

PART II

TRADE IN GOODS

ARTICLE 5

Scope and Objectives

1. The provisions of this Part shall apply to all goods originating in the EU and EAC Partner State(s).
2. The objectives in the area of trade in goods are to:
 - (a) provide full duty-free and quota-free market access conditions for goods originating in the EAC Partner State(s) into the market of the EU on a secure, long-term and predictable basis in accordance with the modalities established in this Agreement;
 - (b) liberalise progressively and gradually the EAC Partner State(s) market(s) for goods originating in the EU in accordance with the modalities established in this Agreement; and
 - (c) preserve and improve market access conditions to ensure that the EAC Partner State(s) benefit fully from this Agreement.

TITLE I

CUSTOMS DUTIES AND FREE MOVEMENT OF GOODS

ARTICLE 6

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 and any form of surtax or surcharge in connection with such importation, but shall not include:
 - (a) charges equivalent to internal taxes levied on both imported and locally produced goods consistent with Article 20;
 - (b) anti-dumping, countervailing or safeguard measures applied in accordance with the provisions of Title VI; and
 - (c) fees or other charges imposed in accordance with Article 8.
2. The basic customs duty to which the successive reductions are to be applied shall be that specified in each Party's tariff liberalisation schedule for each product.

ARTICLE 7

Classification of Goods

1. The classification of goods in trade covered by this Agreement shall be that set out in each Party's respective tariff nomenclature in conformity with the International Convention on the Harmonised Commodity Description and Coding System (HS).
2. The Parties shall exchange all necessary information, within a period of three (3) months after a tariff modification or a change in the HS, on their applied customs duties and the corresponding nomenclatures with those products listed in Annexes I and II.

ARTICLE 8

Fees and Other Charges

Fees and other charges referred to in Article 6(1)(c) shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection for domestic products or a taxation of imports for fiscal purposes. Trade-related fees and charges shall not be imposed for consular services.

ARTICLE 9

Rules of Origin

1. For the purposes of this Part, the term "originating" means qualifying as "originating" under the applicable law of the importing Party^{1 2}.
2. The EPA Council established under Article 104 (hereinafter referred to as "the EPA Council") shall, by decision, adopt a protocol governing the rules of origin at the latest five (5) years after the date of entry into force of this Agreement. Paragraph 1 of this Article shall cease to apply from the moment that such protocol becomes applicable.
3. If at the end of the five-year period referred to in paragraph 2 the Parties have not adopted such protocol, the EPA Council shall assess the application of paragraph 1 and may decide to extend that five-year period.

¹ For greater certainty, in determining the consistency of a measure with this Agreement under Title II of Part VII an arbitration panel may consider, as appropriate, the law of a Party as a matter of fact. In doing so, the arbitration panel shall follow the prevailing interpretation given to the law by the courts or authorities of that Party and any meaning given to law by the arbitration panel shall not be binding upon the courts or the authorities of that Party.

² Products originating in the EAC Partner State when imported into Ceuta or Melilla, shall enjoy in all respects the same customs regime as that which is applied to products originating in the customs territory of the EU under Protocol No 2 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ EU L 302, 15.11.1985, p. 23). The EAC Partner State shall grant to imports of products covered by this Agreement and originating in Ceuta and Melilla the same customs regime as that which is granted to products imported from and originating in the EU.

ARTICLE 10

Customs Duties on Products Originating in the EAC Partner State(s)

Products originating in the EAC Partner State(s) shall be imported into the EU free of customs duties, under the conditions set out in Annex I.

ARTICLE 11

Customs Duties on Products Originating in the EU

Products originating in the EU shall be imported into the EAC Partner State(s) under the conditions set out in the tariff liberalisation schedule in Annex II.

ARTICLE 12

Standstill Clause

1. The Parties agree not to increase their applied customs duties for products subject to liberalisation under this Agreement, with the exception of measures adopted in accordance with Articles 48, 49 and 50.

2. In order to preserve the prospect of wider African regional integration processes, the Parties may decide in the EPA Council to modify the level of customs duties stipulated in Annexes II(a), II(b) and II(c) to this Agreement, which may be applied to a product originating in the EU upon its importation into the EAC Partner State(s). The Parties shall ensure that any such modification does not result in an incompatibility of this Agreement with the requirements of Article XXIV of GATT 1994.

