

CHAPTER V

AREAS FOR FUTURE NEGOTIATIONS

ARTICLE 52

Built-in Agenda

The Parties agree to pursue negotiations in the future in accordance with Article 3 with a view to extending their partnership to cover the following areas:

- (a) customs and trade facilitation;
- (b) outstanding trade and market access issues, including rules of origin and other related issues and trade defence measures;
- (c) technical barriers to trade and sanitary and phytosanitary measures;
- (d) trade in services;
- (e) trade related issues namely:
 - (i) competition policy;
 - (ii) investment and private sector development;
 - (iii) trade, environment and sustainable development;
 - (iv) intellectual property rights;
 - (v) transparency in public procurement;
- (f) agriculture;
- (g) current payments and capital payments;
- (h) development issues;
- (i) cooperation and dialogue on good governance in the tax and judicial area;
- (j) an elaborated dispute settlement mechanism, institutional arrangements; and
- (k) any other areas that the Parties find necessary.

The EPA Committee will agree, not later than 6 months from the entry into force of the Agreement, on the timetable of negotiations.

CHAPTER VI

DISPUTE AVOIDANCE, SETTLEMENT, INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

TITLE I

Dispute avoidance and settlement

ARTICLE 53

Consultations

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

ARTICLE 54

Dispute settlement

1. If consultations do not succeed in settling the dispute within the 60 days or 30 days referred to in Article 53, either Party may request settlement of the dispute by arbitration. To this end, each Party shall appoint an arbitrator within 30 days of the request for arbitration by notifying the other Party and the EPA Committee. The request for arbitration shall identify the measure at issue and the provisions of the Agreement that the complaining Party considers the measure not to be in conformity with. In the event of failure to do so, either Party may ask the Secretary General of the Permanent Court of Arbitration to appoint the second arbitrator.
2. The two arbitrators shall in turn appoint a third arbitrator within thirty days. In the event of failure to do so, either Party may ask the Secretary General of the Permanent Court of Arbitration to appoint the third arbitrator.
3. Unless the arbitrators decide otherwise, the procedure applied shall be as laid down in the Permanent Court of Arbitration Rules 2012. The arbitrators shall take a decision by majority vote within 90 days and in matters of urgency should endeavour to take a decision within 60 days.
4. Each Party to the dispute shall be bound to take the measures necessary to carry out the decision of the arbitrators.

TITLE II

General exceptions

ARTICLE 55

General exception clause

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

- (a) are necessary to protect public morals or to maintain public order and public security;
- (b) are necessary to protect human, animal or plant life or health;
- (c) are necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;
 - (iv) customs enforcement; or
 - (v) protection of intellectual property rights;
- (d) relate to the importation or exportation of gold or silver;
- (e) are necessary to the protection of national treasures of artistic, historic or archaeological value;
- (f) relate to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption of goods, domestic supply or consumption of services and on domestic investors;
- (g) relate to the products of prison labour; or
- (h) are essential to the acquisition or distribution of products in general or local short supply, provided that any such measures shall be consistent with the principle that all parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement, shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

ARTICLE 56

Security exceptions

1. Nothing in this Agreement shall be construed:
 - (a) to require the UK or a Signatory ESA State to furnish any information the disclosure of which it considers contrary to its essential security interests;
 - (b) to prevent the UK or a Signatory ESA State from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (ii) relating to economic activities carried out directly or indirectly for the purpose of supplying or provisioning a military establishment;
 - (iii) connected with the production of or trade in arms, munitions and war materials;
 - (iv) relating to government procurement indispensable for national security or for national defence purposes; or
 - (v) taken in time of war or other emergency in inter- national relations;
 - (c) to prevent the UK or a Signatory ESA State from taking any action in order to carry out obligations it has accepted for the purpose of maintaining international peace and security.
2. The Parties shall inform each other to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

ARTICLE 57

Taxation

1. Nothing in this Agreement or in any arrangement adopted under this Agreement shall be construed to prevent the UK or a Signatory ESA State from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.
2. Nothing in this Agreement or in any arrangement adopted under this Agreement shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic fiscal legislation.
3. Nothing in this Agreement shall affect the rights and obligations of the UK or a Signatory ESA State under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

TITLE III

Institutional, general and final provisions

ARTICLE 58

Definition of the Parties and fulfilment of obligations

1 The Contracting Parties of this Agreement shall be the Union of Comoros, the Republic of Madagascar, the Republic of Mauritius, the Republic of Seychelles, the Republic of Zambia and the Republic of Zimbabwe hereinafter referred to as the ‘ESA States’, on the one part, and the United Kingdom of Great Britain and Northern Ireland, on the other part for which this Agreement has entered into force or is provisionally applied.

2 For the purposes of this Agreement, unless otherwise expressly provided, the ESA States agree to act collectively. In cases where individual action is provided for or required to exercise the rights and/or comply with obligations under this Agreement, reference is made to ‘Signatory ESA State’.

3 The Parties or the Signatory ESA State(s) as the case may be shall adopt any general or specific measures required for them to fulfil their obligations under this Agreement and shall ensure that they comply with the objectives laid down in this Agreement.

