which has at least provisionally applied an EPA.
5. The cumulation provided for in this Article shall not apply to materials:
  - a) of Harmonised Systems Headings 16.04 and 16.05 originating in the EPA Pacific States by use of Article 6.6 of Protocol II of the Interim Partnership Agreement between the European Community, on the one part, and the Pacific States, on the other part<sup>2</sup>;
  - b) of Harmonised System Headings 16.04 and 16.05 originating in the Pacific States by use of any future provision of a comprehensive Economic Partnership Agreement between the European Union and Pacific ACP States;
  - c) originating in the Republic of South Africa which may not be imported directly into the EU duty-free and quota-free.
6. The EU shall notify yearly to the Special Committee on Customs and Trade Facilitation the list of materials referred to by the provisions of paragraph 5(c) of this Article. After notification, this list shall be published by the European Commission in the *Official Journal of the European Union* (C series) and by the West African States in accordance with their own procedures.

#### *Article 8*

#### **Cumulation with other countries benefiting from duty-free quota-free access to the market of the European Union**

1. Without prejudice to the provisions of Article 2, materials originating in countries and territories:
  - a) benefiting from the 'Special arrangement for least developed countries' of the Scheme of Generalised Tariff Preferences of the European Union;
  - b) benefiting from duty-free quota-free access to the market of the European Union under the general provisions of the Scheme of Generalised Tariff Preferences;

shall be considered as materials originating in a West African State when incorporated into a product obtained there.

It shall not be necessary for these materials to have undergone sufficient working or processing, provided they have undergone working or processing going beyond that referred to in Article 5(1). If the product into which these materials have been incorporated also includes non-originating materials, it will have to undergo sufficient working or processing in accordance with Article 4 to be considered as originating in West Africa.

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<sup>2</sup> Council Decision 729/2009/EC of 13 July 2009.

- 1.2. The origin of the materials from the other countries or territories concerned shall be established in accordance with the rules of origin applicable under the Scheme of Generalised Tariff Preferences of the European Union and in accordance with the provisions of Article 28.
- 1.3. The cumulation provided for in this paragraph shall not apply to materials:
- a) which at importation to the European Union are subject to antidumping or countervailing duties when originating from a country which is subject to these antidumping or countervailing duties;
  - b) which are included in tariff subheadings 3302.10 and 3501.10 of the Harmonised System;
  - c) which are included in tuna products classified under Harmonised System Chapter 3 which are covered by the Scheme of Generalised Tariff Preferences of the European Union;
  - d) in respect of which tariff preferences are removed (graduation) or suspended (safeguard clause) under the Scheme of Generalised Tariff Preferences of the European Union.
2. On the basis of a notification from a West African State, without prejudice to the provisions of Article 2 and in compliance with the provisions of paragraphs 2.1, 2.2 and 5, materials originating in countries or territories which are covered by agreements or arrangements that provide for duty-free quota-free access to the market of the European Union shall be considered to be materials originating in a West African State. Such notification shall be sent by the West African State to the European Union through the European Commission. Cumulation shall apply as long as the conditions for granting such cumulation are met. It shall not be necessary for such materials to have undergone sufficient working or processing, provided they have undergone working or processing going beyond that referred to in Article 5(1).
- 2.1. The origin of the materials of the countries or territories concerned shall be determined in accordance with the rules of origin applicable in the framework of the European Union's preferential agreements or arrangements with those countries and territories and in accordance with Article 28.
- 2.2. The cumulation provided for in this paragraph shall not apply to materials:
- a) falling within Harmonised System Chapters 1 to 24 and the products listed in Annex 1 - paragraph 1.(ii) of the Agreement on Agriculture belonging to the GATT (WTO) Agreement of 1994;
  - b) which at importation to the European Union are subject to antidumping or countervailing duties when originating from a country which is subject to these antidumping or countervailing duties;
  - c) which, under a free trade agreement between the European Union and a third country, are subject to trade measures and safeguard measures or any other measure which prevents such products from entering the European Union market on a duty-free and quota-free basis.

3. The European Union shall notify yearly to the Special Committee on Customs and Trade Facilitation the list of materials and countries to which the provisions of paragraph 1 shall apply. After notification, the list shall be published by the European Commission in the *Official Journal of the European Union* (C series) and by the West African States in accordance with their own procedures. West Africa shall notify yearly to the Special Committee on Customs and Trade Facilitation the materials to which the cumulation provided for in paragraphs 1 and 2 has been applied.
4. Movement certificates EUR.1 (in Box 7) or invoice declarations issued by application of paragraph 1 and 2 shall bear one of the following entries:
  - 'Application of art. 8.1 or 8.2 of Protocol 1 to the WA-EU EPA';
  - 'Application de l'art. 8.1 ou 8.2 du Protocole n° 1 de l'APE AO-UE';
  - 'Aplicação do artigo 8.1 ou 8.2 do Protocolo do APE AO-EU'.
5. The cumulation provided for in paragraphs 1 and 2 of this Article may only be applied provided that:
  - a) all the countries involved in the acquisition of the originating status have entered into an arrangement or agreement on administrative cooperation which ensures correct implementation of this Article and includes a reference to the use of appropriate proofs of origin;
  - b) the West African State or States provide the European Union, through the European Commission, with details of agreements on administrative cooperation with the other countries or territories referred to in this Article. The Commission shall publish in the *Official Journal of the European Union* (C series) the date on which the cumulation provided for in this Article may be applied with those countries or territories listed in this Article which have fulfilled the necessary requirements.