ARTICLE 13

Movement of Goods

1. Customs duties shall be imposed once for goods originating in one Party and imported into the territory of the other Party.
2. Any duty paid upon importation into an EAC Partner State shall be refunded fully for the goods that leave the EAC Partner State of first importation to another EAC Partner State. The duty shall be paid in the EAC Partner State of consumption of the goods.
3. The Parties agree on cooperation to facilitate the movement of goods and simplify customs procedures.

ARTICLE 14

Export Duties and Taxes

1. A Party shall not institute any new duties or taxes in connection with the exportation of goods to the other Party that are in excess of those imposed on like products destined for internal sale.
2. Notwithstanding paragraph 1, the EAC Partner State(s) can impose, after notifying the EU, a temporary duty or tax in connection with the exportation of goods under the following circumstances:
 - (a) to foster the development of domestic industry;
 - (b) to maintain currency stability, when the increase in the world price of an export commodity creates the risk of a currency overvaluation; or
 - (c) to protect revenue, food security and the environment.
3. Such taxes should be enforced on a limited number of products for a limited period and shall be reviewed by the EPA Council for renewal after forty-eight (48) months.
4. Any more favourable treatment consisting in or in relation to taxes applied by the EAC Partner State(s) to exports of any products destined for any major trading economy shall, from the date of entry into force of this Agreement, be accorded to the like product destined for the territory of the EU.

5. For the purposes of this Article and Article 15, "major trading economy" means any developed country, or any country accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the free trade agreement referred to in Article 15, or any group of countries acting individually, collectively or through a free trade agreement accounting collectively for a share of world merchandise exports above 1,5 percent in the year before the entry into force of the free trade agreement referred to in Article 15¹.

ARTICLE 15

More Favourable Treatment Resulting from a Free Trade Agreement

1. With respect to the goods covered by this Part, the EU shall accord to the EAC Partner State(s) any more favourable treatment applicable as a result of the EU becoming party to a free trade agreement with a third party after the signature of this Agreement.
2. With respect to the goods covered by this Part, the EAC Partner State(s) shall accord to the EU any more favourable treatment applicable as a result of the EAC Partner State(s) becoming party to a free trade agreement with any major trading economy after the signature of this Agreement. Provided that the EU can demonstrate that it has been given less favourable treatment than that offered by the EAC Partner State(s) to any other major trading economy, the Parties shall to the extent possible, consult and jointly decide on how best to implement this paragraph on a case-by-case basis.

¹ This calculation shall be based on the WTO official data on leading exporters on world merchandise trade (excluding intra-EU trade).

3. The provisions of this Part shall not be so construed as to oblige the Parties to extend reciprocally any preferential treatment applicable as a result of one of them being party to a free trade agreement with a third party on the date of signature of this Agreement.
4. Paragraph 2 shall not apply in respect of trade agreements between the EAC Partner State(s) with countries of the African, Caribbean and Pacific Groups, or other African countries and regions.
5. For the purposes of this Article, "free trade agreement" means an agreement substantially liberalising trade and substantially eliminating discriminatory measures and/or prohibiting new or more discriminatory measures among Parties at the entry into force of that agreement or within a reasonable time frame.

ARTICLE 16

Special Provisions on Administrative Cooperation

1. The Parties agree that administrative cooperation is essential for the implementation and control of the preferential treatment granted under this Part and underline their commitment to combat irregularities and fraud in customs and related matters.
2. 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 temporarily suspend the relevant preferential treatment of the product(s) concerned in accordance with this Article.

3. For the purposes of this Article, a failure to provide administrative cooperation shall mean, *inter alia*:

- (a) a repeated failure to respect the obligation to verify the originating status of the product(s) concerned;
- (b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin of the product(s) concerned;
- (c) a repeated refusal or undue delay in obtaining authorisation to conduct administrative cooperation missions to verify the authenticity of documents or accuracy of information relevant to the granting of the preferential treatment in question.

4. A finding of irregularities or fraud may be made, *inter alia*, where there is a rapid increase, without satisfactory explanation, in imports of goods exceeding the usual level of production and export capacity of the other Party that is linked to objective information concerning irregularities or fraud.

