

PART IX

GENERAL AND FINAL PROVISIONS

ARTICLE 131

Balance of Payments Difficulties

1. Where a Party is in serious balance of payments and external financial difficulties, or under threat thereof, it may adopt or maintain restrictive measures with regard to trade in goods.
2. The Parties shall endeavour to avoid the application of the restrictive measures referred to in paragraph 1.
3. Any restrictive measure adopted or maintained under this Article shall be non-discriminatory and of limited duration and shall not go beyond what is necessary to remedy the balance of payments and external financial situation. It shall be in accordance with the conditions established in the WTO agreements and consistent with the Articles of Agreement of the International Monetary Fund (IMF), as applicable.
4. A Party maintaining or having adopted restrictive measures, or any changes thereto, shall promptly notify them to the other Party and to the EPA Council and present as soon as possible, a time schedule for their removal.

5. Consultations shall be held promptly within the EPA Council, and such consultations shall assess the balance of payments situation of the concerned Party and the restrictions adopted or maintained under this Article, taking into account, *inter alia*, such factors as:

- (a) the nature and extent of the balance of payments and the external financial difficulties;
- (b) the external economic and trading environment;
- (c) alternative corrective measures which may be available.

6. The consultations shall address the compliance of any restrictive measures with paragraphs 3 and 4. All findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves and balance of payments shall be accepted, and conclusions shall be based on the assessment by the IMF of the balance of payments and the external financial situation of the concerned Party adopting or maintaining the measure.

ARTICLE 132

Definition of the Parties and Fulfilment of Obligations

1. The Contracting Parties to this Agreement are the Republic of Kenya and any other Contracting Parties to the Treaty for the Establishment of the East African Community that accede to this Agreement in accordance with Article 144 of this Agreement, herein referred to as the "EAC Partner State(s)", on the one part, and the European Union, herein referred to as the "EU", on the other part.

2. For the purposes of this Agreement, the term "Party" shall refer to the EAC Partner State(s) or the EU as the case may be. The term "Parties" shall refer to the EAC Partner State(s) and the EU.
3. The EAC Partner State(s) may mandate one of their representatives to act on their behalf on all matters under this Agreement.
4. The Parties shall adopt any general or specific measures required from them to fulfil their obligations under this Agreement and shall ensure that they comply with the objectives laid down in this Agreement.

ARTICLE 133

Contact Points

1. In order to facilitate communication relating to the effective implementation of this Agreement, the Parties shall each designate a contact point for the exchange of information upon the date of entry into force of this Agreement. The designation of contact points 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 the contact points for exchange of information, each 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. Each Party, as the case may be, shall, at the request of the other Party, and to the extent legally possible, provide information and reply promptly to any question from the other Party relating to an actual or proposed measure that might affect trade between the Parties.

ARTICLE 134

Transparency and Confidentiality

1. Each Party shall ensure that any laws, regulations, procedures and administrative rulings of general application as well as any international commitments relating to any trade matter covered by this Agreement are promptly published or made publicly available and 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 provided when the information has been made available to the governments of the EAC Partner State(s) and the European Commission or to the WTO or on the official websites of the Parties that shall be publicly accessible without a fee.

3. Nothing in this Agreement shall require a 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 Part VII. Where such disclosure is considered necessary by a panel established under Article 113 the panel shall ensure that confidentiality is fully protected.

ARTICLE 135

Outermost Regions of the European Union

1. Taking account of the geographical proximity of certain outermost regions of the EU and the EAC Partner State(s) and in order to reinforce economic and social links between those regions and the EAC Partner State(s), the Parties shall endeavour to facilitate cooperation in all areas covered by this Agreement between those outermost regions of the EU and the EAC Partner State(s).
2. The objectives enunciated in paragraph 1 shall also be pursued, wherever possible, through fostering the joint participation of the EAC Partner State(s) and those 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 EAC Partner State(s) and those 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 Treaty on the Functioning of the European Union.

