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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 16 December 2008

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Interim agreement establishing a framework for an Economic Partnership Agreement between Eastern and Southern Africa States on the one part and the European Community and its Member States on the other part

- Interim Agreement establishing a framework for an Economic Partnership Agreement
- Annex 1

Delegations will find attached Commission document COM(2008) 861 final - Annex 1.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.12.2008
COM(2008) 861 final

ANNEX I

**INTERIM AGREEMENT ESTABLISHING A FRAMEWORK FOR AN ECONOMIC
PARTNERSHIP AGREEMENT**

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AGREEMENT ESTABLISHING A FRAMEWORK FOR AN ECONOMIC PARTNERSHIP

AGREEMENT

BETWEEN

THE EASTERN AND SOUTHERN AFRICA STATES

ON ONE PART

AND

THE EUROPEAN COMMUNITY AND ITS MEMBER STATES

ON THE OTHER PART

UNION OF COMOROS

MADAGASCAR

THE REPUBLIC OF MAURITIUS

THE REPUBLIC OF SEYCHELLES

THE REPUBLIC OF ZAMBIA

THE REPUBLIC OF ZIMBABWE

Hereinafter referred to as the “ESA States”

On the one Part and

THE KINGDOM OF BELGIUM,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,
THE FRENCH REPUBLIC,
IRELAND,
THE ITALIAN REPUBLIC,
THE REPUBLIC OF CYPRUS,
THE REPUBLIC OF LATVIA,
THE REPUBLIC OF LITHUANIA,
THE GRAND DUCHY OF LUXEMBOURG,
THE REPUBLIC OF HUNGARY,
THE REPUBLIC OF MALTA,
THE KINGDOM OF THE NETHERLANDS,
THE REPUBLIC OF AUSTRIA,
THE REPUBLIC OF POLAND,
THE PORTUGUESE REPUBLIC,
THE REPUBLIC OF SLOVENIA,
THE SLOVAK REPUBLIC,
THE REPUBLIC OF FINLAND,
THE KINGDOM OF SWEDEN,
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,
THE REPUBLIC OF BULGARIA,
ROMANIA
and
THE EUROPEAN COMMUNITY, on the other part

PREAMBLE

WE the African, Caribbean and Pacific (ACP) States of the Eastern and Southern African (ESA) region, constituted as the ESA Group and its individual member States, on the one hand, and the European Community (EC) and its Member States, on the other;

HAVING REGARD TO the Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the one part, and the EC and its Member States of the other part signed on 23 June 2000 (hereinafter referred to as the Cotonou Agreement), the Common Market for Eastern and Southern Africa (COMESA) Treaty signed on 5 November 1993, the Southern Africa Development Community (SADC) Treaty signed on 17 August 1992 and its Protocol on Trade, the East African Community (EAC) Treaty signed on 30 November 1999, and the African Union Constitutive Act signed and adopted on 11 July 2002;

HAVING REGARD TO the Treaty Establishing the European Community;

HAVING ALSO REGARD TO the decision of the eighth Summit of the COMESA Authority of Heads of State and Government held in Khartoum, Sudan on 17 March 2003 on the establishment of the ESA configuration for the purpose of negotiation of an Economic Partnership Agreement (EPA) with the European Union (EU);

CONSIDERING that the ESA States and the EC and its Member States have agreed that their trade and economic cooperation shall aim at fostering the smooth and gradual integration of the ESA States into the world economy with due regard to their political choices, levels of development and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ESA States;

REAFFIRMING their commitment to promote and expedite the economic, cultural and social development of the ESA States with a view to contributing to peace and security and to promoting a stable and democratic political environment conducive for sustainable national and regional development;

REAFFIRMING also that the EPA shall be consistent with the objectives and principles of the Cotonou Agreement and, in particular, with the provisions of Part III, Title II thereof;

REAFFIRMING that the EPA shall serve as an instrument for development and shall promote sustained growth, increase the production and supply-side capacity of ESA States, foster structural transformation of ESA economies and their diversification and competitiveness and lead to the development of trade, the attraction of investment and technology and the creation of employment in ESA States;

RECALLING the commitments of the international community on the achievements of the Millennium Development Goals as contained in the UN Declaration of September 2000;

