ECONOMIC PARTNERSHIP AGREEMENT
BETWEEN THE EUROPEAN UNION
AND ITS MEMBER STATES, OF THE ONE PART,
AND THE SADC EPA STATES, OF THE OTHER PART

EU/SADC/en 1

PREAMBLE

PARTIES TO THE AGREEMENT

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE REPUBLIC OF CROATIA,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty on European Union and the Treaty on the functioning of the European Union, hereinafter referred to as “the Member States of the European Union”

and

THE EUROPEAN UNION, of the one part, and

THE REPUBLIC OF BOTSWANA,

THE KINGDOM OF LESOTHO,

THE REPUBLIC OF MOZAMBIQUE,

THE REPUBLIC OF NAMIBIA,

THE REPUBLIC OF SOUTH AFRICA, and

THE KINGDOM OF SWAZILAND

hereinafter referred to as the “Southern African Development Community Economic Partnership Agreement States”, of the other part (“the SADC EPA States”),

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

CONVINCED that this Agreement will further deepen and encourage economic and trade relations between the Parties;

DESIRING to create new employment opportunities, attract investment and improve living standards in the territories of the Parties while promoting sustainable development;

RECOGNISING the importance of development finance cooperation for the implementation of this Agreement;

RECOGNISING the efforts by the SADC EPA States to ensure economic and social development for their peoples in the context of deepening regional integration in the Southern African Development Community region ("SADC region");

CONFIRMING the Parties' commitment to promote regional cooperation and economic integration, and to encourage the liberalisation of trade in the SADC region;

RECOGNISING the special needs and interests of the SADC EPA States and the need to address their diverse levels of economic development, geographic and socio-economic concerns;

RECOGNISING the special circumstances of Botswana, Lesotho, Namibia and Swaziland ("BLNS States") in this Agreement and the need to take into account the effects on them of trade liberalisation under the Trade, Development and Cooperation Agreement between South Africa and the European Community and its Member States, signed on 11 October 1999 ("TDCA");

RECOGNISING the special circumstances and needs of the Least Developed Countries ("LDCs") of the SADC EPA States through the use of special and differential treatment and asymmetry;

RECOGNISING the special circumstances of Lesotho as the only LDC in SACU and that the impact of the reduction of the tariff revenue as a result of the TDCA and this Agreement necessitates priority in aid for trade;

RECOGNISING the special circumstances of those SADC EPA States emerging from long-term armed conflict, necessitating special and differential treatment and asymmetry;

TAKING ACCOUNT of the Parties' rights and obligations in terms of their membership of the World Trade Organisation ("WTO"), and reaffirming the importance of the multilateral trading system;

RECALLING the importance attached by the Parties to the principles and rules governing the multilateral trading system and to the need to apply them in a transparent and non-discriminatory manner;

BEARING IN MIND the Partnership Agreement between the Members of the African, Caribbean and Pacific ("ACP") Group of States of the one part, and the European Community ("EC") and its Member States of the other part, signed on 23 June 2000 and revised on 25 June 2005 ("Cotonou Agreement");

CONFIRMING the Parties' commitment to and support for economic development in the SADC EPA States to attain the Millennium Development Goals ("MDGs");

BEARING IN MIND the TDCA;

BEARING IN MIND Parties' commitment to ensuring that their mutual arrangements support the process of regional integration under the Treaty of the Southern African Development Community, signed on 17 August 1992, as amended ("SADC Treaty");

RECOGNISING the particular case of the Southern African Customs Union ("SACU") established under the Southern African Customs Union Agreement, 2002, between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of Swaziland, signed on 21 October 2002 ("SACU Agreement");

CONFIRMING the Parties' support and encouragement for the process of trade liberalisation;

EMPHASISING the importance of agriculture and sustainable development in poverty alleviation in the SADC EPA States;

HAVE AGREED to conclude this Agreement:

PART I

SUSTAINABLE DEVELOPMENT AND OTHER AREAS OF COOPERATION

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1

Objectives

The objectives of this Agreement are to:

(a) contribute to the reduction and eradication of poverty through the establishment of a trade partnership consistent with the objective of sustainable development, the MDGs and the Cotonou Agreement;

(b) promote regional integration, economic cooperation and good governance to establish and implement an effective, predictable and transparent regional regulatory framework for trade and investment between the Parties and among the SADC EPA States;

(c) promote the gradual integration of the SADC EPA States into the world economy in conformity with their political choices and development priorities;

(d) improve the SADC EPA States' capacity in trade policy and trade-related issues;

(e) support the conditions for increasing investment and private sector initiatives and enhancing supply capacity, competitiveness and economic growth in the SADC EPA States; and

(f) strengthen the existing relations between the Parties on the basis of solidarity and mutual interest. To this end, consistent with WTO obligations, this Agreement shall enhance commercial and economic relations, consolidate the implementation of the Protocol on Trade in the Southern African Development Community (SADC) Region, signed on 24 August 1996 ("SADC Protocol on Trade") and the SACU Agreement, 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.

ARTICLE 2

Principles

1. This Agreement is based on the Fundamental Principles, as well as the Essential and Fundamental Elements, as set out in Articles 2 and 9, respectively, of the Cotonou Agreement. This Agreement shall build on the achievements of the Cotonou Agreement, the TDCA and the previous ACP-EC agreements in regional cooperation and integration, as well as economic and trade cooperation.

2. This Agreement shall be implemented in a complementary and mutually reinforcing manner with respect to the Cotonou Agreement and the TDCA, subject to Articles 110 and 111.

3. The Parties agree to cooperate to implement this Agreement in a manner that is consistent with the development policies and regional integration programmes in which the SADC EPA States are or may be involved.

4. The Parties agree to cooperate to fulfil their commitments and obligations and to facilitate the capacity of the SADC EPA States to implement this Agreement.

ARTICLE 3

Regional integration

1. The Parties recognise that regional integration is an integral element of their partnership and a powerful instrument to achieve the objectives of this Agreement.

2. The Parties reaffirm the importance of regional and sub-regional integration among the SADC EPA States to achieve greater economic opportunities, enhanced political stability and to foster the effective integration of developing countries into the world economy.

3. The Parties support, in particular, the integration processes based on the SACU Agreement, the SADC Treaty, and the Constitutive Act of the African Union adopted on 11 July 2000, as well as the development policies and political objectives related to such processes. The Parties aim at implementing this Agreement in a mutually supportive manner with those instruments, taking into account the respective levels of development, needs, geographical realities and sustainable development strategies.

ARTICLE 4

Monitoring

1. The Parties undertake to continuously monitor the operation and impact of this Agreement through appropriate mechanisms and timing within their respective participative processes and institutions, as well as those set up under this Agreement, in order to ensure that the objectives of this Agreement are achieved, that it is properly implemented and that the benefits for their people deriving from it, in particular the most vulnerable groups, are maximised.

2. The Parties undertake to consult each other promptly over any issue concerning the implementation of this Agreement.

ARTICLE 5

Cooperation in international fora

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

CHAPTER II

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 6

Context and objectives

1. The Parties recall the Agenda 21 on Environment and Development of 1992, the ILO Declaration on Fundamental Principles and Rights at Work of 1998, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the ILO Declaration on Social Justice for a Fair Globalisation of 2008 and the UN Conference on Sustainable Development of 2012 entitled “The Future We Want”.

2. The Parties reaffirm their commitments to promote the development of international trade in such a way as to contribute to the objective of sustainable development, in its three pillars (economic development, social development, and environmental protection) for the welfare of present and future generations, and will strive to ensure that this objective is integrated and reflected at every level of their trade relationship.

3. The provisions of this Chapter shall not be subject to the provisions of PART III, with the exception of Article 7.

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ARTICLE 7

Sustainable development

1. The Parties reaffirm that the objective of sustainable development is to be applied and integrated at every level of their economic partnership, in fulfilment of the overriding commitments set out in Articles 1, 2 and 9 of the Cotonou Agreement, and especially the general commitment to reducing and eventually eradicating poverty in a way that is consistent with the objectives of sustainable development.

2. The Parties understand this objective to apply in the case of this Agreement as a commitment that:

(a) the application of this Agreement shall fully take into account the human, cultural, economic, social, health and environmental best interests of their respective populations and of future generations; and

(b) the decision-making methods embrace the fundamental principles of ownership, participation and dialogue.

3. As a result, the Parties agree to work cooperatively towards the achievement of people-centred sustainable development.

ARTICLE 8

Multilateral environmental and labour standards and agreements

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems as well as decent work for all as a key element of sustainable development for all countries and as a priority objective of international cooperation.

2. Taking into account the Cotonou Agreement, and in particular its Articles 49 and 50, the Parties, in the context of this Article, reaffirm their rights and their commitment to implement their obligations in respect of the Multilateral Environmental Agreements ("MEAs") and the International Labour Organisation ("ILO") conventions that they have ratified respectively.

ARTICLE 9

Right to regulate and levels of protection

1. The Parties recognise the right of each Party to establish its own levels of domestic environmental and labour protection, and to adopt or modify accordingly its relevant laws and policies, consistently with internationally recognised standards and agreements to which they are a party.

2. The Parties reaffirm the importance of protection as afforded in domestic labour and environmental laws.

3. Recognising that it is inappropriate to encourage trade or investment by weakening or reducing domestic levels of labour and environmental protection, a Party shall not derogate from, or persistently fail to effectively enforce, its environmental and labour laws to this end.

ARTICLE 10

Trade and investment favouring sustainable development

1. The Parties reconfirm their commitment to enhance the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions.

2. A Party may request, through the Trade and Development Committee, consultations with the other Party regarding any matter arising under this Chapter.

3. Dialogue and cooperation on this Chapter by the Parties, through the Trade and Development Committee, may involve other relevant authorities and stakeholders.

ARTICLE 11

Working together on trade and sustainable development

1. The Parties recognise the importance of working together on trade related aspects of environmental and labour policies in order to achieve the objectives of this Agreement.

2. The Parties may exchange information and share experience on their actions to promote coherence and mutual supportiveness between trade, social and environmental objectives, and shall strengthen dialogue and cooperation on sustainable development issues that may arise in the context of trade relations.

3. In respect of paragraphs 1 and 2, the Parties may cooperate, *inter alia*, in the following areas:

(a) the trade aspects of labour or environmental policies in international fora, such as the ILO Decent Work Agenda and MEAs;

(b) the impact of this Agreement on sustainable development;

(c) corporate social responsibility and accountability;

(d) trade aspects of mutual interest to promote the conservation and sustainable use of biological diversity;

(e) trade aspects of sustainable forest management; and

(f) trade aspects of sustainable fishing practices.

CHAPTER III

AREAS OF COOPERATION

ARTICLE 12

Development cooperation

1. The Parties commit to cooperating in order to implement this Agreement and to support the SADC EPA States' trade and development strategies within the overall SADC regional integration process. The cooperation may take both financial and non-financial forms.

2. The Parties recognise that development cooperation is a crucial element of their Partnership and an essential factor for the achievement of the objectives of this Agreement as laid down in Article 1. Development finance cooperation for regional economic cooperation and integration, as provided for in the Cotonou Agreement, shall be carried out to support and promote the efforts of the SADC EPA States to achieve the objectives and to maximise the expected benefits of this Agreement. Areas of cooperation and technical assistance are set out in this Agreement, as appropriate. Cooperation shall be implemented according to the modalities provided for in this Article. Such modalities shall be kept under ongoing review and shall be revised as necessary in accordance with the provisions of Article 116.

3. The EU[1] financing pertaining to development cooperation between the SADC EPA States and the EU supporting the implementation of this Agreement shall be carried out within the framework of the rules and relevant procedures provided for by the Cotonou Agreement, in particular the programming procedures of the European Development Fund, and within the framework of the relevant instruments financed by the General Budget of the Union. In this context, supporting the implementation of this Agreement shall be a priority.

4. The Member States of the European Union collectively undertake to support, by means of their respective development policies and instruments, development cooperation activities for regional economic cooperation and integration and for the implementation of this Agreement in the SADC EPA States and at regional level, in conformity with the principles of complementarity and aid effectiveness such as those contained in the Paris Declaration on Aid Effectiveness of 2005 and the Accra Agenda for Action of 2008.

[1] The term "EU" used throughout this Agreement is defined in Article 104.

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5. The Parties recognise that adequate resources will be required for the implementation of this Agreement and the fullest achievement of its benefits. In this respect, the Parties shall cooperate to enable the SADC EPA States to access other financial instruments as well as facilitate other donors willing to further support the efforts of the SADC EPA States in achieving the objectives of this Agreement.

6. The Parties agree that a regional development financing mechanism such as an EPA fund would provide a useful instrument for efficiently channelling development financial resources and for implementing EPA accompanying measures. The EU agrees to support the efforts of the region to set up such a mechanism. The EU will contribute to the fund following a satisfactory audit.