5. The application of a temporary suspension shall be subject to the following conditions:
- (a) the Party which has made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud shall without undue delay notify the Committee of Senior Officials established under Article 106 (hereinafter referred to as "the Committee of Senior Officials") of its finding together with the objective information and enter into consultations within the Committee of Senior Officials, on the basis of all relevant information and objective findings, with a view to reaching a solution acceptable to both Parties;
 - (b) where the Parties have entered into consultations within the Committee of Senior Officials as referred to in point (a) and have failed to agree on an acceptable solution within three (3) months following the notification, the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned, and such temporary suspension shall be notified to the EPA Council without undue delay;
 - (c) temporary suspensions under this Article shall be limited to those necessary to protect the financial interests of the Party concerned, shall not exceed a period of six (6) months and may be renewed, and they shall be subject to periodic consultations within the Committee of Senior Officials in particular with a view to their termination as soon as the conditions for their application no longer exist.
6. At the same time as the notification to the Committee of Senior Officials under paragraph 5(a), the Party making such notification should publish a notice to importers in its Official Journal. The notice to importers should indicate for the product concerned that there is a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud.

ARTICLE 17

Management of Administrative Errors

In case of error by the competent authorities in the proper management of the preferential system of export, and in particular in the application of the rules of origin applicable for the purposes of this Agreement concerning the definition of the concept of "originating products" and methods of administrative cooperation, and that error leads to consequences in terms of import duties, the Party facing such consequences may request the Committee of Senior Officials to examine the possibility of adopting all appropriate measures with a view to resolving the situation.

ARTICLE 18

Customs Valuation

1. Article VII of GATT 1994 and the Agreement on the implementation of Article VII of GATT 1994 shall govern customs valuation rules applied to trade between the Parties.
2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

TITLE II

NON-TARIFF MEASURES

ARTICLE 19

Prohibition of Quantitative Restrictions

1. All prohibitions or restrictions on the importation, exportation or sale for export between the Parties, other than customs duties, taxes, fees and other charges provided for under Article 6, whether made effective through quotas, import or export licenses or other measures, shall be eliminated upon the date of entry into force of this Agreement. No new such measures shall be introduced in trade between the Parties. This Article shall be without prejudice to the provisions of Title VI of this Part.
2. Paragraph 1 of this Article shall not extend to the following:
 - (a) export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;
 - (b) import and export prohibitions or restrictions necessary for the application of standards or regulations for the classification, grading or marketing of commodities in international trade.

ARTICLE 20

National Treatment with respect to Internal Taxation and Regulation

1. Imported products originating in one Party shall not be subject, either directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products of the other Party. Moreover, the Parties shall not otherwise apply internal taxes or other internal charges so as to afford protection to their respective production.
2. Imported products originating in one Party shall be accorded treatment no less favourable than that accorded to like domestic products of the other Party in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. 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 origin of the product.
3. Neither Party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, neither Party shall apply internal quantitative regulations so as to afford protection to their respective production.
4. This Article shall not prevent the payment of subsidies exclusively to national producers, including payments to national producers derived from the proceeds of internal taxes or charges applied consistently with this Article and subsidies effected through governmental purchases of national products.

5. This Article shall not apply to laws, regulations, procedures or practices governing public procurement.

ARTICLE 21

Good Governance in the Tax Area

The Parties recognise the importance of cooperation on the principles of good governance in the area of taxation through the relevant authorities in line with their respective national laws and regulations.

TITLE III

CUSTOMS COOPERATION AND TRADE FACILITATION

ARTICLE 22

Scope and Objectives

1. The Parties acknowledge the importance of customs cooperation and trade facilitation matters in the evolving global trading environment and agree:
 - (a) to reinforce cooperation and ensure that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations, fulfil the objective of promoting trade facilitation;

(b) that the EAC Partner State(s) need transitional periods and capacity building to smoothly implement the provisions of this Title.

2. The objectives of this Title are to:

(a) facilitate trade between the Parties;

(b) promote harmonisation of customs legislation and procedures at regional level;

(c) provide support to the EAC Partner State(s) to strengthen trade facilitation;

(d) provide support to the customs administrations of the EAC Partner State(s) to implement this Agreement and other international customs best practices; and

(e) enhance cooperation between the Parties' customs authorities and other related border agencies.