## *Article 9*

### **Unit of qualification**

1. The unit of qualification for the application of the provisions of this Protocol shall be the particular product which is considered as the basic unit when determining classification using the nomenclature of the Harmonised System.

This means that:

- a) when a product composed of a group or assembly of articles is classified under the terms of the Harmonised System in a single heading, the whole constitutes the unit of qualification;
- b) when a consignment consists of a number of identical products classified under the same heading of the Harmonised System, each product must be taken individually when applying the provisions of this Protocol.

2. Where, under General Rule 5 of the Harmonised System, packaging is included with the product for classification purposes, it shall be included for the purposes of determining origin.

#### *Article 10*

##### **Accessories, spare parts and tools**

Accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle, which are part of the normal equipment and included in the price thereof or which are not separately invoiced, shall be regarded as one with the piece of equipment, machine, apparatus or vehicle in question.

#### *Article 11*

##### **Sets of assorted articles**

Sets, as defined in General Rule 3 of the Harmonised System, shall be regarded as originating when all component products are originating. Nevertheless, when a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of the non-originating products does not exceed 15 percent of the ex-works price of the set.

#### *Article 12*

##### **Neutral elements**

In order to determine whether a product is an originating product, it shall not be necessary to determine the origin of the following which might be used in its manufacture:

- a) energy and fuel;
- b) plant and equipment;
- c) machines and tools;
- d) goods which neither enter into the final composition of the product nor are intended to do so.

#### *Article 13*

##### **Accounting segregation**

1. Where considerable cost or material difficulties arise in keeping separate stocks of originating and non-originating fungible materials, the customs authorities may, at the written request of those concerned, authorise the so-called 'accounting segregation' method (hereinafter referred to as the method) to be used for managing such stocks.
2. The method referred to in paragraph 1 shall also apply to originating and non-originating raw sugar not containing added flavouring or colouring matter and intended for refining of subheadings 1701.12, 1701.13 and 1701.14 of the



Harmonised System, which is physically combined or mixed in a West African State or the European Union before being exported to the European Union and to West African States respectively.

3. The method shall ensure that, at any time, the number of products obtained which could be considered to originate in West African States or the European Union is the same as would have been obtained if the stocks had been physically separated.
4. The customs authorities may make the grant of authorisation referred to in paragraphs 1 and 2 subject to any conditions deemed appropriate.
5. The method shall be applied and the application thereof shall be recorded on the basis of the general accounting principles applicable in the country where the product was manufactured.
6. The beneficiary of the method may issue or apply for proofs of origin, as the case may be, for the quantity of products which may be considered as originating. At the request of the customs authorities, the beneficiary shall provide a statement of how the quantities have been managed.
7. The customs authorities shall monitor the use made of the authorisation and may withdraw it whenever the beneficiary makes improper use of the authorisation in any manner whatsoever or fails to fulfil any of the other conditions laid down in this Protocol.
8. For the purposes of paragraphs 1 and 2, 'fungible materials' or 'fungible products' shall mean materials or products which are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another in order to establish their origin.

### ***TITLE III***

## **TERRITORIAL REQUIREMENTS**

### *Article 14*

#### **Principle of territoriality**

1. Except as provided for in Articles 6, 7 and 8 the conditions for acquiring originating status set out in Title II must be fulfilled without interruption in the West African States or in the European Union.
2. Except as provided for in Articles 6, 7, and 8 where originating goods exported from West Africa or from the European Union to another country return, they must be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that:
  - a) the returning goods are the same as those exported; and
  - b) they have not undergone any operation beyond that necessary to preserve them in good condition while in that country or while being exported.

3. The acquisition of originating status in accordance with the conditions set out in Title II shall not be affected by working or processing done outside the European Union or West Africa on products exported from the European Union or from West Africa and subsequently reimported there, provided:
  - a) the said products are wholly obtained in the European Union or in West Africa or have undergone working or processing there beyond the operations referred to in Article 5 prior to being exported; and
  - b) it can be demonstrated to the satisfaction of the customs authorities that:
    - i) the working or processing outside the European Union or West Africa was done under the outward processing arrangements, or similar arrangements;
    - ii) the reimported goods have been obtained by working or processing the exported products; and
    - (iii) all costs arising outside West Africa or the European Union, including the value of the materials incorporated there, do not exceed 10 % of the ex-works price of the end product for which originating status is claimed.
4. For goods that meet the conditions laid down in paragraph 3, all the costs arising outside West Africa or the European Union, including the value of the materials incorporated there, shall be considered to be non-originating materials. In that case the originating status of the goods shall be determined by applying the rules laid down in Annex II, cumulating the total value of the non-originating materials used both inside and outside the European Union or West Africa.
5. The provisions of paragraphs 3 and 4 shall not apply to products which can be considered sufficiently worked or processed only if the general tolerance fixed in Article 4(4) is applied.
6. The provisions of paragraphs 3 and 4 shall not apply to products of Chapters 50 to 63 of the Harmonised System.

#### *Article 15*

#### **Direct transport**

1. The preferential treatment provided for under the Agreement applies only to products, satisfying the requirements of this Protocol, which are transported directly between West Africa and the European Union or through the territories of the other countries referred to in Articles 6, 7 and 8 with which cumulation is applicable. However, products constituting one single consignment may be transported through other territories with, should the occasion arise, transshipment or temporary warehousing in such territories, provided that they remain under the surveillance of the customs authorities in the country of transit or warehousing and do not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition.