ARTICLE 13

Cooperation priorities

1. For the purpose of implementing this Agreement and taking into account the development policies of the SADC EPA States, the Parties agree that the areas listed in this Article and in Article 14 are priority areas for trade and economic cooperation.

2. Cooperation in trade in goods shall aim at enhancing trade in goods and the SADC EPA States capacity to trade, including by phasing out tariffs and customs duties in line with liberalisation commitments laid down in this Agreement, by properly implementing rules of origin, trade defence instruments, non-tariff measures, sanitary and phytosanitary ("SPS") standards, and technical barriers to trade ("TBT"), by addressing non-tariff measures and by promoting customs cooperation and trade facilitation.

3. Cooperation in supply-side competitiveness shall aim at increasing the competitiveness of the SADC EPA States and remove supply side constraints at national, institutional and, in particular, at company level. This cooperation includes, amongst others, fields such as production, technology development and innovation, marketing, financing, distribution, transport, diversification of economic base, as well as development of the private sector, improvement of the trade and business environment and support to small and medium enterprises in the fields of agriculture, fisheries, industry and services.

4. Cooperation in business enhancing infrastructure shall aim at developing a competitive business enhancing environment in areas such as information and communication technology, transport and energy.

5. The Parties agree to cooperate to develop and enhance trade in services as provided for in Article 73.

6. The Parties agree to cooperate, to develop and enhance trade-related issues as provided for in Articles 8 to 11, 16 to 19, 73 and 74.

7. Cooperation in trade data shall aim at improving the capacity of the SADC EPA States in the area of trade data capture, analysis and dissemination.

8. Cooperation for EPA institutional capacity building shall aim at supporting institutional structures for EPA implementation management, capacity building for trade negotiations and for trade policy in cooperation with the relevant institutional mechanisms established under the SADC Treaty and SACU Agreement or in the respective SADC EPA States.

ARTICLE 14

Cooperation on fiscal adjustment

1. The Parties recognise that the phasing out or reduction of customs duties laid down in this Agreement may affect the fiscal revenues of the SADC EPA States and agree to cooperate on this matter.

2. The Parties agree to cooperate, in accordance with Article 12, in particular on:

(a) support to fiscal reforms; and

(b) support measures complementary to fiscal reforms for the mitigation of the net fiscal impact of this Agreement to be determined in accordance with a jointly agreed mechanism.

3. The Parties recognise that the impact of tariff reduction will particularly affect Lesotho's fiscal revenues and agree to pay particular attention to Lesotho's situation in the application of Article 12.

ARTICLE 15

Types of interventions

Development cooperation under this Agreement may include, but is not limited to, the following interventions related to this Agreement:

(a) policy development;

(b) legislation and regulatory framework development;

(c) institutional/organisational development;

(d) capacity building and training[1];

(e) technical advisory services;

(f) administrative services;

(g) support in SPS and TBT areas; and

(h) operational support including equipment, materials and related works.

ARTICLE 16

Cooperation on protection of intellectual property rights

1. The Parties reaffirm their commitments under Article 46 of the Cotonou Agreement and their rights, obligations and flexibilities as set out in the Agreement on Trade-related Aspects of Intellectual Property, contained in Annex 1C to the Agreement establishing the World Trade Organisation ("TRIPS Agreement").

[1] For the purpose of this Article, "capacity building" may include in particular training, institutional development, organisational development (structures and procedures), operational support and inter-institutional communication and cooperation procedures.

2. The Parties agree to grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights ("IPRs"), and provide for measures for the enforcement of such rights against infringement thereof, in accordance with the provisions of the international agreements to which they are a party.

3. The Parties may cooperate in matters related to Geographical Indications ("GIs") in line with the provisions of Section 3 (Articles 22 to 24) of the TRIPS Agreement. The Parties recognise the importance of GIs and origin-linked products for sustainable agriculture and rural development.

4. The Parties agree that it is important to respond to reasonable requests to provide information and clarification to each other on GI and other IPR related matters. Without prejudice to the generality of such cooperation, the Parties may, by mutual agreement, involve international and regional organisations with expertise in the areas of GIs.

5. The Parties consider traditional knowledge as an important area and may cooperate on it in future.

6. The Parties may consider entering into negotiations on the protection of IPRs in future, and the SADC EPA States have as their ambition, and will endeavour, to negotiate as a collective. Should negotiations be launched, the EU will consider including provisions on cooperation and special and differential treatment.

7. If a Party that is not a party to a future agreement on protection of IPRs negotiated in accordance with paragraph 6 wishes to join, it may negotiate the terms of its entry to that agreement.

8. If any agreement emanating from negotiations envisaged in paragraphs 6 and 7 were to result in outcomes that prove to be incompatible with the future development of a SADC regional IPRs framework, Parties shall jointly endeavour to adjust this Agreement to bring it in line with that regional framework while ensuring a balance of benefits.

ARTICLE 17

Cooperation on public procurement

1. The Parties recognise the importance of transparent public procurement to promote economic development and industrialisation. The Parties agree on the importance of cooperation to enhance the mutual understanding of their respective public procurement systems. The Parties reaffirm their commitment to transparent and predictable public procurement systems in accordance with national laws.

2. The Parties recognise the importance of continuing to publish their laws, or otherwise make publicly available their laws, regulations and administrative rulings of general application and any modifications thereof, in an officially designated electronic or paper form that is widely disseminated and remains readily accessible to the public. The Parties agree that it is important to respond to reasonable requests to provide information and clarification to each other on above-mentioned matters.

3. The Parties may consider entering into negotiations on public procurement in future, and the SADC EPA States have as their ambition, and will endeavour, to negotiate as a collective. Should negotiations be launched, the EU agrees to include provisions on cooperation and special and differential treatment.

4. If a Party that is not a party of a future agreement on public procurement wishes to join, it may negotiate the terms of its entry to that agreement.

5. If any agreement emanating from negotiations envisaged in paragraphs 3 and 4 were to result in outcomes that prove to be incompatible with the future development of a SADC regional public procurement framework, the Parties shall jointly endeavour to adjust this Agreement to bring it in line with the regional framework while ensuring a balance of benefits.

ARTICLE 18

Cooperation on competition

1. The Parties recognise that certain business practices, such as anti-competitive agreements or concerted practices and abuses of dominant positions, may restrict trade between the Parties and thereby undermine the fulfilment of the objectives of this Agreement.

2. The Parties agree to cooperate on competition matters in accordance with Article 13(6).

3. The Parties may consider entering into negotiations on competition in future, and the SADC EPA States have as their ambition, and will endeavour, to negotiate as a collective. Should negotiations be launched, the EU agrees to include provisions on cooperation and special and differential treatment.

4. If a Party that is not a party of a future agreement on competition wishes to join, it may negotiate the terms of its entry to that agreement.

5. If any agreement emanating from negotiations envisaged in paragraphs 3 and 4 were to result in outcomes that prove to be incompatible with the future development of a SADC regional competition framework, the Parties shall jointly endeavour to adjust this Agreement to bring it in line with the regional framework while ensuring a balance of benefits.

ARTICLE 19

Cooperation on tax governance

The Parties recognise the importance of cooperation on the principles of good governance in the area of taxation through the relevant authorities.

PART II

TRADE AND TRADE-RELATED MATTERS

CHAPTER I

TRADE IN GOODS

ARTICLE 20

Free trade area

1. This Agreement establishes a free trade area between the Parties, in conformity with the General Agreement on Tariffs and Trade ("GATT 1994"), and in particular Article XXIV thereof.

2. This Agreement shall respect the principle of asymmetry, commensurate to the specific needs and capacity constraints of the SADC EPA States, in terms of levels and timing for commitments under this Agreement.

ARTICLE 21

Scope

The provisions of this Chapter shall apply to trade in goods between the Parties.[1]

ARTICLE 22

Rules of origin

The tariff preferences provided for in this Agreement shall be applied to goods qualifying under the rules of origin laid down in Protocol 1.

[1] Except where expressly provided, the terms “goods” and “product” shall have the same meaning.

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ARTICLE 23

Customs duty

1. 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, but shall not include any:

(a) internal taxes or other internal charges imposed in accordance with Article 40; or

(b) duties imposed in accordance with Chapter II of PART II; or

(c) fees or other charges imposed in accordance with Article 27.

2. For all products subject to liberalisation, no new customs duties shall be introduced, nor shall those already applied be increased in trade between the Parties as from the entry into force of this Agreement, with the exception of:

(a) paragraph 7;

(b) paragraph 9;

(c) paragraph 7 of Section A of PART 1 of ANNEX I; and

(d) paragraph 8 of Section A of PART 1 of ANNEX II.

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3. Except as otherwise provided for in this Agreement, for each product the basic duty to which the tariff reduction commitments set out in this Agreement apply, shall be the Most-Favoured-Nation ("MFN") rate of duty applied at the date of entry into force of this Agreement.

4. In cases where the process of tariff reduction does not start at the entry into force of this Agreement, the basic duty to which the tariff reduction commitments set out in this Agreement apply shall be either the rate of duty referred to in paragraph 3, or the MFN rate of duty applied on the starting date of the relevant tariff reduction schedule, whichever is the lower.

5. At the date of entry into force of this Agreement, the EU shall notify its list of basic duties, to which the tariff reduction commitments set out in this Agreement apply, to the SACU Secretariat and the Ministry of Industry and Trade of Mozambique. At the date of entry into force of this Agreement, SACU and Mozambique shall notify their respective lists of basic duties, to which the tariff reduction commitments set out in this Agreement apply, to the European Commission. After notification, as provided for in this paragraph, each party shall make public each of these lists according to their own internal procedures and within one month after the exchange of the notifications. The Trade and Development Committee shall, at its first meeting after notification and publication, adopt the lists of basic duties communicated by the Parties or SACU, as the case may be. The duties listed in the Schedule of the EU included in PART II of ANNEX I and in the Schedule of Mozambique included in PART II of ANNEX III serve an indicative purpose and do not constitute basic duties within the meaning of paragraph 3.

6. The reduced duties calculated in accordance with the tariff reduction schedules contained in this Agreement shall be applied rounded to the first decimal place or, in case of specific duties, to the second decimal place.

7. For those tariff preferences that are expressed as a percentage of the applied MFN rate of duty, if at any moment after the date of entry into force of this Agreement, a Party increases or reduces its applied MFN rate of duty, the rate of duty applied in relation to the other Party shall simultaneously be increased or reduced as long as the margin of preference in accordance with the Party's Schedule is maintained.

8. For those tariff preferences that are wholly expressed as a fixed rate of duty in this Agreement, if at any moment after the date of entry into force of this Agreement, a Party reduces its applied MFN rate of duty, that reduced rate of duty shall apply in relation to the other Party if and for as long as it is lower than the customs duty fixed rate calculated in accordance with that Party's Schedule.

9. The provisions of this Article shall not apply to those products excluded from tariff reduction commitments that are denoted by staging category "X" in each Party's Schedule listed in ANNEX I, II and III respectively.

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ARTICLE 24

Customs duties of the EU on products originating in the SADC EPA States

1. Products originating in Botswana, Lesotho, Mozambique, Namibia and Swaziland shall be imported into the EU in accordance with the duty-free quota-free treatment set out for those countries in ANNEX I.

2. Products originating in South Africa shall be imported into the EU in accordance with the treatment set out for South Africa in ANNEX I.

ARTICLE 25

Customs duties of the SADC EPA States on products originating in the EU

1. Products originating in the EU shall be imported into SACU in accordance with the treatment set out in ANNEX II.

2. Products originating in the EU shall be imported into Mozambique in accordance with the treatment set out in ANNEX III.

ARTICLE 26

Export duties or taxes

1. No new customs duties or taxes imposed on or in connection with the exportation of goods shall be introduced, nor shall those already applied be increased, in the trade between the Parties from the date of entry into force of this Agreement, except as otherwise provided for in this Article.

2. In exceptional circumstances, where justified for specific revenue needs, or where necessary for the protection of infant industries or the environment, or where essential for the prevention or relief of critical general or local shortages of foodstuffs or other products essential to ensure food security, Botswana, Lesotho, Namibia, Mozambique and Swaziland may introduce, after consultation with the EU, temporary customs duties or taxes imposed on or in connection with the exportation of goods, on a limited number of additional products.