ARTICLE 23

Customs Cooperation and Mutual Administrative Assistance

1. In order to ensure compliance with the provisions of this Title and effectively respond to the objectives laid down in Article 22, the Parties shall:

(a) exchange information on customs legislation and procedures;

- (b) develop joint initiatives in mutually agreed areas;
- (c) cooperate in the following areas:
 - (i) modernisation of customs systems and procedures, as well as reduction of customs clearance times;
 - (ii) simplification and harmonisation of customs procedures and trade formalities, including those related to import, export and transit;
 - (iii) enhancement of regional transit systems;
 - (iv) enhancement of transparency in accordance with Article 24(3);
 - (v) capacity building including financial and technical assistance to the EAC Partner State(s);
 - (vi) any other area of customs as may be agreed by the Parties;
- (d) establish, as far as possible, common positions in international organisations in the field of customs and trade facilitation, such as the WTO, World Customs Organisation (WCO), United Nations (UN) and United Nations Conference on Trade and Development (UNCTAD);
- (e) promote coordination between all related agencies, both internally and across borders.

2. Notwithstanding paragraph 1, the Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the provisions of Protocol 1.

ARTICLE 24

Customs Legislation and Procedures

1. The Parties agree that their respective trade and customs legislation and procedures shall draw upon international instruments and standards applicable in the field of customs and trade, including the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures done at Brussels on 26 June 1999, the substantive elements of the WCO Framework of Standards to Secure and Facilitate Global Trade, the WCO data set and the HS Convention.

2. The Parties agree that their respective trade and customs legislation and procedures shall be based upon:

- (a) the need to protect and facilitate legitimate trade through effective enforcement of, and compliance with, the requirements set out in the customs legislation;
- (b) the need to avoid unnecessary and discriminatory burdens on economic operators, to protect against fraud and corruption, and to provide further facilitation for operators that meet high levels of compliance with customs legislation and procedures;

- (c) the need to use a single administrative document or electronic equivalent, for the purposes of establishing customs declarations in the EU and in the EAC Partner State(s), respectively;
- (d) modern customs techniques, including risk assessment, simplified procedures for entry and release of goods, post release controls, and audits;
- (e) the progressive development of systems, including those based upon information technology, for export import and transit operations, to facilitate the exchange of information between economic operators, customs administrations and other agencies;
- (f) the principle that penalties imposed for minor breaches of customs regulations or procedural requirements are proportionate and do not give rise to undue delays in their application in customs clearance;
- (g) a system of binding rulings on customs matters, in particular on tariff classification and rules of origin, in accordance with the rules laid down in regional and/or national legislation;
- (h) the need to apply fees and charges that are commensurate with the service provided in relation to any specific transaction, and not be calculated on an *ad valorem* basis. Fees and charges shall not be imposed on consular services in respect of trade in goods;
- (i) the elimination of any requirement for the mandatory use of pre-shipment inspections as defined by the WTO Agreement on Pre-shipment Inspection, or any equivalent requirement;
- (j) the elimination of all requirements for the mandatory use of customs brokers, as well as transparent, non-discriminatory and proportionate rules for their licensing.

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

- (a) take further steps towards the simplification and standardisation of documentation and trade formalities to enable the rapid release and clearance of goods;
- (b) 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; such procedures shall be easily accessible to all enterprises;
- (c) ensure that integrity is maintained, through the application of measures reflecting the principles of the relevant international conventions and instruments.

ARTICLE 25

Facilitation of transit movements

1. The Parties shall ensure freedom of transit through their territories via the most convenient routes. Any restriction, control or requirement shall be non-discriminatory, proportionate and applied uniformly.

2. A Party may require that traffic in transit through its territory be entered at the proper customs house through designated routes. Should a Party require the use of such routes, it shall do it in full compliance with Article V(3) of GATT 1994.