ARTICLE 136

Relations with other Agreements

1. With the exception of development cooperation provisions contained in Title II of Part 3 of the Cotonou Agreement or the corresponding provisions of its successor 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 or the corresponding provisions of its successor agreement, the provisions of this Agreement shall prevail.
2. In case of any inconsistency between the provisions of Part V of this Agreement and the Cotonou Agreement or its successor agreement, the provisions of the Cotonou Agreement or the corresponding provisions of its successor agreement shall prevail.
3. Nothing in this Agreement shall be construed so as to prevent the adoption by either Party of any appropriate measures consistent with this Agreement and pursuant to the Cotonou Agreement or the corresponding provisions of its successor agreement.

ARTICLE 137

Relation with the WTO Agreements

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

ARTICLE 138

Notifications

Notifications required under this Agreement shall be made in writing and sent to the governments of the EAC Partner State(s) or to the European Commission as the case may be.

ARTICLE 139

Entry into Force

1. This Agreement shall be signed and 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 on the first day of the second month following that in which the Parties have notified each other of the completion of the internal legal procedures referred to in paragraph 1.
3. Notifications of the entry into force of this Agreement shall be sent, in the case of the EAC Partner State(s) to the relevant depositaries of this Agreement in the EAC Partner State(s), and in the case of the EU to the Secretary-General of the Council of the European Union, who shall be joint depositaries of this Agreement. Each depositary shall notify the other depositary upon receipt of the last instrument of ratification indicating the completion of their internal legal procedures for the purpose of the entry into force of this Agreement.

ARTICLE 140

Denunciation

1. Each EAC Partner State or the EU may give written notice to the other Party of its intention to denounce this Agreement.
2. Denunciation shall take effect one year after notification to the other Party.

ARTICLE 141

Territorial application

This Agreement shall apply, on the one hand, to the territories in which the Treaty on the European Union and the Treaty on the Functioning of the European Union are applied and, on the other hand, to the territories of the EAC Partner State(s). References to "territory" in this Agreement shall be understood in that sense.

ARTICLE 142

Review Clause

1. This Agreement shall be reviewed after every five (5) years from the date of its entry into force.
2. As regards the implementation of this Agreement, a Party may make suggestions oriented towards adjusting trade-related cooperation, taking into account the experience acquired during the implementation of this Agreement.
3. Notwithstanding paragraph 1, the Parties agree that this Agreement may be reviewed in light of the expiration of the Cotonou Agreement or of its successor agreement.

ARTICLE 143

Amendment Clause

1. The Parties may agree, in writing, to amend this Agreement. A Party may submit proposals for the amendment of this Agreement to the EPA Council for consideration. The other Party may comment on the proposals for amendment within ninety (90) days from the date of receipt of the proposal.

2. Should the EPA Council adopt amendments to this Agreement, such amendments shall be submitted to the Parties for ratification, acceptance or approval in accordance with their respective constitutional or internal legal requirements.
3. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, on such date as the Parties may agree.

ARTICLE 144

Accession of Contracting Parties to the Treaty for the Establishment of the East African Community

1. This Agreement shall be open to accession by any State that is a contracting party to the Treaty for the Establishment of the East African Community. A request for accession shall be submitted to the EPA Council.
2. The Parties shall review the effects of the accession of the State(s) referred to in paragraph 1 on this Agreement. The EPA Council may decide on any transitional or amending measures that might be necessary.

ARTICLE 145

Accession of new Members to the European Union

1. The EU shall notify the EAC Partner State(s) of any request for accession of a third country to the EU.
2. During the negotiations between the EU and the third country referred to in paragraph 1, the EU shall endeavour to:
 - (a) provide, upon request of the EAC Partner State(s), and to the extent possible, information regarding any matter covered by this Agreement; and
 - (b) take into account concerns expressed by the EAC Partner State(s).
3. The EU shall notify the EAC Partner State(s) of the entry into force of any treaty concerning the accession of a third country to the EU.
4. The EPA Council shall examine, sufficiently in advance of the date of accession of a third country to the EU, any effects which that accession may have on this Agreement. The Parties may, by decision of the EPA Council, put in place any necessary adjustments of this Agreement or transitional arrangements.

ARTICLE 146

Authentic texts

1. 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.
2. The Irish language version shall be authenticated by an exchange of diplomatic notes between the European Union and the Republic of Kenya after the signature and before the entry into force of this Agreement.