3. In exceptional circumstances, where the SADC EPA States can justify industrial development needs, those SADC EPA States may introduce temporary customs duties or taxes imposed on or in connection with the exportation of a limited number of products to the EU. A SADC EPA State wishing to introduce such temporary custom duties or taxes shall notify the EU of such a duty, providing all relevant information and motivation and shall consult with the EU if the EU so requests. Such temporary duties or taxes shall only be applied on a total number of eight (8) products, as defined at an HS6 tariff line level, or in case of “ores and concentrates” at an HS4 tariff line level, per SADC EPA State at any given time and shall not be applied for a period exceeding twelve (12) years in total. This period can be extended or reinstated for the same product in agreement with the EU.

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4. The following conditions shall apply to paragraph 3 but not to paragraph 2:

(a) the SADC EPA State shall for the first six (6) years from the date of introduction of an export tax or duty exempt from the application of that tax or duty exports to the EU of an annual amount equal to the average volume of exports to the EU of such product over the three (3) years preceding the date of introduction of the tax or duty. The SADC EPA State shall from the seventh year following the introduction of the said tax or duty until its expiry pursuant to paragraph 3, exempt from the application of the duty or tax, exports to the EU on an annual amount equal to 50 per cent of the average volume of exports to the EU of such product over the three (3) years preceding the date of introduction of the tax or duty; and

(b) export duties or taxes shall not exceed 10 per cent of the ad valorem export value of the product.

5. Any more favourable treatment consisting in or in relation to customs duties or taxes applied by the SADC EPA States to exports of any product destined for a major trading economy shall, from the entry into force of this Agreement, be accorded to the like product destined for the territory of the EU. For the purpose of this Article, “major trading economy” is defined under Article 28(6).

6. Whenever a SADC EPA State has reasonable doubts as to whether a consignment of a product to which export duties shall not apply by virtue of paragraphs 1, 3 and 4 has been re-exported from, or re-routed without reaching, the EU to one or more third countries, that SADC EPA State may raise this matter at the Trade and Development Committee.

7. The Trade and Development Committee shall examine the matter within ninety (90) days. After the examination, if the Trade and Development Committee takes no decision, the customs authorities of the SADC EPA State concerned may request the Trade and Development Committee to decide that the importer of the product concerned into the EU make a declaration that the imported product will be processed in the EU and will not be re-exported to third countries.

8. If, after a system using such declarations has been in operation for at least ninety (90) days, a SADC EPA State continues to have reasonable doubts as to whether a consignment of a product to which export duties shall not apply by virtue of paragraphs 1, 3 and 4 is re-exported from, or re-routed without reaching, the EU to one or more third countries, that SADC EPA State may inform the Trade and Development Committee of the grounds of its concerns.

9. Having followed these steps, should no solution be found within thirty (30) days, the SADC EPA State concerned may impose effective measures to prevent such circumvention provided that these measures are the least trade-restrictive and exclude operators who have proven not to be involved in the process of circumvention. The retroactive reinstatement of export duties on the consignment that has been re-exported from the EU to one or more third countries may offer an alternate option.

10. The Parties agree to review the provisions of this Article in the Joint SADC EPA States – EU Council (“Joint Council”) no later than three (3) years after the entry into force of this Agreement, taking fully into account their impact on development and diversification of the SADC EPA States' economies.

ARTICLE 27

Fees and charges

1. All fees and charges of whatever character, other than import and export duties and other than taxes within the scope of Article 40, imposed on or in connection with importation or exportation, shall not exceed the cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

2. Without prejudice to Article 30, no Party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

3. The provisions of this Article shall extend to fees and charges, imposed by governmental authorities in connection with importation and exportation, including those relating to:

(a) consular transactions, such as consular invoices and certificates;

(b) quantitative restrictions;

(c) licensing;

(d) exchange control;

(e) statistical services;

(f) documents, documentation and certification;

(g) analysis and inspection; and

(h) quarantine, sanitation and fumigation.

4. Fees and charges shall not be imposed for consular services.

ARTICLE 28

More favourable treatment resulting from free trade agreements

1. With respect to customs duties as defined in Articles 23(1) and 26(1) and fees and other charges as defined in Article 27, the EU shall extend to the SADC EPA States any more favourable treatment applicable as a result of the EU becoming party to a preferential trade agreement with third parties after the signature of this Agreement.

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2. With respect to customs duties as defined in Articles 23(1) and 26(1) and fees and other charges as defined in Article 27, the SADC EPA States shall, upon request of the EU, extend to the EU any more favourable treatment applicable as a result of the SADC EPA States, individually or collectively as the case may be, becoming party to a preferential trade agreement with any major trading economy after the signature of this Agreement.

3. By derogation from paragraph 2, the SADC EPA States shall not extend to the EU the treatment applicable as a result of the SADC EPA States, individually or collectively as the case may be, becoming party to a preferential trade agreement with countries of the African, Caribbean and Pacific group or other African countries or regions.

4. By derogation from paragraph 2, where a SADC EPA State demonstrates that as a result of a preferential trade agreement it has entered into with a major trading economy, it receives substantially more favourable treatment overall than that offered by the EU, the Parties shall consult and jointly decide how best to implement the provisions of paragraph 2.

5. The provisions of this Article shall not be construed so as to oblige the EU or any SADC EPA State to extend reciprocally any preferential treatment applicable as a result of the EU or any SADC EPA State being party to a preferential trade agreement with third parties on the date of signature of this Agreement.

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 per cent in the year before the entry into force of the agreement referred to in paragraph 2, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1,5 per cent in the year before the entry into force of the agreement referred to in paragraph 2.

7. By derogation from paragraph 1, where the EU becomes party to a preferential trade agreement with a third party after the signature of this Agreement and such a preferential trade agreement provides for more favourable treatment to the third party than that granted by the EU to South Africa pursuant to this Agreement, the EU and South Africa shall enter into consultations with a view to deciding whether and how to extend the more favourable treatment contained in the preferential trade agreement to South Africa. The Joint Council may adopt proposals to amend the provisions of this Agreement in accordance with Article 117.

8. By derogation from paragraph 2, where SACU or a SADC EPA LDC becomes party to a preferential trade agreement with a major trading economy and such a preferential trade agreement provides for more favourable treatment granted by SACU or the SADC EPA LDC concerned to the major trading economy than to the EU pursuant to this Agreement, SACU or the respective SADC EPA LDC and the EU shall enter into consultations with a view to deciding whether and how to extend the more favourable treatment contained in the preferential trade agreement to the EU. The Joint Council may adopt proposals to amend the provisions of this Agreement in accordance with Article 117.

ARTICLE 29

Free circulation

1. Customs duties shall be levied only once for goods originating in the EU or in the SADC EPA States when imported into the territory of the EU or the SADC EPA States as the case may be.

2. Any duty paid upon importation in a SADC EPA State which is also a SACU Member State shall be refunded fully when the goods are re-exported from the customs territory of that SADC EPA State of first importation to a SADC EPA State which is not also a SACU Member State. Such products shall then be subject to the duty in the country of consumption. Pending agreement by the SADC EPA States on the procedures for this paragraph, the operation of this paragraph shall be in accordance with applicable customs legislation and procedures.

3. The Parties agree to cooperate with a view to facilitating the circulation of goods and simplifying customs procedures, within the SADC EPA States, in particular as provided for in Article 13(2).

ARTICLE 30

Special provisions on administrative cooperation

1. The Parties agree that administrative cooperation is essential for the implementation and the control of the preferential treatment granted under this Chapter and underline their commitment to combat irregularities and fraud in customs and related matters.

2. The Parties also agree to cooperate in ensuring that the necessary institutional structures enable the responsible authorities to effectively respond to requests for assistance in a timely manner.

3. For the purpose of this Article, and without prejudice to Article 9 of Protocol 2, a failure to provide administrative cooperation shall mean, *inter alia*:

(a) repeated failure to respect the obligations to verify the originating status of the product or products concerned as provided for in Article 38 of Protocol 1;

(b) repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin as provided for in Article 38 of Protocol 1;

(c) 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 as provided for in Article 7 of Protocol 2.

4. For the purpose of this Article, a finding of irregularities or fraud may be made, *inter alia*, where there is a rapid increase, without legitimate 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.

5. Where a Party has 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, in exceptional circumstances, temporarily suspend the relevant preferential treatment of the product or the products concerned, and of the specific origin concerned in accordance with this Article.

6. For the purposes of this Article, exceptional circumstances mean those circumstances which have or might have a significant negative effect on a Party if a relevant preferential treatment of the product or the products concerned is to be continued.

7. The application of a temporary suspension pursuant to paragraph 5 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 Trade and Development Committee of its finding together with the objective information and enter into consultations within the Trade and Development Committee, on the basis of all relevant information and objective findings, including information related to capacity and/or structural constraints, with a view to reaching a solution acceptable to both Parties;

(b) where the Trade and Development Committee has examined the matter and has failed to agree on an acceptable solution within four (4) months from the receipt of the notification, the Party concerned may temporarily suspend the relevant preferential treatment of the product or products concerned, and of the specific origin concerned. A temporary suspension shall be notified to the Trade and Development Committee without undue delay. At the request of either Party, the period to agree on an acceptable solution may, where duly justified, be extended to five (5) months;

(c) temporary suspensions under this Article shall be limited to those necessary to protect the financial interests of the Party concerned. They shall not exceed a period of six (6) months, which may be renewed after the Trade and Development Committee has had the opportunity to re-examine the matter. Temporary suspensions shall be notified immediately after their adoption to the Trade and Development Committee. They shall be subject to periodic consultations within the Trade and Development Committee in particular with a view to their termination as soon as the conditions for their application are no longer given.

ARTICLE 31

Management of administrative errors

The Parties recognise each other’s right to correct administrative errors during the implementation of this Agreement. Where errors are identified, either Party may request the Trade and Development Committee to examine the possibilities of adopting all appropriate measures with a view to resolving the situation.

CHAPTER II

TRADE DEFENCE INSTRUMENTS

ARTICLE 32

Anti-dumping and countervailing measures

The rights and obligations of either Party in respect of the application of anti-dumping or countervailing measures shall be governed by the relevant WTO Agreements. The provisions of this Article shall not be subject to the provisions of PART III.

ARTICLE 33

Multilateral safeguards

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent a Party from adopting measures in accordance with Article XIX of the GATT 1994, the WTO Agreement on Safeguards, Article 5 of the WTO Agreement on Agriculture annexed to the Marrakesh Agreement Establishing the World Trade Organisation ("WTO Agreement") and any other relevant WTO Agreements.

2. Notwithstanding paragraph 1, the EU shall, in the light of the overall development objectives of this Agreement and the small size of the economies of the SADC EPA States, exclude imports from any SADC EPA State from any measures taken pursuant to Article XIX of the GATT 1994, the WTO Agreement on Safeguards and Article 5 of the WTO Agreement on Agriculture.

3. The provisions of paragraph 2 shall apply for a period of five (5) years, beginning from the date of entry into force of this Agreement. Not later than one hundred and twenty (120) days before the end of this period, the Joint Council shall review the operation of paragraph 2 in the light of the development needs of the SADC EPA States, with a view to determining their possible extension for a further period.

4. The provisions of paragraph 1 shall not be subject to the provisions of Part III.

ARTICLE 34

General bilateral safeguards

1. Notwithstanding Article 33, after having examined alternative solutions, a Party or SACU, as the case may be, may apply safeguard measures of limited duration which derogate from the provisions of Articles 24 and 25, under the conditions and in accordance with the procedures laid down in this Article.

2. Safeguard measures referred to in paragraph 1 may be taken if, as a result of the obligations incurred by a Party under this Agreement, including tariff concessions, a product originating in one Party is being imported into the territory of the other Party or SACU, as the case may be, 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 SACU, as the case may be; or

(b) disturbances in a sector of the economy producing like or directly competitive products, 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 SACU, as the case may be; or

(c) disturbances in the markets of like or directly competitive agricultural products in the territory of the importing Party or SACU, as the case may be.

These safeguard measures shall not exceed what is necessary to remedy or prevent the serious injury or disturbances.

3. Safeguard measures referred to in this Article shall take the form 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; or

(b) increase in the customs duty on the product concerned up to a level which does not exceed the MFN applied rate at the time of taking the measure; or

(c) introduction of tariff quotas on the product concerned.

4. Without prejudice to paragraphs 1 to 3, where any product originating in any SADC EPA 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 in paragraphs 2(a) to (c) to a like or directly competitive production sector of one or several of the EU's outermost regions, the EU may take surveillance or safeguard measures limited to the region or regions concerned in accordance with the procedures laid down in paragraphs 6 to 8.

5. Without prejudice to paragraphs 1 to 3, where any product originating in the EU is being imported in such increased quantities and under such conditions as to cause or threaten to cause one of the situations referred to in paragraph 2(a) to (c) to a SADC EPA State or SACU, as the case may be, the SADC EPA State concerned or SACU, as the case may be, may take surveillance or safeguard measures limited to its territory in accordance with the procedures laid down in paragraphs 6 to 8.