Originating products may be transported by pipeline across territory other than that of West Africa or the European Union.

2. Evidence that the conditions set out in paragraph 1 have been fulfilled shall be supplied to the customs authorities of the importing country by the production of:
  - a) a single transport document covering the passage from the exporting country through the country of transit; or
  - b) a certificate issued by the customs authorities of the country of transit:
    - i) giving an exact description of the products;
    - ii) stating the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used; and
    - (iii) certifying the conditions under which the products remained in the transit country; or
  - c) failing these, any substantiating documents.

#### *Article 16*

#### **Exhibitions**

1. Originating products sent for exhibition in a country or territory other than those referred to in Articles 6, 7 and 8 with which cumulation is applicable and sold after the exhibition for importation into the European Union or West Africa shall benefit on importation from the provisions of the Agreement provided it is shown to the satisfaction of the customs authorities that:
  - a) an exporter has consigned these products from West Africa or from the European Union to the country in which the exhibition is held and has exhibited them there;
  - b) the products have been sold or otherwise disposed of by that exporter to a person in West Africa or in the European Union;
  - c) the products have been consigned during the exhibition or immediately thereafter in the state in which they were sent for exhibition; and
  - d) the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition.
2. A proof of origin shall be issued or made out in accordance with the provisions of Title IV and submitted to the customs authorities of the importing country in the normal manner. The name and address of the exhibition shall be indicated thereon. Where necessary, additional documentary evidence of the conditions under which they have been exhibited may be required.

3. Paragraph 1 shall apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display which is not organised for private purposes in shops or business premises with a view to the sale of foreign products, and during which the products remain under customs control.

#### ***TITLE IV***

### **PROOF OF ORIGIN**

#### *Article 17*

#### **General conditions**

1. Products originating in West Africa shall, on importation into the European Union and products originating in the European Union shall, on importation into West Africa, benefit from the provisions of the Agreement upon submission of either:
  - a) a movement certificate EUR.1, a specimen of which appears in Annex III; or
  - b) in the cases specified in Article 22(1), a declaration, subsequently referred to as the 'invoice declaration', given by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified; the text of the invoice declaration appears in Annex IV.
2. Notwithstanding paragraph 1, originating products within the meaning of this Protocol shall, in the cases specified in Article 27, benefit from this Agreement without it being necessary to submit any of the documents referred to above.
3. For the purposes of applying the provisions of this title, exporters shall endeavour to use a language shared by West Africa and the European Union.

#### *Article 18*

#### **Procedure for the issue of a movement certificate EUR.1**

1. A movement certificate EUR.1 shall be issued by the customs authorities of the exporting country on application having been made in writing by the exporter or, under the exporter's responsibility, by his authorised representative.
2. For this purpose, the exporter or his authorised representative shall fill out both the movement certificate EUR.1 and the application form, specimens of which appear in Annex III. These forms shall be completed in accordance with the provisions of this Protocol. If the forms are handwritten, they shall be completed in ink in printed characters. The description of the products must be given in the box reserved for this purpose without leaving any blank lines. Where the box is not completely filled, a horizontal line shall be drawn below the last line of the description, the empty space being crossed through.
3. The exporter applying for the issue of a movement certificate EUR.1 shall be prepared to submit at any time, at the request of the customs authorities of the exporting country where the movement certificate EUR.1 is issued, all appropriate

documents proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Protocol.

4. A movement certificate EUR.1 shall be issued by the customs authorities of a Member State of the European Union or a West African State if the products concerned can be considered as products originating in the European Union, West Africa or one of the other countries or territories referred to in Articles 6, 7 and 8 and fulfil the other requirements of this Protocol.
5. The issuing customs authorities shall take any steps necessary to verify the originating status of the products and the fulfilment of the other requirements of this Protocol. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate. The issuing customs authorities shall also ensure that the forms referred to in paragraph 2 are duly completed. In particular, they shall check whether the space reserved for the description of the products has been completed in such a manner as to exclude all possibility of fraudulent additions.
6. The date of issue of the movement certificate EUR.1 shall be indicated in Box 11 of the certificate.
7. A movement certificate EUR.1 shall be issued by the customs authorities and made available to the exporter as soon as actual exportation has been effected or ensured.

#### *Article 19*

##### **Movement certificates EUR.1 issued retrospectively**

1. Notwithstanding Article 18(7), a movement certificate EUR.1 may exceptionally be issued after exportation of the products to which it relates if:
  - a) it was not issued at the time of exportation because of errors or involuntary omissions or special circumstances; or
  - b) it is demonstrated to the satisfaction of the customs authorities that a movement certificate EUR.1 was issued but was not accepted at importation for technical reasons.
2. For the implementation of paragraph 1, the exporter must indicate in his application the place and date of exportation of the products to which the movement certificate EUR.1 relates, and state the reasons for his request.
3. The customs authorities may issue a movement certificate EUR.1 retrospectively only after verifying that the information supplied in the exporter's application agrees with that in the corresponding file.
4. Movement certificates EUR.1 issued retrospectively must be endorsed with one of the following phrases:

'ISSUED RETROSPECTIVELY'