3. Without prejudice to legitimate customs controls, a Party shall accord no less favourable treatment to goods in transit from the territory of the other Party than that accorded to domestic goods.
4. The Parties shall operate bonded transport regimes that allow the transit of goods without payment of customs duties or other charges having an equivalent effect, subject to the provision of an appropriate guarantee in accordance with regional and/or national customs legislation.
5. The Parties shall promote and implement regional transit arrangements.
6. The Parties shall promote coordination between all concerned agencies, both internally and across borders.
7. The legislation of the Parties shall draw upon international standards and instruments relevant to transit.

ARTICLE 26

Relations with the Business Community

The Parties agree to:

- (a) ensure that all legislation, procedures as well as fees and charges are made publicly available, as far as possible through electronic or any other appropriate means, and whenever possible provide necessary clarifications;

- (b) regularly consult in a timely manner with trade representatives on legislative proposals and procedures related to customs and trade issues;
- (c) introduce new legislation and procedures or amend them in a way that allows traders to become well prepared for complying with them;
- (d) 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;
- (e) foster cooperation between operators and relevant administrations via the use of non-arbitrary and publicly accessible procedures, such as memoranda of understanding, based upon those promulgated by the WCO;
- (f) ensure that their respective customs and related requirements and procedures continue to meet the needs of the trading community, follow best practices, and remain as little trade-restrictive as possible.

ARTICLE 27

Transitional Provisions

1. In view of the need to enhance the capacity of the EAC Partner State(s) in the area of customs and trade facilitation and without prejudice to their WTO commitments, the Parties agree that the EAC Partner State(s) shall benefit from a transition period of five (5) years from the date of entry into force of this Agreement to meet the obligations in Articles 23, 24 and 25.
2. That transition period can be further extended by authorisation of the EPA Council.

ARTICLE 28

Harmonisation of Customs Standards at Regional Level

The Parties acknowledge and recognise the importance of consolidating the harmonisation of customs standards and trade facilitation measures at regional level, including the initiation of reforms in the field of customs and trade facilitation where necessary.

ARTICLE 29

Special Committee on Customs and Trade Facilitation

1. The Parties hereby establish a Special Committee on Customs and Trade Facilitation, composed of their representatives, which shall:
 - (a) meet on a date and with an agenda agreed in advance by the Parties;
 - (b) be chaired alternately by each Party; and
 - (c) report to the EPA Council.

2. The functions of the Special Committee on Customs and Trade Facilitation shall include:
 - (a) monitoring the implementation and administration of this Title and of Article 9;
 - (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) any other issues agreed by the Parties in respect of this Title.

TITLE IV

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 30

Scope and Definitions

1. The provisions of this Title apply to measures covered by the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (the WTO SPS Agreement).
2. For the purpose of this Title, unless otherwise provided, the definitions of the WTO SPS Agreement, the Codex Alimentarius Commission, the World Animal Health Organisation and the International Plant Protection Convention shall apply.

ARTICLE 31

Objectives

The objectives in the area of application of sanitary and phytosanitary (SPS) measures are to:

- (a) facilitate the Parties' inter-regional and intra-regional trade, while safeguarding human, animal and plant life or health in accordance with the WTO SPS Agreement;
- (b) address problems arising from SPS measures on agreed priority sectors and products giving due consideration to regional integration;
- (c) establish procedures and modalities for facilitating cooperation in SPS matters;
- (d) ensure transparency as regards SPS measures applicable to trade between and within the Parties;
- (e) promote intra-regional harmonisation of measures with international standards, in accordance with the WTO SPS Agreement, and the development of appropriate policies, legislative, regulatory and institutional frameworks within the EAC Partner State(s);
- (f) enhance the effective participation of EAC Partner State(s) in the Codex Alimentarius Commission, World Animal Health Organisation and International Plant Protection Convention signed in Rome on 6 December 1951;

- (g) promote consultation and exchanges between the EAC Partner State(s) and EU institutions and laboratories;
- (h) facilitate the development of capacity for setting and implementing regional and national standards in accordance with international requirements in order to facilitate regional integration;
- (i) establish and enhance the capacity of EAC Partner State(s) to implement and monitor SPS measures pursuant to the provisions of Title VI of Part V; and
- (j) promote technology transfer.