6. Safeguard measures referred to in this Article:

(a) 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) shall not be applied for a period exceeding two (2) 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 (2) years. Where a SADC EPA State or SACU, as the case may be, apply a safeguard measure, or where the EU apply a measure limited to the territory of one or more of its outermost regions, they may however apply that measure for a period not exceeding four (4) years and, where the circumstances warranting imposition of safeguard measures continue to exist, extend it for a further period of four (4) years;

(c) that exceed one (1) year shall contain clear elements progressively leading to their elimination at the end of the set period, at the latest; and

(d) shall not be applied to the import of a product that has previously been subject to such a measure, within a period of at least one (1) year from the expiry of the measure.

7. For the implementation of paragraphs 1 to 6, the following provisions shall apply:

(a) where a Party or SACU, as the case may be, takes the view that one of the situations referred to in paragraphs 2(a) to (c), 4 and/or 5 exists, it shall immediately refer the matter to the Trade and Development Committee for examination;

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

(c) before taking any measure provided for in this Article or, in the cases to which paragraph 8 applies, the Party or SACU, as the case may be, shall, as soon as possible, supply the Trade and Development Committee with all relevant information required for a thorough examination of the situation, with a view to seeking a solution acceptable to the parties concerned;

(d) in the selection of safeguard measures pursuant to this Article, priority must be given to those which least disturb the operation of this Agreement. If the MFN applied rate in effect the day immediately preceding the day of entry into force of this Agreement is lower than the MFN applied rate at the time of taking the measure, measures applied in accordance with the provisions of paragraph 3(b) may exceed the MFN rate in effect the day immediately preceding the day of entry into force of this Agreement. In such a case, the Party or SACU, as the case may be, shall supply, in accordance with the provisions of paragraph (c), the Trade and Development Committee with the relevant information indicating that an increase of the duty up to the level of MFN applied at the time of entry into force is not sufficient and that a measure exceeding this duty is necessary to remedy or prevent the serious injury or disturbances pursuant to paragraph 2;

(e) any safeguard measure taken pursuant to this Article shall be notified immediately to the Trade and Development Committee and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their abolition as soon as circumstances permit.

8. Where delay would cause damage which would be difficult to repair, the importing Party or SACU, as the case may be, may take the measures provided for in paragraphs 3, 4, and/or 5 on a provisional basis without complying with the requirements of paragraph 7.

(a) Such action may be taken for a maximum period of one hundred and eighty (180) days where measures are taken by the EU and two hundred (200) days where measures are taken by a SADC EPA State or SACU, as the case may be, or where measures taken by the EU are limited to the territory of one or more of its outermost region(s).

(b) 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.

(c) In taking such provisional measures, the interest of all parties involved shall be taken into account.

(d) The importing Party or SACU, as the case may be, shall inform the other Party concerned and it shall immediately refer the matter to the Trade and Development Committee for examination.

9. If the importing Party or SACU, as the case may be, 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 Trade and Development Committee without delay.

10. Safeguard measures adopted under the provisions of this Article shall not be subject to WTO Dispute Settlement provisions.

ARTICLE 35

Agricultural safeguards

1. Notwithstanding Article 34, a safeguard measure in the form of an import duty may be applied if, during any given twelve-month period, the volume of imports into SACU of an agricultural product listed in Annex IV originating in the EU exceeds the reference quantity for the product therein indicated.

2. A duty which shall not exceed 25 per cent of the current WTO bound tariff or 25 percentage points, whichever is higher, may be imposed to the agricultural products referred to in paragraph 1. Such duty shall not exceed the prevailing MFN applied rate.

3. Safeguard measures referred to in this Article shall be maintained for the remainder of the calendar year or five (5) months, whichever is the longer.

4. Safeguard measures referred to in this Article shall not be maintained or applied with respect to the same good at the same time as:

(a) a general bilateral safeguard measure in accordance with Article 34;

(b) a measure under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards; or

(c) a special safeguard measure under Article 5 of the WTO Agreement on Agriculture.

5. Safeguard measures referred to in this Article shall be implemented in a transparent manner. Within ten (10) days after applying such a measure, SACU shall notify the EU in writing and shall provide relevant data concerning the measure. On request, SACU shall consult the EU regarding the application of the measure. SACU shall also notify the Trade and Development Committee within thirty (30) days after such imposition.

6. The implementation and operation of this Article may be the subject of discussion and review in the Trade and Development Committee. On request of either Party, the Trade and Development Committee may review the reference quantities and agricultural products as provided for in this Article.

7. The provisions of this Article may only be applied during the period of twelve (12) years from the date of entry into force of this Agreement.

ARTICLE 36

Food security safeguards

1. The Parties acknowledge that the removal of barriers to trade between them, as envisaged in this Agreement, may pose significant challenges to the SADC EPA States' producers in the agricultural and food sectors and agree to consult with each other on these issues.

2. Notwithstanding Article 34, where essential for the prevention or relief of critical general or local shortages of foodstuffs or other products in order to ensure food security of a SADC EPA State and where this situation gives rise or is likely to give rise to major difficulties for such a SADC EPA State, that SADC EPA State may adopt safeguard measures in accordance with the procedure set out in paragraph 7(b) to (d), 8 and 9 of Article 34. The measure will be reviewed at least annually and shall be removed as soon as the circumstances leading to its adoption cease to exist.

ARTICLE 37

BLNS transitional safeguards

1. The Parties acknowledge the sensitivity of the liberalised products listed in Annex V for the BLNS States.

2. Notwithstanding Article 34, in the event that one of the products listed in Annex V and originating in the EU being imported into the territory of a BLNS State in such increased quantities as to cause or threaten to cause serious injury in any BLNS State, that BLNS State may apply a transitional safeguard measure.

3. Safeguard measures referred to in paragraph 2 shall take the form of a duty on the product concerned listed in Annex V up to a level which does not exceed the MFN applied rate at the time of taking the measure or introduce a zero duty tariff rate quota (TRQ), provided that the level of the duty outside the quota does not exceed the MFN applied rate at the time of taking the measure.

4. Thirty (30) days in advance of applying the safeguard measure, the BLNS State concerned shall notify the measure to the EU in writing. After notification, the BLNS State concerned shall have sixty (60) days to provide all relevant information concerning the measure.

5. Without prejudice to paragraph 2, the BLNS State concerned and the EU shall, upon request of either Party, enter into consultations on the safeguard measure.

6. Safeguard measures referred to in this Article shall be applied for a period not exceeding four (4) years. Where the circumstances warranting imposition of the measure continue to exist, such a measure may be extended for a further period of no more than four (4) years.

7. No safeguard measure referred to in this Article may be adopted after twelve (12) years from the entry into force of this Agreement.

ARTICLE 38

Infant industry protection safeguards

1. Notwithstanding Article 34, Botswana, Lesotho, Namibia, Mozambique and Swaziland may temporarily suspend further reductions of the rate of customs duty or increase the rate of customs duty up to a level which does not exceed the applied MFN duty, where a product originating in the EU, as a result of the reduction of duties, is being imported into its territory in such increased quantities and under such conditions as to threaten the establishment of an infant industry, or cause or threaten to cause disturbances to an infant industry producing like or directly competitive products.

2. Safeguard measures adopted in accordance with the conditions of paragraph 1 by a SADC EPA State which is also a SACU Member State shall take the form of the levying of additional duties exclusively by the SADC EPA State invoking this provision.

3. Safeguard measures referred to in paragraph 1 may be applied for a period of up to eight (8) years and may be further extended by a decision of the Joint Council

4. With regard to the implementation of paragraphs 1 and 2, the following provisions shall apply:

(a) where a SADC EPA State takes the view that the circumstances set out in paragraph 1 exist, it shall immediately refer the matter to the Trade and Development Committee for examination. The SADC EPA State concerned shall supply the Trade and Development Committee with all relevant information required for a thorough examination of the situation;

(b) the Trade and Development Committee may make any recommendation with a view to seeking an acceptable solution needed to remedy the circumstances which have arisen. If no recommendation has been made by the Trade and Development Committee, or no other satisfactory solution has been reached within thirty (30) days of the matter being referred to the Trade and Development Committee, the SADC EPA State concerned may adopt measures in accordance with this Article;

(c) in the application of measures pursuant to paragraph 1, priority must be given to those which least disturb the operation of this Agreement; and

(d) any measure taken pursuant to this Article shall be notified immediately to the Trade and Development Committee and shall be the subject of periodic consultations within that body.

5. In critical circumstances where delay would cause damage which would be difficult to repair, the SADC EPA State concerned may take measures provided for in paragraph 1 on a provisional basis without complying with the requirements of paragraph 4. Such measure may be taken for a maximum period of two hundred (200) days. The duration of any such provisional measure shall be counted as part of the period referred to in paragraph 3. In taking such provisional measures, the interest of all parties involved shall be taken into account. The importing SADC EPA State concerned shall inform the EU, and it shall immediately refer the matter to the Trade and Development Committee for examination of such provisional measure.

6. SACU Member States shall have the right to have recourse to Article 26 of the SACU Agreement.

CHAPTER III

NON-TARIFF MEASURES

ARTICLE 39

Prohibition of quantitative restrictions

The Parties may apply quantitative restrictions provided such restrictions are applied in conformity with the WTO Agreement.

ARTICLE 40

National treatment on internal taxation and regulation

1. The Parties recognise that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

2. Imported products originating in the other Party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, the Parties shall not otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.[1]

[1] A tax conforming to the requirements of the first sentence of this paragraph would be considered to be inconsistent with the provisions of its second sentence only in cases where competition was involved between, on the one hand, the taxed product and, on the other hand, a directly competitive or substitutable product which was not similarly taxed.

3. Imported products originating in the other Party shall be accorded treatment no less favourable than that accorded to like domestic products of national origin 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.

4. The Parties shall not 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, Parties shall not otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.

5. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.

6. The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

7. The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

8. The Parties recognise that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of Parties supplying imported products. Accordingly, Parties applying such measures shall take account of the interests of exporting Parties with a view to avoiding to the fullest practicable extent such prejudicial effects.

9. The provisions of this Article shall not prevent any Party from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films and meeting the requirements of Article IV of the GATT 1947.

CHAPTER IV

CUSTOMS AND TRADE FACILITATION

ARTICLE 41

Objectives

The objectives of this Chapter are to:

(a) reinforce cooperation in the area of customs and trade facilitation with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the customs authorities, fulfil the objectives of effective control and the promotion of trade facilitation;

(b) promote harmonisation of customs legislation and procedures;

(c) ensure that legitimate public policy objectives, including those related to security and the prevention of fraud in the area of customs and trade facilitation, shall not be compromised in any way; and

(d) provide the necessary support for the SADC EPA States' customs administrations to effectively implement this Agreement.

ARTICLE 42

Customs and administrative cooperation

1. In order to ensure compliance with the provisions of this Chapter and effectively respond to the objectives laid down in Article 41, the Parties shall:

(a) exchange information on customs legislation and procedures;

(b) develop joint initiatives relating to customs and trade facilitation and the strengthening of administrative capacity;

(c) exchange experience and best practices on combating corruption and fraud in matters relating to this Chapter;

(d) exchange experience and best practices on issues relating to import, export and transit procedures and to improving the service to the business community;

(e) exchange experience and best practices on facilitating transit;

(f) facilitate the exchange of experts between customs administrations; and

(g) promote coordination between all related agencies, both internally and across borders.

2. The Parties shall prepare and develop an enhanced cooperation on the implementation of the World Customs Organisation ("WCO") Framework of Standards to Secure and Facilitate Global Trade of 2005. This cooperation shall include initiatives in view of working towards the mutual recognition of the Authorised Economic Operator status and the exchange of advance information to allow an effective risk assessment and management for security purposes.

3. The Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of Protocol 2.

ARTICLE 43

Customs legislation and procedures

1. The Parties agree that their respective trade and customs legislation and procedures shall to the extent possible be based on:

(a) the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures of 1999, the substantive elements of the WCO Framework of Standards to Secure and Facilitate Global Trade, the International Convention on the Harmonised System and other international instruments and standards applicable in the field of customs and trade;

(b) the need to protect and facilitate legitimate trade;

(c) the need to avoid unnecessary and discriminatory burdens on economic operators, the need to safeguard against fraud and corruption and the need to provide further facilitation for operators that meet high level of compliance;

(d) the need for each Party to apply a single administrative document or electronic equivalent;

(e) the application of modern customs techniques, including risk assessment, simplified procedures for entry and release of goods, post release controls, and company audits;

(f) transparency, efficiency and proportionality, in order to reduce costs and increase predictability for economic operators;

(g) the need for non-discrimination in terms of requirements and procedures applicable to import, export and goods in transit, though it is accepted that consignments might be treated differently according to objective risk assessment criteria;

(h) the progressive development of systems, including those based upon information technology, for both export and import operations, to facilitate the exchange of information between economic operators, customs administrations and other agencies;

(i) the adoption of systems that facilitate the importation of goods through the use of simplified customs procedures and processes, including pre-arrival clearance;

(j) the elimination of any requirements for the mandatory use of pre-shipment inspections as defined by the WTO Agreement on Preshipment Inspection, or their equivalent;

(k) the application of rules that ensure that any penalties imposed for minor breaches of customs regulations or procedural requirements are proportionate and, in their application, do not give rise to undue delays in customs clearance;

(l) a system of binding rulings on customs matters, in particular on tariff classification and rules of origin, in accordance with rules laid down in their respective legislation;

(m) the facilitation of transit movements;

(n) the elimination of all requirements for the mandatory use of customs brokers; and

(o) transparent, non-discriminatory and proportionate rules in respect of the licensing of customs brokers.