'DELIVRE A POSTERIORI'

'EMITIDO A POSTERIORI'

5. The endorsement referred to in paragraph 4 shall be inserted in the 'Remarks' box of the movement certificate EUR.1.

#### *Article 20*

##### **Issue of a duplicate movement certificate EUR.1**

1. In the event of the theft, loss or destruction of a movement certificate EUR.1, the exporter may apply to the customs authorities which issued it for a duplicate made out on the basis of the export documents in their possession.
2. The duplicate issued in this way must be endorsed with one of the following:  
  
'DUPLICATE'  
  
'DUPLICATA'  
  
'SEGUNDA VIA'
3. The endorsement referred to in paragraph 2 shall be inserted in the 'Remarks' box of the duplicate movement certificate EUR.1.
4. The duplicate, which must bear the date of issue of the original movement certificate EUR.1, shall take effect as from that date.

#### *Article 21*

##### **Issue of movement certificates EUR.1 on the basis of a proof of origin issued or made out previously**

When originating products are placed under the control of a customs office in a West African State or in the European Union, it shall be possible to replace the original proof of origin by one or more movement certificates EUR.1 for the purpose of sending all or some of these products elsewhere within West Africa or within the European Union. The replacement movement certificate(s) EUR.1 shall be issued by the customs office under whose control the products are placed and endorsed by the customs authority under whose control the products are placed.

#### *Article 22*

##### **Conditions for making out an invoice declaration**

1. An invoice declaration as referred to in Article 17(1)(b) may be made out:
  - a) by an approved exporter within the meaning of Article 23; or
  - b) by any exporter for any consignment consisting of one or more packages containing originating products whose total value does not exceed EUR 6 000.

2. An invoice declaration may be made out if the products concerned can be considered as products originating in West Africa, the European Union or in one of the other countries referred to in Articles 6, 7 and 8 and fulfil the other requirements of this Protocol.
3. The exporter making out an invoice declaration shall be prepared to submit at any time, at the request of the customs authorities of the exporting country, all appropriate documents proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Protocol.
4. An invoice declaration shall be made out by the exporter by typing, stamping or printing on the invoice, the delivery note or another commercial document, the declaration, the text of which appears in Annex IV to this Protocol, using one of the linguistic versions set out in that Annex and in accordance with the provisions of the domestic law of the exporting country. If the declaration is handwritten, it shall be written in ink in printed characters.
5. Invoice declarations shall bear the original signature of the exporter in manuscript. However, an approved exporter within the meaning of Article 23 shall not be required to sign such declarations provided that he gives the customs authorities of the exporting country a written undertaking that he accepts full responsibility for any invoice declaration which identifies him as if it had been signed in manuscript by him.
6. An invoice declaration may be made out by the exporter when the products to which it relates are exported, or after exportation on condition that it is presented in the importing country no longer than two (2) years after the importation of the products to which it relates.

### *Article 23*

#### **Approved exporter**

1. The customs authorities of the exporting country may authorize any exporter who makes frequent shipments of products under the trade cooperation provisions of the Agreement to make out invoice declarations irrespective of the value of the products concerned. An exporter seeking such authorisation must offer to the satisfaction of the customs authorities all guarantees necessary to verify the originating status of the products as well as the fulfilment of the other requirements of this Protocol.
2. The customs authorities may grant the status of approved exporter subject to any conditions which they consider appropriate.
3. The customs authorities shall grant to the approved exporter a customs authorisation number which shall appear on the invoice declaration.
4. The customs authorities shall monitor the use of the authorisation by the approved exporter.
5. The customs authorities may withdraw the authorisation at any time. They shall do so where the approved exporter no longer offers the guarantees referred to in

paragraph 1, no longer fulfils the conditions referred to in paragraph 2 or otherwise makes an incorrect use of the authorisation.

#### *Article 24*

##### **Validity of proof of origin**

1. A proof of origin shall be valid for ten (10) months from the date of issue in the exporting country, and must be submitted within that period to the customs authorities of the importing country.
2. Proofs of origin which are submitted to the customs authorities of the importing country after the final date for presentation specified in paragraph 1 may be accepted for the purpose of applying preferential treatment, where the failure to submit these documents by the final date set is due to exceptional circumstances.
3. In other cases of belated presentation, the customs authorities of the importing country may accept the proofs of origin where the products have been submitted before the said final date.

#### *Article 25*

##### **Submission of proof of origin**

Proofs of origin shall be submitted to the customs authorities of the importing country in accordance with the procedures applicable in that country. These authorities may require that a proof of origin be translated. They may also require the import declaration to be accompanied by a statement from the importer to the effect that the products meet the conditions required for the implementation of the Agreement.

#### *Article 26*

##### **Importation by instalments**

Where, at the request of the importer and on the conditions laid down by the customs authorities of the importing country, dismantled or non-assembled products within the meaning of General Rule 2(a) of the Harmonised System falling within Sections XVI and XVII or headings 73.08 and 94.06 of the Harmonised System are imported by instalments, a single proof of origin for such products shall be submitted to the customs authorities upon importation of the first instalment.

#### *Article 27*

##### **Exemptions from proof of origin**

1. Products sent as small packages from private persons to private persons or forming part of travellers' personal luggage shall be admitted as originating products without requiring the submission of a proof of origin, provided that such products are not imported by way of trade and have been declared as meeting the requirements of this Protocol and where there is no doubt as to the veracity of such a declaration. In the



case of products sent by post, this declaration can be made on customs declaration CN22/CN23 or on a sheet of paper annexed to that document.

2. Imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as imports by way of trade if it is evident from the nature and quantity of the products that no commercial purpose is in view.
3. Furthermore, the total value of these products shall not exceed EUR 500 in the case of small packages or EUR 1 200 in the case of products forming part of travellers' personal luggage.

#### *Article 28*

##### **Information procedure for cumulation purposes**

1. When Article 7(1) is applied, the evidence of originating status within the meaning of this Protocol, of the materials coming from West Africa, from the European Union, from another ACP State which has at least provisionally applied an EPA or an OCT shall be given by a movement certificate EUR.1 or by the supplier's declaration, a specimen of which appears in Annex V A to this Protocol, given by the exporter in West Africa or in the European Union from which the materials came.
2. When Article 7(2) is applied, the evidence of working or processing of the materials coming from West Africa, from the European Union, from another ACP State which has at least provisionally applied an EPA or an OCT shall be given by the supplier's declaration, a specimen of which appears in Annex V B to this Protocol, given by the exporter in West Africa or in the European Union from which the materials came.
3. When Article 8(1) is applied, the documentary proofs of origin applicable shall be determined in accordance with the rules which apply to GSP countries<sup>3</sup>;
4. When Article 8(2) is applied, the documentary proofs of origin applicable shall be determined in accordance with the rules laid down in the relevant arrangements or agreements.
5. A separate supplier's declaration shall be issued by the supplier for each consignment of goods on the commercial invoice relating to that shipment or in an annex to that invoice, or on a delivery note or other commercial document relating to that shipment which describes the materials concerned in sufficient detail for them to be identified.
6. The supplier's declaration may be issued on a pre-printed form.
7. The supplier's declarations shall bear the original signature of the supplier in manuscript. However, where the invoice and the supplier's declaration are issued using electronic data-processing methods, the supplier's declaration need not be signed in manuscript provided the responsible official in the supplying company is identified to the satisfaction of the customs authorities in the State where the

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<sup>3</sup> See Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, establishing the Community Customs Code

supplier's declaration is issued. Those customs authorities may lay down conditions for the implementation of this paragraph.

8. The supplier's declarations shall be submitted to the customs authorities in the exporting country requested to issue the movement certificate EUR.1.
9. The supplier issuing a declaration must be prepared to submit at any time, at the request of the customs authorities of the country where the declaration is issued, all appropriate documents proving that the information given on this declaration is correct.
10. Supplier's declarations and information certificates issued before the date of entry into force of this Protocol in accordance with Article 26 of Protocol 1 to the Cotonou Agreement shall remain valid.

#### *Article 29*

#### **Supporting documents**

The documents referred to in Articles 18(3) and 22(3) used for the purpose of proving that products covered by a movement certificate EUR.1 or an invoice declaration can be considered as products originating in West Africa, the European Union or one of the other countries or territories referred to in Articles 6, 7 and 8 and fulfil the other requirements of this Protocol may consist inter alia of the following:

- a) direct evidence of the processes carried out by the exporter or supplier to obtain the goods concerned, contained for example in his accounts or internal bookkeeping;
- b) documents proving the originating status of materials used, issued or made out in West Africa, the European Union or one of the other countries or territories referred to in Articles 6, 7 and 8 where these documents are used in accordance with domestic law;
- c) documents proving the working or processing of materials in West Africa, in the European Union or in one of the other countries or territories referred to in Articles 6, 7 and 8, issued or made out in West Africa, in the European Union or in one of the other countries or territories referred to in Articles 6, 7 and 8 where these documents are used in accordance with national law;
- d) movement certificates EUR.1 or invoice declarations proving the originating status of materials used, issued or made out in West Africa, in the European Union or in one of the other countries or territories referred to in Articles 6, 7 and 8 and in accordance with this Protocol.

#### *Article 30*

#### **Preservation of proof of origin and supporting documents**

1. The exporter applying for the issue of a movement certificate EUR.1 shall keep for at least three (3) years the documents referred to in Article 18(3).

2. The exporter making out an invoice declaration shall keep a copy of this invoice declaration as well as the documents referred to in Article 22(3) for at least three (3) years.
3. The supplier making out a supplier's declaration shall keep for at least three (3) years copies of the declaration and of the invoice, delivery notes or other commercial documents to which this declaration is annexed as well as the documents referred to in Article 28(9).
4. The customs authorities of the exporting country issuing a movement certificate EUR.1 shall keep for at least three (3) years the application form referred to in Article 18(2).
5. The customs authorities of the importing country shall keep for at least three (3) years the movement certificates EUR.1 and the invoice declarations submitted to them.

### *Article 31*

#### **Discrepancies and formal errors**

1. The discovery of slight discrepancies between the statements made in the proof of origin and those made in the documents submitted to the customs office for the purpose of carrying out the formalities for importing the products shall not ipso facto render the proof of origin null and void if it is duly established that this document does correspond to the products submitted.
2. Obvious formal errors such as typing errors on a proof of origin should not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.