ARTICLE 32

Rights and Obligations

1. The Parties reaffirm their rights and obligations under the international treaties and agreements relating to this Title to which they are party.
2. Each Party shall:
 - (a) have the sovereign right to implement SPS measures, provided that such measures are consistent with the provisions of the WTO SPS Agreement;

- (b) consult the other Party prior to the introduction of any new SPS measures, through the notification mechanisms provided for in the WTO SPS Agreement and, if and when appropriate, through the Parties' contact points;
- (c) support the other Party in gathering information needed to make informed decisions;
- (d) promote linkages, joint ventures, joint research and development between the EAC Partner State(s) and EU institutions and laboratories.

ARTICLE 33

Scientific Justification of Measures

Subject to the provisions of this Title, the Parties shall ensure that the introduction, alteration or modification of any SPS measure in their territories shall be based on scientific justifications and comply with the WTO SPS Agreement.

ARTICLE 34

Harmonisation

1. The Parties shall aim to achieve harmonisation of their respective rules and procedures for the formulation of their SPS measures, including inspection, testing and certification procedures, in accordance with the WTO SPS Agreement.

2. The Committee of Senior Officials shall develop modalities to assist and monitor this process of harmonisation.

ARTICLE 35

Equivalence

The Parties shall apply the principles of equivalence according to the provisions of the WTO SPS Agreement. For this purpose, each Party shall give reasonable access, upon request, to the other Party for inspection, testing and other relevant procedures.

ARTICLE 36

Zoning and Compartmentalisation

The Parties shall recognise, on a case-by-case basis, designated areas which are free from pests or diseases or areas of low pest or disease prevalence as potential sources of plant and animal products taking into account Article 6 of the WTO SPS Agreement.

ARTICLE 37

Notification, Enquiry and Transparency

1. The Parties shall be transparent in their 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 SPS import requirements that may affect trade falling under the scope of this Title. The Parties also undertake to establish mechanisms for the exchange of such information.

ARTICLE 38

Conformity Assessment

The Parties shall, for the purpose of ensuring compliance with SPS standards, agree on procedures for conformity assessment.

ARTICLE 39

Information Exchange and Transparency of Trade Conditions

Cooperation between the Parties under this Title shall include:

- (a) information sharing and consultation on changes to SPS measures which may affect products of export interest to either Party;
- (b) exchange of information on other areas of potential relevance to their trade relations, including rapid alerts, scientific opinions and events upon specific request;
- (c) advance notice to ensure that the EAC Partner State(s) are informed of new SPS measures that may affect the exports of the EAC Partner State(s) to the EU; this system shall build on existing mechanisms under WTO agreements, especially Article 7 of the WTO SPS Agreement;
- (d) promotion of transparency as regards the sampling, analysis and action following official controls on feed and food from either Party.

ARTICLE 40

Competent Authorities

1. The respective SPS authorities of the Parties shall be the competent authorities in the EAC Partner State(s) and the EU for the implementation of the measures referred to in this Title.
2. The competent authorities referred to in paragraph 1 shall have the roles conferred upon them under the WTO SPS Agreement.
3. The Parties shall notify each other of their respective competent authorities referred to in paragraph 1 and any changes thereto.

TITLE V

STANDARDS, TECHNICAL REGULATIONS AND CONFORMITY ASSESSMENT

ARTICLE 41

Scope and Definitions

1. The provisions of this Title shall apply to the preparation, adoption and application of technical regulations, standards and conformity assessment, as defined in the WTO Technical Barriers to Trade Agreement (TBT Agreement).
2. For the purposes of this Title the definitions of the TBT Agreement apply.

ARTICLE 42

Rights and Obligations

1. The Parties reaffirm their rights and obligations under the TBT Agreement, while taking account of their rights and commitments under other international arrangements to which both the EAC Partner State(s) and the EU are parties, including in particular those relating to the protection of the environment and biodiversity.

2. In accordance with the provisions of the TBT Agreement, the Parties shall ensure that technical regulations are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between them.

ARTICLE 43

Mutual Recognition Agreements

The Parties may negotiate mutual recognition agreements in sectors of mutual economic interest.

ARTICLE 44

Transparency and Notification

1. The Parties reaffirm their obligations concerning the notification and sharing of information about technical regulations, standards and conformity assessment procedures as provided for by the TBT Agreement.
2. The Parties shall exchange information on issues of potential relevance to their trade relations, including rapid alerts, scientific opinions and events through enquiry points.
3. The Parties may cooperate in the establishment and maintenance of enquiry points, and in the setting up and maintenance of common data bases.