2. In order to improve working methods and to ensure transparency and efficiency of customs operations, the Parties shall:

(a) ensure that the highest standards of integrity be maintained, through the application of anti-corruption measures in this field;

(b) take further steps towards the reduction, simplification and standardization of data in the documentation required by customs and other related agencies;

(c) simplify requirements and formalities wherever possible, in respect of the rapid release and clearance of goods;

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

(e) create an environment for the effective enforcement of legislative requirements.

ARTICLE 44

Facilitation of transit movements

1. The Parties shall ensure freedom of transit through their territory via the route most convenient for transit. Any controls or requirements must be non-discriminatory, proportionate and applied uniformly.

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2. Without prejudice to legitimate customs control, the Parties shall accord to traffic in transit treatment no less favourable than that accorded to domestic goods, exports and imports, and their movement.

3. The Parties shall:

(a) operate bonded transport regimes that allow the transit of goods without payment of duties or other charges, subject to the provision of an appropriate guarantee;

(b) promote and implement regional transit arrangements;

(c) use international standards and instruments relevant to transit; and

(d) promote coordination between all concerned agencies, both internally and across borders.

ARTICLE 45

Relations with the business community

The Parties agree to:

(a) ensure that all customs legislation, procedures and fees and charges are made publicly available, as well as whenever possible the necessary explanations, and as far as possible through electronic means;

(b) consult, as far as possible, timely and regularly with trade representatives on legislative proposals and procedures related to customs and customs related trade issues;

(c) introduce, where appropriate, new or amended legislation and procedures and their entry into force in a way to allow traders to become well prepared for complying with them. The Parties shall make publicly available relevant notices of an administrative nature, including agency requirements and entry procedures, hours of operation and operating procedures for customs offices at ports and border crossing points, and points of contact for information enquiries; and

(d) to foster cooperation between operators and relevant administrations through the use of instruments such as memoranda of understanding.

ARTICLE 46

Customs valuation

1. The Agreement on Implementation of Article VII of the GATT 1994 ("WTO Agreement on Customs Valuation") shall govern customs valuation rules applied to trade covered by this Agreement.

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

ARTICLE 47

Harmonisation of customs standards at regional level

1. The Parties shall promote harmonisation of customs legislation, procedures, standards and requirements.

2. Each Party shall determine the content and pace of this process.

ARTICLE 48

Support to the SADC EPA States' customs administrations

1. The Parties recognise the importance of supporting the SADC EPA States' customs administrations for the implementation of this Chapter, in line with the provisions of Chapter III of Part I.

2. The priority areas for such support are:

(a) the application of modern customs techniques, including:

(i) risk management;

(ii) post release controls; and

(iii) automation of customs procedures;

(b) control of customs valuation, classification and rules of origin, including in view of meeting the requirement of Article 43(1)(j);

(c) the facilitation of transit and the enhancement of the efficiency of regional transit arrangements;

(d) transparency issues relating to the publication and administration of all trade regulations, as well as relevant fees and formalities;

(e) the introduction and implementation of procedures and practices which reflect international instruments and standards applicable in the field of customs and trade, *inter alia* the revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures and the WCO Framework of Standards to Secure and Facilitate Global Trade.

3. The Parties recognise the need for specific needs assessment studies taking into account the situation in each country, using WTO and WCO needs assessment instruments or any other mutually agreed instrument.

ARTICLE 49

Transitional arrangements

1. The Parties recognise the need for transitional arrangements to ensure the smooth implementation of the provisions of this Chapter.

2. In view of the need to enhance their capacity in the area of customs and trade facilitation and without prejudice to their WTO rights and obligations, the SADC EPA States shall benefit from a transitional period of eight (8) years to meet those requirements referred to in Articles 27, 43, 44, and 45 where the need for capacity building exists at the time of entry into force of this Agreement.

3. The Joint Council may decide to extend this transitional period by two (2) years in case the necessary capacity has not yet been attained.

ARTICLE 50

Special Committee on Customs and Trade Facilitation

1. The Parties hereby establish a Special Committee on Customs and Trade Facilitation, composed of representatives of the Parties.

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2. The functions of the Special Committee on Customs and Trade Facilitation shall include:

(a) monitoring the implementation and administration of this Chapter and of Protocol I;

(b) providing a forum to consult and discuss all issues concerning customs, including rules of origin, general customs procedures, customs valuation, tariff classification, transit 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) enhancing cooperation on capacity building and technical assistance;

(e) following up on the implementation of Article 47;

(f) determining its own rules of procedure; and

(g) addressing any other issues agreed by the Parties in respect of this Chapter.

3. The Special Committee on Customs and Trade Facilitation shall meet on a date and with an agenda agreed in advance by the Parties.

4. The Special Committee on Customs and Trade Facilitation shall be chaired alternatively by either Party.

5. The Special Committee on Customs and Trade Facilitation shall report to the Trade and Development Committee.

CHAPTER V

TECHNICAL BARRIERS TO TRADE

ARTICLE 51

Multilateral obligations

1. The Parties affirm their commitment to the rights and obligations provided for in the Agreement on Technical Barriers to Trade ("WTO TBT Agreement").

2. Those rights and obligations shall underlie the activities of the Parties under this Chapter.

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ARTICLE 52

Objectives

The Parties agree to:

(a) cooperate in order to facilitate and increase trade in goods between them, by identifying, preventing and eliminating unnecessary barriers to trade within the terms of the WTO TBT Agreement;

(b) cooperate in strengthening regional, and specifically the SADC EPA States' integration and cooperation on matters concerning TBT; and

(c) establish and enhance the SADC EPA States' technical capacity on matters concerning TBT.

ARTICLE 53

Scope and definitions

1. The provisions of this Chapter shall apply to standards, technical regulations, and conformity assessment procedures as defined in the WTO TBT Agreement in so far as they affect trade covered by this Agreement.

2. For the purposes of this Chapter, the definitions used by the WTO TBT Agreement shall apply.

ARTICLE 54

Collaboration and regional integration

The Parties agree that collaboration between national and regional authorities dealing with matters concerning TBT, in both the public and private sector, is important to facilitate trade in the region and between the Parties, as well as for the overall process of regional integration and undertake to cooperate to this end.

ARTICLE 55

Transparency

1. The Parties reaffirm the principle of transparency in the application of technical regulations and standards in accordance with the WTO TBT Agreement.

2. The Parties recognise the importance of effective mechanisms for consultation, notification and exchange of information with respect to technical regulations and standards in accordance with the WTO TBT Agreement.

3. The Parties agree to establish an early warning mechanism to ensure that the SADC-EPA States are informed in advance of new measures of the EU that may affect SADC EPA exports to the EU. The Parties shall make optimal use of existing mechanisms and avoid unnecessary duplications to multilateral or unilateral mechanisms.

ARTICLE 56

Measures related to technical barriers to trade

The Parties agree to identify and implement mechanisms among those supported by the WTO TBT Agreement that are the most appropriate for particular priority issues or sectors. Such mechanisms may include:

(a) intensifying their collaboration to facilitate access to their respective markets, by increasing the mutual knowledge and understanding of their respective systems in the field of technical regulations, standards, metrology, accreditation and conformity assessment;

(b) exchanging information, identifying and implementing appropriate mechanisms for particular issues or sectors, i.e. alignment with international standards, reliance on the supplier's declaration of conformity, the use of internationally recognised accreditation to qualify conformity assessment bodies and the use of international product testing and certification schemes;

(c) identifying and organising sector-specific interventions on standards, technical regulations and conformity assessment procedures to facilitate understanding of and access to their respective markets. These sectors will be chosen taking into account key areas of trade, including priority products;

(d) developing cooperation activities and measures with a view to supporting the implementation of the rights and obligations under the WTO TBT Agreement;

(e) developing common views and approaches on technical regulatory practices, including transparency, consultation, necessity and proportionality, the use of international standards, conformity assessment requirements, the use of impact and risk assessment, enforcement and market surveillance, where appropriate;

(f) promoting harmonisation, whenever possible and in areas of mutual interest, towards international standards, and the use of such standards in the development of technical regulations and conformity assessment procedures;

(g) undertaking to consider, in due course, negotiating mutual recognition agreements in sectors of mutual economic interest;

(h) promoting collaboration between the Parties' organisations responsible for technical regulations, metrology, standardisation, testing, certification, inspection and accreditation; and

(i) promoting the participation by the SADC EPA States in international standards-setting bodies.

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ARTICLE 57

Role of the Trade and Development Committee on TBT matters

The Parties agree that the Trade and Development Committee shall be competent to:

(a) monitor and review the implementation of this Chapter;

(b) provide coordination and consultation on TBT matters;

(c) identify and review priority sectors and products and the resulting priority areas for cooperation;

(d) make recommendations for modifications of this Chapter if necessary and appropriate; and

(e) address any other issues agreed by the Parties in respect of this Chapter.

ARTICLE 58

Capacity building and technical assistance

1. The Parties recognise the importance of cooperating in the areas of technical regulations, standards, metrology, accreditation and conformity assessment in order to achieve the objectives of this Chapter.

2. The Parties agree that the following are priority areas for cooperation:

(a) the establishment of appropriate arrangements for the sharing of expertise, including appropriate training to ensure adequate and enduring technical competence of the relevant standardisation and conformity assessment bodies of the SADC EPA States and mutual understanding between such bodies in the territories of the Parties;

(b) the development of capacities of the SADC EPA States in the fields of technical regulations, metrology, standards, accreditation and conformity assessment including through the upgrading or setting up of laboratories and other equipment. In this regard, the Parties acknowledge the importance of strengthening regional cooperation and the need to take into account priority products and sectors;

(c) the development and adoption, within the SADC EPA States, of harmonised technical regulations, standards, metrology, accreditation and conformity assessment procedures based on relevant international standards;

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(d) the support for the participation of the SADC EPA States in international standardisation, accreditation and metrology activities; and

(e) the development of TBT enquiry and notification points within the SADC EPA States.

CHAPTER VI

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 59

Multilateral obligations

1. The Parties affirm their commitment to the rights and obligations provided for in the Agreement on the Application of Sanitary and Phytosanitary Measures ("WTO SPS Agreement"), the International Plant Protection Convention ("IPPC"), the Codex Alimentarius Commission and the World Organisation for Animal Health ("OIE").

2. Those rights and obligations shall underlie the activities of the Parties under this Chapter.

ARTICLE 60

Objectives

The Parties agree to:

(a) facilitate trade and investment within the SADC EPA States and between the Parties while ensuring that measures adopted shall apply only to the extent necessary to protect human, animal or plant life or health in accordance with the provisions of the WTO SPS Agreement;

(b) cooperate in strengthening regional integration and specifically SADC EPA States' cooperation on matters concerning sanitary and phytosanitary measures ("SPS measures") and to address problems arising from SPS measures on agreed priority products and sectors as listed in Annex VI, whilst giving due consideration to regional integration;

(c) promote collaboration aiming at recognition of appropriate levels of protection in SPS measures; and

(d) establish and enhance SADC EPA States' technical capacity to implement and monitor SPS measures, including promoting greater use of international standards and other matters concerning SPS.

ARTICLE 61

Scope and definitions

1. The provisions of this Chapter shall apply to SPS measures as defined in the WTO SPS Agreement.

2. For the purposes of this Chapter, definitions used in the WTO SPS Agreement and international standard-setting bodies, namely the Codex Alimentarius Commission, the IPPC and the OIE shall apply.

ARTICLE 62

Competent authorities

1. The respective SPS authorities shall be the competent authorities in the Parties for the implementation of the measures referred to in this Chapter.

2. The Parties shall, in accordance with this Agreement, inform each other of their respective competent SPS authorities and any changes thereto.

ARTICLE 63

Transparency

1. The Parties reaffirm the principle of transparency in the application of SPS measures, in accordance with the WTO SPS Agreement.