### *Article 32*

#### **Amounts expressed in euro**

1. For the application of the provisions of Article 22(1)(b) and Article 27(3) in cases where products are invoiced in a currency other than euro, amounts in the national currencies of the West African States, the Member States of the European Union or of the other countries or territories referred to in Articles 6, 7 and 8 equivalent to the amounts expressed in euro shall be fixed annually by each of the countries concerned.
2. A consignment shall benefit from the provisions of Article 22(1)(b) or Article 27(3) by reference to the currency in which the invoice is drawn up, according to the amount fixed by the country concerned.
3. The amounts to be used in any given national currency shall be the equivalent in that currency of the amounts expressed in euro as at the first working day of October each year. These amounts shall be communicated to the European Commission by 15 October at the latest and shall apply from 1 January the following year. The European Commission shall notify all countries concerned of the relevant amounts.

4. A country may round up or down the amount resulting from the conversion into its national currency of an amount expressed in euro. The rounded-off amount may not differ from the amount resulting from the conversion by more than 5 per cent. A country may retain unchanged its national currency equivalent of an amount expressed in euro if, at the time of the annual adjustment provided for in paragraph 3, the conversion of that amount, prior to any rounding-off, results in an increase of less than 15 per cent in the national currency equivalent. The national currency equivalent may be retained unchanged if the conversion would result in a decrease in that equivalent value.
5. The amounts expressed in euro shall be reviewed by the Special Committee on Customs and Trade Facilitation at the request of the European Union or West Africa. When carrying out that review, the Special Committee on Customs and Trade Facilitation shall consider the desirability of preserving the effects of the limits concerned in real terms. For this purpose, it may decide to modify the amounts expressed in euro.

## ***TITLE V***

### **ADMINISTRATIVE COOPERATION**

#### *Article 33*

#### **Administrative conditions for products to benefit from the Agreement**

Products originating within the meaning of this Protocol in West Africa or the European Union shall benefit, at the time of the customs import declaration, from the preferences resulting from the Agreement only on condition that they were exported on or after the date on which the exporting country complies with the provisions laid down in Articles 34, 35 and 46.

The parties shall make the notifications referred to in Article 34.

#### *Article 34*

#### **Notification of customs authorities**

1. The West African States and the Member States of the European Union shall provide each other, through the European Commission and the ECOWAS Commission, with the addresses of the customs authorities responsible for issuing and verifying the movement certificates EUR.1, invoice declarations and supplier's declarations and with specimen impressions of stamps used in their customs offices for the issue of these certificates.

Movement certificates EUR.1 and invoice declarations or supplier's declarations shall be accepted for the purpose of applying preferential treatment from the date this information is received by the European Commission and the ECOWAS Commission.

2. The West African States and the Member States of the European Union shall inform each other immediately whenever there are any changes to the information referred to in paragraph 1.
3. The authorities referred to in paragraph 1 shall act under the authority of the government of the country concerned. The authorities in charge of control and verification shall be part of the governmental authorities of the country concerned.

#### *Article 35*

##### **Other methods of administrative co-operation**

1. In order to ensure the proper application of this Protocol, the European Union, West Africa and the other countries referred to in Article 6, 7 and 8 shall check, through the competent customs administrations, the authenticity of the movement certificates EUR.1, the invoice declarations or the supplier's declarations and the correctness of the information given in these documents. Moreover, the West African States and the Member States of the European Union:
  - a) shall provide each other with all necessary administrative cooperation in the event of a request for monitoring of the proper management and control of the Protocol in the country concerned, including visits on the spot;
  - b) shall check, in accordance with Article 36, the originating status of the products and the compliance with the other conditions laid down in this Protocol.
2. The authorities consulted shall furnish the relevant information concerning the conditions under which the product has been made, indicating especially the conditions in which the rules of origin have been respected in West Africa, the European Union and the other countries referred to in Articles 6, 7 and 8.

#### *Article 36*

##### **Verification of proofs of origin**

1. Subsequent verifications of proofs of origin shall be carried out based on risk analysis and at random or whenever the customs authorities of the importing country have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of this Protocol.
2. For the purposes of implementing the provisions of paragraph 1, the customs authorities of the importing country shall return the movement certificate EUR.1 and the invoice, if it has been submitted, the invoice declaration, or a copy of these documents, to the customs authorities of the exporting country giving, where appropriate, the reasons for the request for verification. Any documents and information obtained suggesting that the information given on the proof of origin is incorrect shall be forwarded in support of the request for verification.

3. The verification shall be carried out by the customs authorities of the exporting country. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate.
4. If the customs authorities of the importing country decide to suspend the granting of preferential treatment to the products concerned while awaiting the results of the verification, release of the products shall be offered to the importer subject to any precautionary measures judged necessary.
5. The customs authorities requesting the verification shall be informed of the results of this verification as soon as possible. These results must indicate clearly whether the documents are authentic and whether the products concerned can be considered as products originating in West Africa, in the European Union or in one of the other countries referred to in Articles 6, 7 and 8 and fulfil the other requirements of this Protocol.
6. If in cases of reasonable doubt there is no reply within 10 months of the date of the verification request or if the reply does not contain sufficient information to determine the authenticity of the document in question or the real origin of the products, the requesting customs authorities shall, except in exceptional circumstances, refuse entitlement to the preferences.
7. The parties shall refer to Article 7 of the Protocol on mutual administrative assistance in customs matters for joint enquiries on proofs of origin.