ARTICLE 45

Harmonisation

The Parties shall endeavour to harmonise their standards, technical regulations and conformity assessment procedures.

ARTICLE 46

Conformity Assessment

1. The Parties reaffirm their commitments with regard to conformity assessment in accordance with the TBT Agreement.
2. The Parties may consider, taking account of the extent of alignment of their technical regulations, standards, and conformity assessment infrastructures, the negotiation of agreements on the mutual recognition of conformity assessment procedures.

ARTICLE 47

Technical Regulatory Bodies

1. The regulatory bodies of the EAC Partner State(s) shall be the competent authorities in the EAC Partner State(s) for the implementation of the measures referred to in this Title that have the responsibility and competence for ensuring or supervising the implementation of standardisation, metrology, accreditation and conformity assessment.
2. The body responsible in the EU for the implementation of this Title is the European Commission.
3. The EAC Partner State(s) shall notify the EU of their technical regulatory bodies in accordance with this Agreement.

TITLE VI

TRADE DEFENCE MEASURES

ARTICLE 48

Anti-Dumping and Countervailing Measures

1. Subject to this Article, nothing in this Agreement shall prevent the EU or the EAC Partner State(s), whether individually or collectively, from adopting anti-dumping or countervailing measures in accordance with the relevant WTO agreements. For the purpose of this Article, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.
2. Before imposing definitive anti-dumping or countervailing duties in respect of products imported from either Party, the Parties shall consider the possibility of constructive remedies as provided for in the relevant WTO agreements.
3. Where an anti-dumping or countervailing measure has been imposed by either Party, there shall be a single forum of judicial review, including at the stage of appeals.
4. Where anti-dumping or countervailing measures can be imposed on a regional basis and on a national basis, where applicable, the Parties shall ensure that such measures are not applied simultaneously in respect of the same product by regional authorities on the one hand, and national authorities on the other.

5. The importing Party shall notify the exporting Party of the receipt of a properly documented complaint before initiating any investigation.
6. This Article shall be applicable in all investigations initiated after this Agreement enters into force.
7. The WTO rules on dispute settlement shall apply to any disputes related to anti-dumping or countervailing measures.

ARTICLE 49

Multilateral Safeguards

1. Subject to this Article, nothing in this Agreement shall prevent the EAC Partner State(s) and the EU from adopting measures in accordance with Article XIX of the GATT 1994, the WTO Agreement on Safeguards, and Article 5 of the WTO Agreement on Agriculture. For the purposes of this Article, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.
2. Notwithstanding paragraph 1 of this Article, the EU shall, in light of the overall development objectives of this Agreement and the small size of the economies of the EAC Partner State(s), exclude imports from any EAC Partner State(s) from any measures taken pursuant to Article XIX of GATT 1994, the WTO Agreement on Safeguards and Article 5 of the WTO Agreement on Agriculture.

3. Paragraph 2 shall apply for a period of five (5) years, beginning with the date of entry into force of this Agreement. Not later than one hundred and twenty (120) days before the end of that period, the EPA Council shall review the operation of paragraph 2 in the light of the development needs of the EAC Partner State(s), with a view to determining whether to extend their application for a further period.

4. Paragraph 1 shall be subject to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

ARTICLE 50

Bilateral Safeguards

1. After having examined alternative solutions, a Party may apply safeguard measures of limited duration which derogate from Articles 10 and 11 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 where a product originating in one Party is being imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause:

(a) serious injury to the domestic industry producing like or directly competitive products in the territory of the importing Party;

(b) disturbances in a sector of the economy, particularly where those disturbances produce major social problems, or difficulties which could bring about a serious deterioration in the economic situation of the importing Party; or

(c) disturbances in the markets of like or directly competitive agricultural products¹ or in the mechanisms regulating those markets.