4 A Signatory ESA State which is not subject to the rights and obligations set out in Chapter II shall nevertheless be subject to and enjoy the rights and obligations arising from other Chapters of this Agreement.

ARTICLE 59

Entry into force, denunciation and duration

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

2 This Agreement shall enter into force as between the UK and a Signatory ESA State either on the first day of the first month, or on such other date as the UK and that Signatory ESA State agree, following the deposit of the later of their respective instruments of ratification, acceptance or approval.

3 Notifications of ratification, acceptance or approval shall be sent to:

- (a) the Authority designated by a Signatory ESA State; or
- (b) the Secretary General of the Common Market of Eastern and Southern Africa,

who shall be the depositories of this Agreement.

4 Pending entry into force of the Agreement, the UK and the Signatory ESA 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.

5. Provisional application shall be notified to the depositories. This Agreement shall be applied provisionally between the UK and a Signatory ESA State ten (10) days, or on such other date as the UK and that Signatory ESA State agree, after the later of either the receipt of notification of provisional application from the UK or of ratification or provisional application from the Signatory ESA State.

6. Notwithstanding paragraphs 2 and 4, the UK and Signatory ESA States may unilaterally take steps to apply the Agreement, before provisional application, to the extent feasible.

7. The UK or a Signatory ESA State(s) may give written notice to the other of its intention to denounce this Agreement.

8. Denunciation shall take effect one month after notification to the other Party.

ARTICLE 60

Territorial application

This Agreement shall apply, on the one hand, to the United Kingdom of Great Britain and Northern Ireland and the territories for whose international relations the UK is responsible to which the Interim Agreement establishing a framework for an Economic Partnership Agreement between the ESA States, on the one part, and the European Community and its Member States, on the other part applied to the extent and under the conditions that it applied and, on the other hand, to the territories of Signatory ESA States. References in this Agreement to ‘territory’ shall be understood in this sense.

ARTICLE 61

EPA Committee

1. An EPA Committee is hereby established.

2. Except as otherwise provided for in paragraph 3 of this Article, the EPA Committee shall be responsible for the administration of all matters under this Agreement, including development cooperation as provided for under Article 35 and for the fulfilment of any of the tasks mentioned in this Agreement.

3. The EPA Committee shall not be responsible for the administration of matters set out in Annex V.

4. The EPA Committee shall be composed of representatives of the Parties. Each Party determines the organisation of its representation.

5. The EPA Committee shall adopt its rules of procedure within three months of entry into force of the Agreement.

ARTICLE 62

Relationships with other agreements

1. The Parties acknowledge that some Signatory ESA States are not members of the WTO. Accordingly, references in this Agreement to WTO agreements (including the definitions provided therein) and WTO bodies or Committees shall not be construed as imposing on a Signatory ESA State that is not a member of the WTO any obligations arising from such WTO agreements or decisions of such bodies or Committees beyond the obligations expressly taken by such Signatory ESA State under this Agreement. Consequently, in the event of inconsistency between provisions of WTO agreements or decisions of WTO bodies or Committees on the one part and provisions of this Agreement, the latter shall always prevail in respect of Signatory ESA States who are not members of the WTO.
2. The Parties agree that nothing in this Agreement requires them or the Signatory ESA States to act in a manner inconsistent with their WTO obligations.

ARTICLE 63

Accession

1. Any of the following ESA states namely, the Republic of Djibouti, the State of Eritrea, the Federal Democratic Republic of Ethiopia, the Republic of Malawi, the Republic of Sudan, may accede to this Agreement with the agreement of the Parties. This Agreement shall enter into force with respect to the acceding state in accordance with the applicable legal procedures of the UK and the ESA States and the acceding country. The UK shall endeavour to apply this Agreement to the acceding country as soon as possible.
2. (a) Any request for accession to this Agreement made by a state in the ESA region not listed in paragraph 1 shall be presented to the EPA Committee for determination.

(b) The EPA Committee may lay down the conditions and specific arrangements applicable to the state referred to in paragraph 2(a) for its accession.
3. All ESA states acceding to the Agreement shall submit a tariff offer to the EPA Committee prior to signature of this Agreement.
4. This Agreement shall enter into force in relation to an acceding state on the date its instrument of accession is deposited or on such other date as the Parties agree.

ARTICLE 64

Amendments

1. Any amendments to this Agreement shall be adopted by the EPA Committee and shall enter into force when ratified.
2. The EPA Committee shall adopt any transitional measures that may be required in respect of the amended provisions until they come into force.

ARTICLE 65

Authentic texts

This Agreement is drawn up in duplicate in the English and French, languages, each of these texts being equally authentic.

ARTICLE 66

Annexes

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

In witness whereof the undersigned, duly authorized by their respective Governments, have signed this Agreement.

Done in two original languages at, this.....day of.....2019 in the English language.

The Union of Comoros,

The Republic of Madagascar,

The Republic of Mauritius,

The Republic of Seychelles,

The Republic of Zambia,

The Republic of Zimbabwe

The United Kingdom of Great Britain and Northern Ireland