2. The Parties recognise the importance of effective mechanisms for consultation, notification and exchange of information with respect to SPS measures in accordance with the WTO SPS Agreement.

3. The importing Party shall inform the exporting Party of any changes in its sanitary and phytosanitary import requirements that may affect trade falling under the scope of this Chapter. The Parties undertake to establish mechanisms for the exchange of such information where appropriate.

4. The Parties will apply the principle of zoning or compartmentalisation when defining import conditions, taking into account international standards. Zones or compartments of defined sanitary or phytosanitary status may also be identified and proposed jointly by the Parties, on a case by case basis, wherever possible, in order to avoid disruption to trade.

ARTICLE 64

Exchange of information

1. The Parties agree to establish an early-warning system to ensure that the SADC EPA States are informed in advance of new SPS measures of the EU that may affect SADC EPA exports to the EU. This system shall be based on existing mechanisms where appropriate.

2. The Parties, agree to collaborate in the further development of the epidemiological surveillance network on animal diseases and in the domain of plant health. The Parties will exchange information on the occurrence of pests and diseases of known and immediate danger to the other Party.

ARTICLE 65

Role of the Trade and Development Committee on SPS matters

The Trade and Development Committee shall be competent to:

(a) monitor and review the implementation of this Chapter;

(b) advise and make recommendations in order to achieve the objectives of this Chapter through its implementation;

(c) provide a forum for discussion and exchange of information and issues of cooperation;

(d) make recommendations for modifications to this Chapter if necessary and appropriate;

(e) review the list of priority products and sectors included in ANNEX VI as well as the resulting priority areas for cooperation;

(f) enhance cooperation on the development, application and enforcement of SPS measures; and

(g) discuss any other relevant matters relating thereto.

ARTICLE 66

Consultations

If either Party considers that the other Party has taken measures which may affect or have affected access to its market, appropriate consultations shall be held to avoid undue delays and to find an appropriate solution in conformity with the WTO SPS Agreement. In this regard, the Parties shall exchange names and addresses of contact points with sanitary and phytosanitary expertise in order to facilitate communication and the exchange of information.

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ARTICLE 67

Cooperation, capacity building and technical assistance

The Parties agree to:

(a) promote cooperation between the equivalent institutions of the Parties;

(b) cooperate in facilitating regional harmonisation of measures and the development of appropriate regulatory frameworks and policies within and between the SADC EPA States, thereby enhancing intra-regional trade and investment; and

(c) cooperate in the following priority areas:

(i) building of technical capacity in the public and private sectors of the SADC EPA States to enable sanitary and phytosanitary control, including training and information events for inspection, certification, supervision and control;

(ii) building of capacity in the SADC EPA States to maintain and expand their market access opportunities;

(iii) building of capacity to ensure that measures adopted do not become unnecessary barriers to trade, while recognising the Parties' rights to set their own appropriate levels of protection;

(iv) enhancement of technical capacity for the implementation and monitoring of SPS measures, including promoting greater use of international standards;

(v) promotion of cooperation on the implementation of the WTO SPS Agreement, particularly strengthening SADC EPA States' notification procedures and enquiry points as well as other matters concerning relevant international standards setting bodies;

(vi) development of capacities for risk analysis, harmonisation, compliance, testing, certification, residue monitoring, traceability and accreditation including through the upgrading or setting up of laboratories and other equipment to help the SADC EPA States comply with international standards. In this regard, the Parties acknowledge the importance of strengthening regional cooperation and the need to take into account the priority products and sectors identified in accordance with this Chapter; and

(vii) support for the participation of the SADC EPA States in relevant international standards setting bodies.

CHAPTER VII

AGRICULTURE

ARTICLE 68

Cooperation on agriculture

1. The Parties underline the importance of the agricultural sector to the SADC EPA States for food security, generating rural employment, increasing incomes of farm households, creating an inclusive rural economy, and as a basis for wider industrialisation and sustainable development, as well as to contribute to the objectives of this Agreement.

2. The use of export subsidies on agricultural goods in the trade between the Parties shall not be allowed from the date of entry into force of this Agreement.

3. An agricultural partnership is established between the EU and the SADC EPA States to facilitate an exchange of views between the Parties on agriculture, *inter alia*, food security, development, regional value chains and integration. The coverage of issues and operational rules for the agricultural partnership shall be established by common agreement of the Parties acting within the Committee referred to in Article 103.

CHAPTER VIII

CURRENT PAYMENTS AND CAPITAL MOVEMENTS

ARTICLE 69

Current payments

1 Subject to the provisions of Articles 70 and 71, the Parties undertake to impose no restrictions on and to allow all payments for current transactions between their residents to be made in freely convertible currency.

2. The Parties may take the necessary measures to ensure that the provisions of paragraph 1 are not used to make transfers that are not compliant with a Party’s laws and regulations.

ARTICLE 70

Safeguard measures

1. Where, in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in one or more SADC EPA States or one or more Member States of the European Union, safeguard measures with regard to payments and capital movements that are strictly necessary may be taken by the EU or the SADC EPA State concerned for a period not exceeding six (6) months.

2. The Joint Council shall be informed forthwith of the adoption of any safeguard measure and, as soon as possible, of a time schedule for its removal.

ARTICLE 71

Balance of payment difficulties

Where one or more Member States of the European Union or a SADC EPA State is in serious balance of payments difficulties or external financial difficulties, or under threat thereof, it may adopt restrictive measures in accordance with the conditions established under the WTO Agreement and the Articles of Agreement of the International Monetary Fund, which shall be of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. The Party having adopted or maintained such measures shall inform the other Party forthwith and shall submit to it as soon as possible a timetable for the elimination of the measures concerned.

CHAPTER IX

TRADE IN SERVICES AND INVESTMENT

ARTICLE 72

Objectives

The Parties recognise the growing importance of trade in services and investment for the development of their economies and reaffirm their commitment regarding services in Articles 41 to 43 of the Cotonou Agreement and their respective rights and obligations under the General Agreement on Trade in Services ("GATS").

ARTICLE 73

Trade in services

1. The Parties may negotiate trade in services to extend the scope of this Agreement. In this regard, Botswana, Lesotho, Mozambique and Swaziland ("Participating SADC EPA States") on the one hand, and the EU on the other hand, have started and will continue to negotiate trade in services.

2. The negotiations between the EU and the Participating SADC EPA States shall be guided by the following principles:

(a) negotiations shall cover definitions and principles for the liberalisation of trade in services;

(b) negotiations shall cover lists of commitments, setting out the conditions applicable to the liberalisation of trade in services. Such conditions shall be listed per sector liberalised and include, where necessary, limitations on market access and national treatment as well as transition periods for liberalisation;

(c) negotiations shall also address regulatory provisions supporting the liberalisation of trade in services;

(d) liberalisation of trade in services shall meet the requirements of Article V of the GATS;

(e) liberalisation of trade in services shall be reciprocal and asymmetric, taking into account the development needs of the Participating SADC EPA States. This may also result in the inclusion of provisions on cooperation and on special and differential treatment;

(f) negotiations shall build on the relevant provisions in existing applicable legal frameworks.

3. The EU and the Participating SADC EPA States agree to cooperate on strengthening the regulatory frameworks of the Participating SADC EPA States as well as to support the implementation of the commitments resulting from the negotiations in accordance with Article 13(5). The Parties recognise that in accordance with Article 13(8) trade capacity building can support the development of economic activities.

4. If a Party that is not party to an agreement on trade in services negotiated in accordance with paragraphs 1 and 2 wishes to join, it may negotiate the terms of its entry to that agreement.

5. If any agreement emanating from negotiations envisaged in paragraphs 1 and 4 were to result in outcomes that prove to be incompatible with the future development of a SADC regional services framework, the Parties shall negotiate to bring this Agreement in line with such regional framework while ensuring a balance of benefits.

ARTICLE 74

Trade and investment

1. The EU and the Participating SADC EPA States agree to cooperate on investment in accordance with Article 13(6) and may in future consider negotiating an agreement on investment in economic sectors other than services.

2. If a Party that is not party to an agreement on investment negotiated in accordance with paragraph 1 wishes to join, it may negotiate the terms of its entry to that agreement.

3. If any agreement emanating from negotiations envisaged in paragraphs 1 and 2 were to result in outcomes that prove to be incompatible with the future development of a SADC regional investment framework, the Parties shall jointly endeavour to bring this Agreement in line with such regional framework while ensuring a balance of benefits.

PART III

DISPUTE AVOIDANCE AND SETTLEMENT

CHAPTER I

OBJECTIVE AND SCOPE

ARTICLE 75

Objective

1. The objective of Part III is to avoid or settle any dispute between the Parties concerning the interpretation and application of this Agreement with a view to arrive at, where possible, a mutually agreed solution.

2. For disputes that relate to the collective action of SACU, SACU will act as a collective for the purposes of this Part, and the EU shall act against SACU as such.

3. For disputes that relate to an individual action of a SADC EPA State, the SADC EPA State concerned shall act individually for the purposes of this Part, and the EU shall act only against the specific State that it considers has infringed a provision of this Agreement.

ARTICLE 76

Scope

1. Part III shall apply to any dispute concerning the interpretation and application of this Agreement, except as otherwise expressly provided.

2. Notwithstanding paragraph 1, the procedure set out in Article 98 of the Cotonou Agreement shall be applicable in the event of a dispute concerning the financing pertaining to development cooperation between the Parties.

CHAPTER II

CONSULTATIONS AND MEDIATION

ARTICLE 77

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 76 by entering into consultations in good faith with the aim of reaching an amicable solution.

2. A Party shall seek consultations by means of a written request to the other Party, copied to the Trade and Development Committee, identifying the measure at issue and the provisions of this Agreement with which it considers the measure not to be in conformity.

3. Consultations shall be held within forty (40) days of the date of the receipt of the request. The consultations shall be deemed concluded within sixty (60) days of the date of the receipt 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 fifteen (15) days of the date of the receipt of the request, and shall be deemed concluded within thirty (30) days of the date of the receipt of the request.

5. If consultations are not held within the timeframes laid down in paragraph 3 or 4 respectively, or if consultations have been concluded and no mutually agreed solution has been reached, the complaining Party may request the establishment of an arbitration panel in accordance with Article 79.

ARTICLE 78

Mediation

1. If consultations fail to produce a mutually agreed solution, the Parties may, by agreement, seek recourse to a mediator. Unless the Parties agree otherwise, the terms of reference for the mediation shall be the matter referred to in the request for consultations.

2. Unless the Parties agree on a mediator within fifteen (15) days of the date of the agreement to request mediation, the Chairperson of the Trade and Development Committee, or his or her delegate, shall select by lot a mediator from the pool of individuals who are on the list referred to in Article 94 and are not nationals of either Party. The selection shall be made within twenty-five (25) days of the date of the submission of agreement to request mediation and in the presence of a representative of each Party. The mediator will convene a meeting with the Parties no later than thirty (30) days after being selected. The mediator shall receive the submissions of each Party no later than fifteen (15) days before the meeting and notify an opinion no later than forty-five (45) days after having been selected.

3. The mediator's opinion may include a recommendation on how to resolve the dispute consistent with the provisions of this Agreement. The mediator's opinion is non-binding.

4. The Parties may agree to amend the time limits referred to in paragraph 2. The mediator may also decide to amend these time limits upon request of any of the Parties or on his own initiative, given the particular difficulties experienced by the Party concerned or the complexities of the case.

5. The proceedings involving mediation, in particular all information disclosed and positions taken by the Parties during these proceedings, shall remain confidential.

CHAPTER III

DISPUTE SETTLEMENT PROCEDURES

ARTICLE 79

Initiation of the arbitration procedure

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 77, or by recourse to mediation as provided for in Article 78, the complaining Party may request the establishment of an arbitration panel.

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

ARTICLE 80

Establishment of the arbitration panel

1. An arbitration panel shall be composed of three (3) arbitrators.

2. Each Party shall appoint one arbitrator within ten (10) days of the date of the receipt of the request for the establishment of an arbitration panel. The two (2) arbitrators shall appoint a third arbitrator, who shall be the chairperson of the arbitration panel, within twenty (20) days of the receipt of the request for the establishment of a panel. The chairperson of the arbitration panel shall not be a national of the Parties nor permanently reside in the territory of the Parties.

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3. If all three (3) arbitrators are not appointed within twenty (20) days, or if, within ten (10) days of the appointment of the third arbitrator, either Party submits a reasoned written objection to the appointed arbitrators to the Trade and Development Committee, either Party may request the Chairperson of the Trade and Development Committee, or her or his delegate, to select all three (3) members by lot from the list established under Article 94, one among the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against, and one among the individuals selected by the Parties to act as chairperson. Where the Parties agree on one or more of the members of the arbitration panel, any remaining members shall be selected by the procedure laid down in this paragraph.

