

TITLE V

TRADE-RELATED RULES

CHAPTER 1

CURRENT PAYMENTS AND CAPITAL MOVEMENTS

ARTICLE 56

Continuation of negotiations on current payments and movement of capital

1. The Parties recognise the need to guarantee that cross-border flows of the funds necessary for the liberalisation of trade in products and services, and for investments by one of the Parties in the region of the other Party, cannot be restricted or prevented by one of the Parties. Any obstacle to these flows would be contrary to the objectives of liberalisation, given that trade or investment, although itself permissible, could not give rise to payment or financing from abroad.

2. To achieve this objective, the Parties undertake to conclude negotiations by 1 January 2009 on a series of issues related to the following:

- (a) liberalisation of flows of funds relating to trade in products and services, known as "current payments";
- (b) liberalisation of flows of funds relating to "investments", known as "movements of capital relating to investments", including repatriation of investments and profits;
- (c) a safeguard clause, granting a short-term derogation from freedom of capital movement, on grounds of serious difficulties as regards monetary situation or balance of payments;
- (d) a development clause, providing for the liberalisation of other types of capital movements not related to investment.

CHAPTER 2

COMPETITION

ARTICLE 57

Continuation of negotiations on competition

1. The Parties recognise the importance of free and undistorted competition in their trade relations and the fact that certain anti-competitive practices may restrict trade between the Parties and thus hinder the achievement of the objectives of this Agreement.
2. The Parties therefore agree to take part in the negotiations on a chapter on competition in the EPA, which will include the following in particular:
 - (a) anti-competitive practices which are considered incompatible with the proper functioning of this Agreement, insofar as they can affect trade between the Parties;
 - (b) provisions on the effective implementation of competition rules and policies and of regional policies in Central Africa which govern the anti-competitive practices identified in accordance with paragraph 2(a);
 - (c) provisions on technical assistance by independent experts to ensure that the Chapter's objectives are achieved and that Central Africa's competition policies are properly implemented at regional level.

3. The negotiations shall be based on a two-step approach, first applying the rules in the context of regional integration in Central Africa and, after a transition period to be determined jointly, applying the rules bilaterally.
4. The negotiations on the competition chapter shall be concluded by 1 January 2009.

CHAPTER 3

INTELLECTUAL PROPERTY

ARTICLE 58

Continuation of negotiations on intellectual property

1. The Parties reaffirm their rights and obligations arising from the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and recognise the need to ensure an adequate and effective level of protection of intellectual, industrial and commercial property rights, and other rights covered by the TRIPS Agreement, in line with international standards and with a view to reducing distortions and impediments to bilateral trade.
2. With due regard for the powers transferred to the African Intellectual Property Organisation (OAPI), the Parties undertake to conclude negotiations by 1 January 2009 on a series of commitments regarding intellectual property rights.

3. The Parties also agree to strengthen their cooperation in the area of intellectual property rights. Such cooperation shall be directed at supporting the implementation of each Party's commitments and shall extend to the following areas *inter alia*:

- (a) reinforcement of regional integration initiatives in Central Africa with a view to improving regional regulatory capacity, regional laws and regulations;
- (b) prevention of the abuse of such rights by right-holders and the infringement of such rights by competitors;
- (c) support in the preparation of national laws and regulations in Central Africa for the protection and enforcement of intellectual property rights.

4. The negotiations shall be based on a two-step approach, first applying the rules in the context of regional integration in Central Africa and, after a transition period to be determined jointly, applying the rules bilaterally.

5. In conducting the negotiations, the different levels of development in the signatory Central African States should be taken into account.

CHAPTER 4

PUBLIC PROCUREMENT

ARTICLE 59

Continuation of negotiations on public procurement

1. The Parties recognise the contribution of transparent and competitive tendering to economic development. They therefore agree to negotiate the gradual and mutual opening of their public procurement markets, while recognising their different levels of development, under the conditions set out in paragraph 3.
2. To achieve this objective, the Parties shall conclude negotiations by 1 January 2009 on a set of potential commitments on procurement, which shall include in particular the following:
 - (a) transparent and non-discriminatory rules, procedures and principles to be applied;
 - (b) lists of the products covered and the thresholds applied;
 - (c) effective challenge procedures;
 - (d) measures to support capacities to implement these commitments, including making use of opportunities created by information technologies.

3. The negotiations shall be based on a two-step approach, first applying the rules in the context of regional integration in Central Africa and, after a transition period to be determined jointly, applying the rules bilaterally.

4. In conducting the negotiations, the EC Party shall take into account the development, financial and trade needs of the signatory Central African States, which may take the form of the following measures in the interest of special and differential treatment:

- (a) appropriate implementation periods, where required, to bring government procurement measures into line with any specific procedural requirements;
- (b) adoption or retention of transitional measures such as a price preference programme or offset, in accordance with a phasing-out schedule.

CHAPTER 5

SUSTAINABLE DEVELOPMENT

ARTICLE 60

Continuation of negotiations on sustainable development

1. The Parties recognise that sustainable development is an overall objective of the EPA. They therefore agree to ensure that sustainability considerations are reflected in all titles of the EPA and to draft specific chapters covering environmental and social issues.
2. To achieve this objective, the Parties shall conclude negotiations by 1 January 2009 on a set of potential commitments on sustainable development, which shall include in particular the following:
 - (a) level of protection and right to regulate;
 - (b) regional integration in Central Africa, use of international environmental standards and of the International Labour Organisation and promotion of decent work;
 - (c) upholding levels of protection;
 - (d) consultation and monitoring procedures.