#### *Article 37*

#### **Verification of supplier's declarations**

1. Verification of supplier's declarations shall be carried out based on risk analysis and at random or whenever the customs authorities of the country where such declarations have been taken into account to issue a movement certificate EUR.1 or to make out an invoice declaration, have reasonable doubts as to the authenticity of the document or the correctness of the information given in this document.
2. The customs authorities to which a supplier's declaration is submitted may request the customs authorities of the State where the declaration was made out to issue an information certificate, a specimen of which appears in Annex VI to this Protocol. Alternatively, the certifying authorities to which a supplier's declaration is submitted may request the exporter to produce an information certificate issued by the customs authorities of the State where the declaration was made.

A copy of the information certificate shall be preserved by the office which has issued it for at least three (3) years.

3. The customs authorities requesting the verification shall be informed of the results of this verification as soon as possible. The results must indicate clearly whether the information given in the supplier's declaration is correct and make it possible for them to determine whether and to what extent this supplier's declaration could be

taken into account for issuing a movement certificate EUR.1 or for making out an invoice declaration.

4. The verification shall be carried out by the customs authorities of the country where the supplier's declaration was made out. For this purpose, they shall have the right to call for any evidence or to carry out any inspection of the supplier's accounts or any other check which they consider appropriate in order to verify the correctness of any supplier's declaration.
5. Any movement certificate EUR.1 or invoice declaration issued or made out on the basis of an incorrect supplier's declaration shall be considered null and void.

#### *Article 38*

##### **Dispute settlement**

1. Where disputes arise in relation to the verification procedures of Articles 36 and 37 which cannot be settled between the customs authorities requesting a verification and the customs authorities responsible for carrying out this verification or where they raise a question as to the interpretation of this Protocol, they shall be submitted to the Special Committee on Customs and Trade Facilitation.
2. In all cases, the settlement of disputes between the importer and the customs authorities of the importing country shall take place under the legislation of that country.

#### *Article 39*

##### **Penalties**

Penalties shall be imposed on any person who draws up, or causes to be drawn up, a document which contains incorrect information for the purpose of obtaining a preferential treatment for products.

#### *Article 40*

##### **Free zones**

1. West Africa and the European Union shall take all necessary steps to ensure that products traded under cover of a proof of origin or a supplier's declaration and which in the course of transport use a free zone situated in their territory, are not substituted by other goods and do not undergo handling other than normal operations designed to prevent their deterioration.
2. By way of derogation from the provisions contained in paragraph 1, when products originating in West Africa or the European Union are imported into a free zone under cover of a proof of origin and undergo treatment or processing, the authorities concerned shall issue a new movement certificate EUR.1 at the exporter's request, if the treatment or processing undergone is in conformity with the provisions of this Protocol.

## *Article 41*

### **Derogations**

1. Derogations from this Protocol may be adopted by the Special Committee on Customs and Trade Facilitation, referred to hereafter in this Article as 'the Committee', when they are justified by the development of existing industries or the creation of new industries in West Africa. To this end, either before or when a West African State submits the matter to the Committee, it shall notify the European Union and West Africa of its request for a derogation together with the reasons for the request in accordance with paragraph 2. The European Union shall respond positively to all the West African requests which are duly justified in conformity with this Article and which cannot cause serious damage to an established industry in the European Union.
  
2. In order to facilitate the examination by the Committee of requests for derogation, the West African State making the request shall, by means of the form given in Annex VII to this Protocol, furnish in support of its request the fullest possible information covering in particular the points listed below:
  - a) description of the finished product;
  - b) nature and quantity of materials originating in a third country;
  - c) nature and quantity of materials originating in the West African State or the States or territories mentioned in Article 7, or of materials that have been processed there;
  - d) manufacturing processes;
  - e) added value;
  - f) number of employees in the enterprise concerned;
  - g) anticipated volume of exports to the European Union;
  - h) other possible sources of supply for raw materials;
  - i) reasons for the duration requested in the light of efforts made to find new sources of supply;
  - j) other observations.

The same rules shall apply to any requests for extension.

The Committee may modify the form.

3. The examination of requests shall in particular take into account:
  - a) the level of development or the geographical situation of the West African State concerned;



- b) cases where the application of the existing rules of origin would significantly affect the ability of an existing industry in a West African State to continue its exports to the European Union, with particular reference to cases where this could lead to cessation of its activities;
  - c) specific cases where it can be clearly demonstrated that significant investment in an industry could be deterred by the rules of origin and where a derogation favouring the realisation of an investment programme would enable these rules to be satisfied by stages.
4. In every case an examination shall be made to ascertain whether the rules relating to cumulation of origin do not provide a solution to the problem.
5. In addition, when a request for derogation concerns a least-developed or an island State of West Africa, its examination shall be carried out with a favourable bias having particular regard to:
- a) the economic and social impact of the decisions to be taken especially in respect of employment;
  - b) the need to apply the derogation for a period taking into account the particular situation of the West African State concerned and its difficulties.
6. In the examination of requests, special account shall be taken, case by case, of the possibility of conferring originating status on products which include in their composition materials originating in neighbouring developing countries, least-developed countries or developing countries with which one or more West African States have special relations, provided that administrative co-operation can be established.
7. The Committee shall take steps necessary to ensure that a decision is reached as soon as possible and in any case not later than seventy-five working days after the request is received by the European Union Co-chairman of the Committee. If the European Union does not inform the West African States of its position on the request within this period, the request shall be deemed to have been accepted.
8. a) Derogations shall be valid for a period, generally of five (5) years, to be determined by the Committee.
- b) The derogation decision may provide for renewals without a new decision of the Committee being necessary, provided that the West African State submits, three (3) months before the end of each period, proof that it is still unable to meet the conditions of this Protocol which have been derogated from.
- If any objection is made to the extension, the Committee shall examine it as soon as possible and decide whether to prolong the derogation. The Committee shall proceed as provided for in paragraph 7. All necessary measures shall be taken to avoid interruptions in the application of the derogation.
- c) In the periods referred to in subparagraphs (a) and (b), the Committee may review the terms for implementing the derogation should a significant change be found to have taken place in the substantive factors governing the decision

to grant the derogation. On conclusion of its review the Committee may decide to amend the terms of its decision as regards the scope of derogation or any other condition previously laid down.