4. The Chairperson of the Trade and Development Committee, or her or his delegate, shall select the arbitrators within five (5) days of receipt of the request made by either Party referred to in paragraph 3 and in the presence of a representative of each Party.

5. The date of establishment of the arbitration panel shall be the date on which the three (3) arbitrators are finally selected.

ARTICLE 81

Interim panel report

The arbitration panel shall notify to the Parties an interim report containing both the descriptive section and its findings and conclusions, as a general rule not later than one hundred and twenty (120) days from the date of establishment of the arbitration panel. In cases of urgency, the time limit shall be reduced to sixty (60) days. Any Party may submit written comments to the arbitration panel on precise aspects of its interim report within fifteen (15) days of the notification of the report.

ARTICLE 82

Arbitral ruling

1. The arbitration panel shall notify its ruling to the Parties and to the Trade and Development Committee within one hundred and fifty (150) days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Trade and Development Committee in writing, stating the reasons for the delay and the date on which the panel plans to conclude its work. Under no circumstances should the ruling be notified later than one hundred and eighty (180) days from the date of the establishment of the arbitration panel.

2. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel shall make every effort to notify its ruling within ninety (90) days from the date of its establishment. The arbitration panel may give a preliminary ruling within ten (10) days of its establishment on whether it deems the case to be urgent.

3. Either Party may request the arbitration panel to provide a recommendation as to how the Party complained against could bring itself into compliance.

ARTICLE 83

Compliance with the arbitral ruling

The Party complained against shall take any steps necessary to comply with the arbitral ruling and the Parties shall seek to agree on the period of time to comply with that ruling.

ARTICLE 84

The reasonable period of time for compliance

1. No later than thirty (30) days after the receipt of notification of the arbitral ruling to the Parties, the Party complained against shall notify the complaining Party and the Trade and Development Committee of the reasonable period of time it will require to bring itself into compliance with the arbitral ruling.

2. Upon notification by the Party complained against, the Parties shall seek to agree on such a reasonable period of time. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitral ruling, the complaining Party shall, within thirty (30) days of the notification made under paragraph 1, request in writing the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the Party complained against and to the Trade and Development Committee. The arbitration panel shall notify its ruling to the Parties and to the Trade and Development Committee within thirty (30) days from the date of the receipt of the request.

3. The arbitration panel shall, in determining the length of the reasonable period of time, take into consideration the length of time that it will normally take the Party complained against to adopt comparable legislative or administrative measures to those identified by such Party as being necessary to ensure compliance. The arbitration panel shall also take into consideration capacity constraints and the different level of development which may affect the adoption of the necessary measures by the Party complained against.

4. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 80 shall apply. The time limit for notifying the ruling shall be forty-five (45) days from the date of the receipt of the request referred to in paragraph 2.

5. The reasonable period of time may be extended by agreement of the Parties.

ARTICLE 85

Review of any measure taken to comply with the arbitral ruling

1. The Party complained against shall notify the complaining Party and the Trade and Development Committee, before the end of the reasonable period of time, of any measure that it has taken to comply with the arbitral ruling.

2. In the event of a disagreement between the Parties concerning the compatibility of any measure notified under paragraph 1 with the provisions of this Agreement, the complaining Party may request in writing the original arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and it shall explain how such measure is incompatible with the provisions of this Agreement. The arbitration panel shall notify its ruling within ninety (90) days of the date of the receipt of the request. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel shall notify its ruling within forty-five (45) days of the date of the receipt of the request.

3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 80 shall apply. The time limit for notifying the ruling shall be one hundred and five (105) days from the date of the receipt of the request referred to in paragraph 2.

ARTICLE 86

Temporary remedies in case of non-compliance

1. If the Party complained against fails to notify any measure taken to comply with the arbitral ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 85(1) is not compatible with the provisions of this Agreement, the Party complained against shall, if so requested by the complaining Party, present an offer for compensation. Such compensation may include or consist of financial compensation, although nothing in this Agreement shall oblige the Party complained against to offer such financial compensation.

2. If no agreement on compensation is reached within thirty (30) days of the end of the reasonable period of time or of the arbitral ruling under Article 85 that a measure taken to comply is not compatible with this Agreement, the complaining Party shall be entitled, upon notification to the Party complained against, to adopt appropriate measures.

3. In adopting such measures the complaining Party shall seek to select measures proportionate to the violation which least affect the attainment of the objectives of this Agreement and shall take into consideration their impact on the economy of the Party complained against and on the individual SADC EPA States.

4. If the EU fails to notify any measure taken to comply with the arbitral ruling by the expiry of the reasonable period of time at the latest, or if the arbitration panel rules that the measure notified under Article 85(1) is not compatible with that Party's obligations under this Agreement, and the complaining Party asserts that the adoption of appropriate measures would result in significant damage to its economy, the EU shall consider providing financial compensation.

5. The EU shall exercise due restraint in asking for compensation or adopting appropriate measures pursuant to paragraphs 1 or 2.

6. Compensation or appropriate measures shall be temporary and shall be applied only until any measure found to violate the provisions of this Agreement has been withdrawn or amended so as to bring it into conformity with those provisions or until the Parties have agreed to settle the dispute.

7. For the purposes of Articles 86 and 87, appropriate measures refer to measures similar to those available under Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement ("DSU").

ARTICLE 87

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

1. The Party complained against shall notify the complaining Party and the Trade and Development Committee of any measure it has taken to comply with the arbitral ruling and of its request to end the application of appropriate measures by the complaining Party.

2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions of this Agreement within thirty (30) days of the date of notification, the complaining Party shall request in writing the original arbitration panel to rule on the matter. Such request shall be notified to the Party complained against and to the Trade and Development Committee. The arbitral ruling shall be notified to the Parties and to the Trade and Development Committee within forty-five (45) days of the date of the receipt of the request. If the arbitration panel rules that any measure taken to comply is not in conformity with the provisions of this Agreement, the arbitration panel shall determine whether the complaining Party may continue to apply appropriate measures. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions of this Agreement, the appropriate measures shall be terminated.

3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 80 shall apply. The period for notifying the ruling shall be sixty (60) days from the date of the receipt of the request referred to in paragraph 2.

CHAPTER IV

COMMON PROVISIONS

ARTICLE 88

Mutually agreed solution

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall notify the Trade and Development Committee and the arbitration panel, if any, of such a solution. Upon adoption of the mutually agreed solution, the dispute settlement procedure shall be terminated.

ARTICLE 89

Rules of Procedure and Code of Conduct

1. The Parties shall agree on Rules of Procedure and a Code of Conduct within twelve (12) months of the entry into force of this Agreement which shall be adopted by the Joint Council.

2. Any meeting of the arbitration panel shall be open to the public in accordance with the Rules of Procedure, unless the arbitration panel decides otherwise on its own motion or at the request of the Parties. The arbitration panel shall meet in closed session when the submissions or arguments of a Party contain confidential information.

ARTICLE 90

Information and technical advice

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

ARTICLE 91

Languages of the submissions

1. The written and oral submissions of the Parties shall be made in any official language of the Parties.

2. The Parties shall endeavour to agree on a common working language for any specific proceedings under this Part. If the Parties are unable to agree on a common working language, each Party shall arrange for and bear the costs of the translation of its written submissions and interpretation at the hearings into the language chosen by the Party complained against, unless such language is an official language of that Party. The EU shall, when seeking to agree on a common working language, take into account the potential impact of such costs on the SADC EPA States.

ARTICLE 92

Rules of interpretation

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

ARTICLE 93

Arbitral rulings

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote.

2. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the reasoning behind any findings and conclusions that it makes. The Trade and Development Committee shall make the arbitral ruling publicly available unless it decides not to do so.

ARTICLE 94

List of arbitrators

1. The Trade and Development Committee shall, no later than three (3) months after the entry into force of this Agreement, establish a list of twenty-one (21) individuals who are willing and able to serve as arbitrators. Each of the Parties shall select eight (8) individuals to serve as arbitrators. The Parties shall also agree on five (5) individuals who are not nationals of either Party and who shall act as chairperson of the arbitration panel. The Trade and Development Committee will ensure that the list is always maintained in accordance with this Article.

2. Arbitrators shall have specialised knowledge on matters covered by this Agreement or experience in law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the governments of any of the Parties, and shall comply with the Code of Conduct annexed to the Rules of Procedures.

3. The Trade and Development Committee may establish an additional list of fifteen (15) individuals having a sectoral expertise in specific matters covered by this Agreement. When recourse is made to the selection procedure of Article 80, the Chairperson of the Trade and Development Committee may use such a sectoral list upon agreement of both Parties.

ARTICLE 95

Relation with WTO obligations

1. Arbitration bodies set up under this Agreement shall not arbitrate disputes on a Party's rights and obligations under the WTO Agreement.

2. Recourse to the dispute settlement provisions of this Agreement shall be without prejudice to any action in the WTO framework, including dispute settlement action. However, where a Party has, with regard to a particular measure, initiated a dispute settlement proceeding under this Agreement or under the WTO Agreement, it may not initiate a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. For the purposes of this paragraph, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the DSU.

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

ARTICLE 96

Time limits

1. Any time limits referred to in this Part, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days from the day following the act or fact to which they refer.

2. Any time limits referred to in this Part may be extended by mutual agreement of the Parties.

PART IV

GENERAL EXCEPTIONS

ARTICLE 97

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 either Party of measures:

(a) necessary to protect public morals;

(b) necessary to protect human, animal or plant life or health;

(c) relating to the importation or exportation of gold or silver;

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII of the GATT, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;

(e) relating to the products of prison labour;

(f) imposed for the protection of national treasures of artistic, historic or archaeological value;

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

(h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the GATT Contracting Parties and not disapproved by them or which is itself so submitted and not so disapproved;[1]

[1] The exception provided for in this sub-paragraph extends to any commodity agreement which conforms to the principles approved by the Economic and Social Council in its resolution 30 (IV) of 28 March l947.

(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination; or

(j) 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 the Parties and the SADC EPA States 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 98

Security exceptions

1. Nothing in this Agreement shall be construed to:

(a) require either Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) prevent either Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to fissionable materials or the materials from which they are derived; or

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or

(iii) taken in time of war or other emergency in international relations; or

(c) prevent either Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Trade and Development Committee shall be informed of measures taken under paragraph 1(b) and (c) and of their termination.

ARTICLE 99

Taxation

1. Nothing in this Agreement, or in any arrangement adopted under this Agreement, shall be construed to prevent either Party 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 either Party 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.

PART V

INSTITUTIONAL PROVISIONS

ARTICLE 100

The Joint Council

A Joint SADC EPA States – EU Council ("Joint Council") is hereby established, which shall oversee and administer the implementation of this Agreement.

ARTICLE 101

Composition and functions

1. The Joint Council shall be composed, on the one hand, of the relevant members of the Council of the EU and relevant members of the European Commission or their representatives, and, on the other hand, of the relevant Ministers of the SADC EPA States or their representatives. The first meeting of the Joint Council shall be co-chaired by the Parties.

2. In relation to matters where SACU acts collectively for purposes of this Agreement, SACU shall act collectively in such matters under this provision and the EU shall treat SACU as such. In relation to matters where Member States of SACU act individually in such matters under this provision, the specific SACU Member State shall act in that capacity and the EU shall treat that Member State as such.

3. Without prejudice to the functions of the Council of Ministers as defined in Article 15 of the Cotonou Agreement, the functions of the Joint Council shall be to:

(a) be responsible for the operation and implementation of this Agreement and monitor the fulfilment of its objectives;

(b) examine any major issues arising under this Agreement that are of common interest and affect trade between the Parties;

(c) examine proposals and recommendations from the Parties for the review of this Agreement;

(d) make appropriate recommendations;

(e) monitor the development of economic and trade relations between the Parties;

(f) monitor and assess the impact of the cooperation provisions of this Agreement on sustainable development;

(g) monitor and review progress on all matters covered by this Agreement;

(h) establish its own rules of procedure;

(i) establish the rules of procedures of the Trade and Development Committee;

(j) monitor the work of the Trade and Development Committee; and

(k) perform any other duties under this Agreement.

4. The Joint Council may provide periodic reports on the operation of this Agreement to the Council of Ministers established in accordance with Article 15 of the Cotonou Agreement.

ARTICLE 102

Decision-making powers and procedures

1. In order to attain the objectives of this Agreement, the Joint Council shall have the power to take decisions in respect of all matters covered by this Agreement.

2. The decisions of the Joint Council shall be taken by consensus and shall be binding on the Parties. The Parties shall take all the measures necessary to implement such decisions in accordance with their respective internal rules.