3. In conducting the negotiations, the EC Party shall take into account the development needs of the signatory Central African States, which may take the form of provisions on cooperation in this field.

CHAPTER 6

PROTECTION OF PERSONAL DATA

ARTICLE 61

Overall objective

The Parties, recognising:

- (a) their common interest in protecting the fundamental rights and freedoms of natural persons, and in particular their right to privacy, with respect to the processing of personal data;
- (b) the importance of maintaining effective data protection regimes as a means of protecting the interests of consumers, stimulating investor confidence and facilitating cross-border flows of personal data;

- (c) the need to collect and process personal data in a transparent and fair manner, with due respect accorded to the data subject, agree to establish appropriate legal and regulatory regimes, and the appropriate administrative capacity to implement them, including independent supervisory authorities, in order to ensure an adequate level of protection of individuals with regard to the processing of personal data, in line with the highest international standards¹.

ARTICLE 62

Definitions

For the purposes of this Chapter:

- (a) "personal data" shall mean any information relating to an identified or identifiable natural person (data subject);
- (b) "processing of personal data" shall mean any operation or set of operations which is performed upon personal data, such as collection, recording, organisation, storage, alteration, retrieval, consultation, use, disclosure, combination, blocking, erasure or destruction, as well as transfers of personal data across national borders;

¹ Standards to be taken into account include the following international instruments:

- (i) Guidelines on computerised personal data files, as amended by the United Nations General Assembly on 20 November 1990.
- (ii) Recommendation of the OECD Council of 23 September 1980 concerning guidelines governing the protection of privacy and trans-border flows of personal data.

- (c) "data controller" shall mean the natural or legal person, authority or any other body which determines the purposes and means of the processing of personal data.

ARTICLE 63

Principles and general rules

The Parties agree that the legal and regulatory regimes and administrative capacity to be established shall, at a minimum, include the following content principles and enforcement mechanisms:

(a) Content principles

- (i) The purpose limitation principle – data should be processed for a specific purpose and subsequently used or further communicated only insofar as this is not incompatible with the purpose of the transfer. The only exemptions to these rights should be those provided for in legislation and necessary in a democratic society for the protection of important public interests.
- (ii) The data quality and proportionality principle – data should be accurate and, where necessary, kept up to date. The data should be adequate, relevant and not excessive in relation to the purposes for which they are transferred or further processed.

- (iii) The transparency principle – individuals should be provided with information as to the purpose of the processing and the identity of the data controller in the third country, and other information insofar as this is necessary to ensure fairness. The only exemptions to these rights should be those provided for in legislation and necessary in a democratic society for the protection of important public interests.
- (iv) The security principle – the data controller should take technical and organisational security measures that are appropriate to the risks presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process data except on instructions from the controller.
- (v) The rights of access, rectification and opposition – the data subject should have the right to obtain a copy of all data relating to him/her that are processed, and the right to rectify those data where they are shown to be inaccurate. In certain situations he/she should also be able to object to the processing of the data relating to him/her. The only exemptions to these rights should be those provided for in legislation and necessary in a democratic society for the protection of important public interests.
- (vi) Restrictions on onward transfers – as a matter of principle, further transfers of the personal data by the recipient of the original data transfer should be permitted only where the second recipient (i.e. the recipient of the onward transfer) is also subject to rules affording an adequate level of protection.

- (vii) Sensitive data – where special categories of data are involved, revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership, data concerning health and sex, and data relating to offences, criminal convictions or security measures, additional safeguards should be in place.

(b) Enforcement mechanisms

Appropriate mechanisms should be in place to ensure that the following objectives are achieved:

- (i) to ensure a good level of compliance with the rules, including a high degree of awareness among data controllers of their obligations, and among data subjects of their rights and the means of exercising them; the existence of effective and dissuasive sanctions; and systems of verification by authorities, auditors or independent data protection officials;
- (ii) to provide support and help to individual data subjects in the exercise of their rights, which they must be able to enforce rapidly and effectively, and without prohibitive cost, including through an appropriate institutional mechanism allowing independent investigation of complaints;
- (iii) to provide appropriate redress to the injured party where rules are not complied with, allowing compensation to be paid and sanctions imposed where appropriate.

ARTICLE 64

Consistency with international commitments

1. The Parties shall keep each other informed, via the EPA Committee, of the multilateral commitments and agreements with third countries in which they may participate, or of any obligation by which they may be bound and which could be relevant to the application of this Chapter, and in particular of any agreement providing for the processing of personal data, such as personal data being collected, stored or accessed by third parties or transferred to third parties.
2. The Parties may request consultations to discuss any matter which may arise.

ARTICLE 65

Cooperation

The Parties acknowledge the importance of cooperation in order to facilitate the development of appropriate legislative, judicial and institutional frameworks and to ensure an adequate level of protection of personal data that is consistent with the objectives and principles contained in this Chapter.