9. Notwithstanding paragraphs 1 to 8, automatic derogations concerning canned tuna and tuna loins of HS 16.04 shall only be granted within an annual quota of 4 800 tonnes for canned tuna and within an annual quota of 1 200 tonnes for tuna loins.

## *TITLE VI*

### **CEUTA AND MELILLA**

#### *Article 42*

##### **Special conditions**

1. The term 'European Union' used in this Protocol does not cover Ceuta and Melilla.
2. Products originating in a West African State, when imported into Ceuta or Melilla, shall enjoy in all respects the same customs regime as that which is applied to products originating in the customs territory of the European Union under Protocol 2 of the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities. West Africa shall grant to imports of products covered by this Agreement and originating in Ceuta and Melilla the same customs regime as that which is granted to products imported from and originating in the European Union.
3. For the purpose of the application of paragraph 2 concerning products originating in Ceuta and Melilla, this Protocol shall apply *mutatis mutandis* subject to the special conditions set out in Article 43.

#### *Article 43*

##### **Special conditions**

1. Providing they have been transported directly in accordance with the provisions of Article 15, the following shall be considered as:
  - 1) products originating in Ceuta and Melilla:
    - a) products wholly obtained in Ceuta and Melilla;
    - b) products obtained in Ceuta and Melilla in the manufacture of which products other than those referred to in (a) are used, provided that:
      - i) the said products have undergone sufficient working or processing within the meaning of Article 4, or that
      - ii) those products originate in West Africa or in the European Union, provided that they have been submitted to working or processing which goes beyond the operations referred to in Article 5;
  - 2) products originating in a West African State:

- a) products wholly obtained in a West African State;
  - b) products obtained in a West African State, in the manufacture of which products other than those referred to in (a) are used, provided that:
    - i) the said products have undergone sufficient working or processing within the meaning of Article 4, or that
    - ii) those products originate in Ceuta and Melilla or in the European Union, within the meaning of this Protocol, provided that they have been submitted to working or processing which goes beyond the operations referred to in Article 5.
2. Ceuta and Melilla shall be considered as a single territory.
  3. The exporter or his authorised representative shall enter '....' and 'Ceuta and Melilla' in Box 2 of movement certificates EUR.1 or on invoice declarations. In addition, in the case of products originating in Ceuta and Melilla, this shall be indicated in Box 4 of movement certificates EUR.1 or on invoice declarations.
  4. The Spanish customs authorities shall be responsible for the application of this Protocol in Ceuta and Melilla.

## ***TITLE VII***

### **FINAL PROVISIONS**

#### *Article 44*

#### **Revision and application of rules of origin**

1. In accordance with the provisions of Article 92 of the Agreement, the Joint Council of the West Africa-European Union EPA may, whenever requested by West Africa or the European Union, examine the application of the provisions of this Protocol and their economic effects with a view to adapting or amending them, as necessary. The Joint Council of the West Africa-European Union EPA shall take account, among other factors, of the impact of technological developments on the rules of origin.
2. Notwithstanding the provisions of paragraph 1, this Protocol and its annexes shall be reviewed and, if appropriate, revised within five (5) years of the date when the Protocol enters into force, in accordance with the obligations laid down in Article 6 of the Agreement. This review shall also concern Annex II(a) with a view to establishing whether it should be renewed.
3. In accordance with Article 45 of the Agreement, the Special Committee on Customs and Trade Facilitation shall monitor the implementation and management of the provisions of this Protocol and take decisions on the following matters, among others:
  - a) cumulation, under the conditions set out in Article 8;

- b) the derogations from the provisions of this Protocol, under the conditions set out in Article 41.

*Article 45*

**Annexes**

The Annexes to this Protocol shall form an integral part thereof.

*Article 46*

**Implementation of the Protocol**

The European Union and West Africa shall each take the measures required to implement this Protocol, including:

- a) the necessary national and regional arrangements required for the implementation and enforcement of the rules and procedures laid down in this Protocol, in particular the arrangements necessary for the application of the articles on cumulation;
- b) the creation of the administrative structures and systems required for proper management and verification of the origin of products.

*Article 47*

**Transitional provision for goods in transit or storage**

The provisions of the Agreement may be applied to goods which comply with the provisions of this Protocol and which on the date of entry into force of this Protocol are either in transit or are in the European Union or in West Africa in temporary storage in customs warehouses or in free zones, subject to the submission to the customs authorities of the importing country, within ten (10) months of the said date, of a movement certificate EUR.1 issued retrospectively by the customs authorities of the exporting country together with the documents showing that the goods have been transported directly in accordance with Article 15.