3. Safeguard measures referred to in this Article shall not exceed what is necessary to remedy or prevent the serious injury or disturbances, as defined in paragraphs 2 and 5(b). The safeguard measures of the importing Party may only consist of one or more of the following:

(a) the suspension of the further reduction of the rate of import duty for the product concerned, as provided for under this Agreement;

(b) an increase in the customs duty on the product concerned up to a level which does not exceed the customs duty applied to other WTO members; and

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

4. Without prejudice to paragraphs 1 to 3, where any product originating in the EAC Partner State(s) is being imported in such increased quantities and under such conditions as to cause or threaten to cause one of the situations referred to under paragraph 2 to one or several of the EU 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 9.

¹ For the purpose of this article, agricultural products are those covered by Annex I to the WTO Agreement on Agriculture.

5. (a) 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 to the EAC Partner State(s), the EAC Partner State(s) may take surveillance or safeguard measures limited to their territory in accordance with the procedures laid down in paragraphs 6 to 9.
 - (b) The EAC Partner State(s) may take safeguard measures, in accordance with the procedures laid down in paragraphs 6 to 9, where a product originating in the EU as a result of the reduction of duties is being imported into their territory in such increased quantities and under such conditions as to cause or threaten to cause disturbances to an infant industry producing like or directly competitive products. Such provision is only applicable for a period of ten (10) years from the date of entry into force of this Agreement. This period may be extended by the EPA Council for a period of a maximum of five (5) years.
6. (a) Safeguard measures referred to in this Article shall be maintained only for such a time as may be necessary to prevent or remedy serious injury or disturbances as defined in paragraphs 2, 4 and 5.
 - (b) Safeguard measures referred to in this Article shall not be applied for a period exceeding two (2) years. Where the circumstances warranting the imposition of safeguard measures continue to exist, such measures may be extended for a further period of no more than two (2) years. Where the EAC Partner State(s) apply a safeguard measure, or where the EU applies a safeguard measure limited to the territory of one or more of its outermost regions, such measure may nevertheless be applied for a period not exceeding four (4) years and, where the circumstances warranting the imposition of safeguard measures continue to exist, may be extended for a further period of four (4) years.

- (c) Safeguard measures referred to in this Article that exceed one (1) year shall contain clear elements progressively leading to their elimination by the end of the set period, at the latest.
- (d) No safeguard measure referred to in this Article shall be applied to the import of a product that has previously been subject to such a measure for a period of at least one (1) year since the expiry of the measure.

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

- (a) where a Party takes the view that one of the circumstances set out in paragraphs 2, 4 or 5 exists, it shall immediately refer the matter to the Committee of Senior Officials for examination;
- (b) the Committee of Senior Officials may make any recommendation needed to remedy the circumstances which have arisen; if no recommendation has been made by the Committee of Senior Officials aimed at remedying the circumstances, or no other satisfactory solution has been reached within thirty (30) days of the matter being referred to the Committee of Senior Officials, the importing Party may adopt the appropriate measures to remedy the circumstances in accordance with this Article;
- (c) before taking any measure provided for in this Article or, in the cases to which paragraph 8 of this Article applies, as soon as possible, the EAC Partner State(s) shall supply the Committee of Senior Officials with all relevant information required for a thorough examination of the situation, with a view to seeking a solution acceptable to the Parties concerned;

- (d) in the selection of safeguard measures pursuant to this Article, priority must be given to those which least disturb the operation of this Agreement;
- (e) any safeguard measure taken pursuant to this Article shall be notified in writing immediately to the Committee of Senior Officials and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their abolition as soon as circumstances permit.

8. Where exceptional circumstances require immediate action, the importing Party concerned may take the measures provided for in paragraph 3, 4 or 5 on a provisional basis without complying with the requirements of paragraph 7. Such action may be taken for a maximum period of one hundred and eighty (180) days where measures are taken by the EU, and of two hundred (200) days where measures are taken by the EAC Partner State(s) or where measures taken by the EU are limited to the territory of one or more of its outermost regions. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraph 6. In the taking of such provisional measures, the interest of all Parties involved shall be taken into account, including their level of development. The importing Party concerned shall inform the other Party and shall immediately refer the matter to the Committee of Senior Officials for examination.

9. If an importing Party subjects imports of a product to an administrative procedure having as its purpose the rapid provision of information on the trend of trade flows liable to give rise to the problems referred to in this Article, it shall inform the Committee of Senior Officials without delay.

10. The WTO Agreement shall not be invoked to preclude a Party from adopting safeguard measures in conformity with this Article.