3. For procedural matters and dispute settlement procedures, the Joint Council shall adopt decisions and recommendations by mutual agreement between the Parties.

4. The Joint Council shall meet at regular intervals, not exceeding a period of two (2) years, and extraordinarily whenever circumstances so require, if the Parties so agree.

ARTICLE 103

Trade and Development Committee

1. The Joint Council shall be assisted in the performance of its duties by a Trade and Development Committee composed of representatives of the Parties, normally at the level of senior officials.

2. The Trade and Development Committee shall be chaired alternately by a representative of each of the Parties for a period of one year. The first meeting of the Trade and Development Committee shall be co-chaired by the Parties.

3. This Committee may establish any special technical groups to deal with specific matters falling within their competence.

4. This Committee shall establish the rules of procedure of the special technical groups established under paragraph 3.

5. This Committee shall report and be responsible to the Joint Council.

6. This Committee shall take decisions or make recommendations in the cases provided for in this Agreement or where such power has been delegated to it by the Joint Council. In this event the Committee shall take its decisions by consensus.

7. This Committee shall have, in particular, the following functions:

(a) In the area of trade, to:

(i) monitor and evaluate the implementation of the decisions of the Joint Council;

(ii) facilitate and supervise the implementation of the provisions of this Agreement;

(iii) consider and recommend cooperation priorities to the Joint Council;

(iv) make recommendations to the Joint Council to avoid potential conflicts in areas covered by this Agreement;

(v) carry out any other function assigned to it by the Joint Council;

(vi) supervise the work of the special technical groups as referred to in paragraph 3;

(vii) monitor the development of regional integration and of economic and trade relations between the Parties;

(viii) discuss and undertake actions that may facilitate trade, investment and business opportunities between the Parties; and

(ix) discuss any matters under this Agreement and any issue that may affect the attainment of its objectives.

(b) In the area of development cooperation, to:

(i) monitor the implementation of the cooperation provisions laid down in this Agreement and coordinate such action with third party donors;

(ii) make recommendations on trade-related cooperation between the Parties;

(iii) keep under periodic review the cooperation priorities set out in this Agreement, and make recommendations on the inclusion of new priorities, as appropriate;

(iv) review and discuss cooperation issues pertaining to regional integration and implementation of this Agreement; and

(v) monitor and assess the impact of the implementation of this Agreement on the sustainable development of the Parties.

PART VI

GENERAL AND FINAL PROVISIONS

ARTICLE 104

Definition of the Parties and fulfilment of obligations

1. The Parties of this Agreement shall be Botswana, Lesotho, Namibia, South Africa, Swaziland and Mozambique, of the one part ("the SADC EPA States"), and the European Union or its Member States or the European Union and its Member States, within their respective areas of competence as derived from the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), of the other part ("the EU").

2. The term "Party" shall refer to the SADC EPA States individually on the one part or the EU on the other part as the case may be.

3. Where reference is made to SACU in this Agreement, as in Articles 25(1), 34, 35 and 101 and in PART III, Botswana, Lesotho, Namibia, South Africa and Swaziland, shall act collectively as provided for in the SACU Agreement.

4. The Joint Council may decide to modify the application of paragraph 3.

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5. The Parties shall adopt any general or specific measures required to fulfil their obligations under this Agreement and shall ensure that they comply with the objectives laid down in this Agreement.

ARTICLE 105

Exchange of information

1. In order to facilitate communication relating to the effective implementation of this Agreement, the Parties shall designate a coordinator for the exchange of information upon the entry into force of this Agreement. The designation of a coordinator for the exchange of information is without prejudice to the specific designation of competent authorities under specific provisions of this Agreement.

2. At the request of either Party, the coordinator of the other Party shall indicate the office or official responsible for any matter pertaining to the implementation of this Agreement and provide the required support to facilitate communication with the requesting Party.

3. At the request of either Party, the other Party shall, to the extent legally possible, provide information and reply promptly to any question relating to an actual or proposed measure that might affect trade between the Parties.

ARTICLE 106

Transparency

1. A Party shall publish or make publicly available its laws, regulations, procedures and administrative rulings of general application as well as any other commitments under an international agreement relating to any trade matter covered by this Agreement. Any such measures adopted after the entry into force of this Agreement shall be brought to the attention of the other Party.

2. Without prejudice to specific transparency provisions in this Agreement, the information referred to under this Article shall be considered to have been brought to the attention of the other Party when the information has been made available:

(a) by appropriate notification to the WTO; or

(b) on the official, fee-free and publicly accessible website; or

(c) to the coordinator of the other Party.

However, where the EU has provided such information and it has not been notified to the WTO through an official, fee-free and publicly accessible website, the SADC EPA States, which, because of capacity constraints, have difficulties accessing such a website, may request the EU to provide such information to the relevant coordinator.

3. Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private, except to the extent that it may be necessary to be disclosed in the context of a dispute settlement proceeding under this Agreement. Where such disclosure is considered necessary by a panel established under PART III, the panel shall ensure that confidentiality is fully protected.

ARTICLE 107

Temporary difficulties in implementation

A Party encountering difficulties in meeting its obligations under this Agreement as a result of factors beyond its control shall immediately bring the matter to the attention of the Joint Council.

ARTICLE 108

Regional preferences

1. Nothing in this Agreement shall oblige a Party to extend to the other Party any more favourable treatment which is applied by a Party as part of its respective regional integration process.

2. Any more favourable treatment and advantage that may be granted under this Agreement by a SADC EPA State to the EU shall be enjoyed by the other SADC EPA States.

ARTICLE 109

Outermost regions of the EU

1. Taking account of the geographical proximity of the outermost regions of the EU and the SADC EPA States and in order to reinforce economic and social links between those regions and the SADC EPA States, the Parties shall endeavour to facilitate cooperation in all areas covered by this Agreement between the outermost regions of the EU and the SADC EPA States.

2. The objectives of paragraph 1 shall also be pursued, wherever possible, through fostering the joint participation of the SADC EPA States and the outermost regions of the EU in the framework and specific programmes of the EU in areas covered by this Agreement.

3. The EU shall endeavour to ensure coordination between the various financial instruments of the EU's cohesion and development policies in order to foster cooperation between the SADC EPA States and the outermost regions of the EU in the areas covered by this Agreement.

4. Nothing in this Agreement shall prevent the EU from applying existing measures aimed at addressing the structural social and economic situation of its outermost regions pursuant to Article 349 of the TFEU. This provision shall not permit the maintenance of tariffs on trade between the Parties other than those permitted pursuant to paragraph 2 of PART III of ANNEX I.

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ARTICLE 110

Relations with the Cotonou Agreement

1. With the exception of development cooperation provisions provided for in Title II of Part 3 of the Cotonou Agreement, in case of any inconsistency between the provisions of this Agreement and the provisions of Title II of Part 3 of the Cotonou Agreement, the provisions of this Agreement shall prevail to the extent of such inconsistency.

2. Nothing in this Agreement shall be construed so as to prevent the adoption by either Party of appropriate measures pursuant to the Cotonou Agreement.

ARTICLE 111

Relations with the TDCA

The relationship between this Agreement and the TDCA shall be governed by the provisions of Protocol 4.

ARTICLE 112

Relations with the WTO Agreement

The Parties agree that nothing in this Agreement requires them to act in a manner inconsistent with their WTO obligations.

ARTICLE 113

Entry into force[1]

1. This Agreement shall be signed, ratified or approved in accordance with the applicable constitutional or internal rules and procedures of each Party.

2. This Agreement shall enter into force thirty (30) days following the deposit of the last instrument of ratification, acceptance or approval.

[1] The Parties to the attached Protocol on Geographical indications and on trade in wines and spirits shall implement the undertakings therein.

3. Pending entry into force of this Agreement, the EU and the SADC EPA 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 this Agreement.

4. This Agreement shall be applied provisionally between the EU and a SADC EPA state ten (10) days after either the receipt of notification of provisional application from the EU or of ratification or provisional application from that SADC EPA state, whichever is the later.

5. Provisional application of this Agreement between the EU and a Member of SACU shall exclude the agricultural market access concessions and the fisheries market access concessions referred to in Article 24(2) and Article 25(1), that are denoted by an asterisk (*) in the tariff schedules as set out in Annexes I and II, until such time as all members of SACU have ratified or provisionally applied this Agreement.

6. Provisional application or entry into force of this Agreement between the EU and a Member of SACU shall exclude the agricultural market access concessions referred to in Article 24(2) and Article 25(1), that are denoted by an asterisk (*) in the tariff schedules as set out in Annexes I and II, until such time as the conditions set out in Article 16 of Protocol 3 are met.

7. Notifications regarding the provisional application or ratification shall be sent to the Secretary-General of the Council of the European Union, who shall be the depository of this Agreement. Certified copies of the notifications shall be lodged with the Executive Secretary of the SADC Secretariat

8. If pending the entry into force of this Agreement, the Parties decide to apply it provisionally, all references in this Agreement to the date of entry into force shall be deemed to refer to the date such provisional application takes effect.

ARTICLE 114

Duration

1. This Agreement shall be valid indefinitely.

2. Either Party may give written notice of its intention to denounce this Agreement.

3. Denunciation shall take effect six (6) months after the notification referred to in paragraph 2.

ARTICLE 115

Territorial application

1. This Agreement shall apply, on the one hand, to the territories in which the TEU and TFEU are applied and under the conditions laid down in those Treaties, and, on the other hand, to the territories of the SADC EPA States.

2. References in this Agreement to “territory” shall be understood in this sense.

ARTICLE 116

Revision clause

1. The Parties agree to review this Agreement in its entirety no later than five (5) years after its entry into force. Such review is without prejudice to instances of adjustments, reviews or revisions otherwise provided for in this Agreement, such as those contemplated under Articles 12(2), 16(8), 17(5), 18(5), 26(10), 33(3), 35(6) and 65(e).

2. As regards the implementation of this Agreement, either Party may make suggestions oriented towards adjusting trade-related cooperation, taking into account the experience acquired during the implementation thereof.

3. The Parties agree that this Agreement may need to be reviewed in light of further developments in international economic relations and in the light of the expiration of the Cotonou Agreement.

ARTICLE 117

Amendments

1. Any Party may submit proposals for amendments to this Agreement to the Joint Council for consideration and adoption.

2. Amendments to this Agreement shall, after adoption by the Joint Council, be submitted to the Parties for ratification, acceptance or approval in accordance with their respective constitutional or internal legal requirements.

ARTICLE 118

Accession of new EU Member States

1. The Joint Council shall be advised of any request made by a third State to become a member of the EU. During the negotiations between the EU and the applicant State, the EU shall provide the SADC EPA States with any relevant information. The SADC EPA states shall convey their concerns, and may request consultations, to the EU so that the EU can take them fully into account. The SADC EPA States shall be notified by the EU of any accession to the EU.

2. Any new Member State of the European Union 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 SADC EPA States.

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

ARTICLE 119

Accession

1. A third state or organisation having competence for the matters covered by this Agreement may request to accede to this Agreement. If the Joint Council agrees to consider such a request, the Parties and the state or organisation requesting to accede shall conduct negotiations on the terms of accession. The Protocol of Accession shall be adopted by the Joint Council and submitted for ratification, acceptance or approval in accordance with the Parties' respective constitutional or internal legal requirements.

2. The Parties shall review the effects of such accession on this Agreement. The Joint Council may decide on any transitional or amending measures that might be necessary.

3. Notwithstanding paragraph 1, the Parties agree that in the case of a request from Angola to the Joint Council to accede to this Agreement, negotiations concerning the terms of accession should be conducted on the basis of this Agreement, taking into account the specific situation of Angola.

ARTICLE 120

Languages and authentic texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of those texts being equally authentic. In the event of a contradiction, reference shall be made to the language in which this Agreement was negotiated.

ARTICLE 121

Annexes

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

ARTICLE 122

Rights and obligations under this Agreement

Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons, other than those created between the Parties under public international law.

In witness whereof, the undersigned Plenipotentiaries have affixed their signatures below this Agreement.

LIST OF ANNEXES AND PROTOCOLS

ANNEX I:	Customs duties of the EU on products originating in the SADC EPA States
ANNEX II:	Customs duties of SACU on products originating in the EU
ANNEX III:	Customs duties of Mozambique on products originating in the EU
ANNEX IV:	Agricultural safeguards
ANNEX V:	BLNS transitional safeguards
ANNEX VI:	SPS priority products and sectors
PROTOCOL 1:	Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation
PROTOCOL 2:	Mutual Administrative Assistance in Customs Matters
PROTOCOL 3:	Geographical Indications and Trade in Wines and Spirits
PROTOCOL 4:	Concerning the relationship between the TDCA and this Agreement
FINAL ACT	

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