REAFFIRMING that advancing the development agenda requires genuine international cooperation and the full implementation of agreed commitments made at Conferences of Rio, Beijing, Copenhagen, Cairo and Monterrey, as well as in the Programmes of Action in favour of Least Developed Countries (LDCs), Landlocked Developing Countries (LLDCs) and Small Island Developing States (SIDS) respectively;

BEARING in mind the rights and obligations of the Members of the World Trade Organization (WTO), the importance they attach to the principles and rules governing international trade and the need for a transparent, predictable, open and fair multilateral trading system;

REITERATING the need to ensure that particular emphasis be placed on regional integration and the provision of special and differential treatment to all ESA States, maintain special treatment for least developed ESA States, and take due account of the vulnerability of small economies, landlocked, island, coastal, drought prone and ESA States emerging from conflict;

COGNISANT that substantial investments are required to uplift the standards of living of ESA States;

RECALLING the commitments of the Parties within the framework of the WTO;

HAVE AGREED AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

OBJECTIVES

Article 1

Scope of the Interim Agreement

This Interim Agreement establishes a framework for an Economic Partnership Agreement (EPA).

Article 2

General EPA objectives

The objectives of the Economic Partnership Agreement are:

- (a) Contributing to the reduction and eventual eradication of poverty through the establishment of a strengthened and strategic trade and development partnership consistent with the objective of sustainable development, the Millennium Development Goals and the Cotonou Agreement;
- (b) Promoting regional integration, economic cooperation and good governance in the ESA region;
- (c) Promoting the gradual integration of the ESA region into the world economy, in conformity with its political choices and development priorities;
- (d) Fostering the structural adjustment of the ESA economies and diversification including value addition;
- (e) Improving the ESA region's capacity in trade policy and trade related issues;
- (f) Establishing and implementing an effective, predictable and transparent regional regulatory framework for trade and investment in the ESA region, thus supporting the conditions for increasing investment and private sector initiative and enhancing supply capacity, competitiveness and economic growth; and
- (g) Strengthening the existing relations between the Parties on the basis of solidarity and mutual interest. To this end, consistent with WTO obligations, the Agreement shall enhance commercial and economic relations, 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 and investment.

Article 3

Specific objectives of this Agreement

1. Consistent with Articles 34 and 35 of the Cotonou Agreement, the objectives of this Agreement are:
 - (a) to establish an agreement consistent with Article XXIV of General Agreement on Tariffs and Trade 1994 ("GATT 1994");
 - (b) to establish the framework, scope and principles for further negotiations on trade in goods including, rules of origin, trade defense instruments, customs cooperation and trade facilitation, sanitary and phytosanitary measures, technical barriers to trade, and agriculture, on the basis of the proposals already submitted; and
 - (c) to establish a framework and scope of potential negotiation in relation to other issues including trade in services, trade related issues as identified in the Cotonou Agreement and any other areas of interest to both Parties.
2. The Parties undertake to complete negotiations with a view to concluding a comprehensive EPA, no later than 31 December 2008, including on subject matters listed in paragraphs b) and c) according to the Agreed Joint Road Map adopted by the Parties on 7 February 2004.

Article 4

Principles

The principles of this Agreement on the basis of which further negotiations between the Parties shall be held with a view to reaching a comprehensive EPA are the following:

- (a) building on the acquis of the Cotonou Agreement;
- (b) strengthening regional integration in the ESA region;
- (c) asymmetry in the liberalisation of trade and in the application of trade related measures and trade defence instruments;
- (d) special and differential treatment for the ESA LDCs and taking into account the vulnerability of small landlocked and island countries, including in the level and pace of trade liberalisation;
- (e) variable geometry to allow an ESA State in a position to do so to undertake liberalisation within an earlier timeframe and schedule;
- (f) inclusiveness of application of development cooperation provisions such that ESA LDCs not in a position to conclude a tariff offer should be able to benefit from all aspects of this Agreement in particular economic and development cooperation in this Interim Agreement;
- (g) allowing ESA LDCs that have not yet submitted tariff reduction offers to do so after signature of this Interim Agreement on the same or flexible conditions and to benefit fully from its provisions;
- (h) allowing ESA States to maintain regional preferences among themselves and with other African countries and regions without the obligation to extend them to the EC.

CHAPTER II TRADE REGIME FOR GOODS

TITLE I GENERAL PROVISIONS

Article 5

Objectives

The objectives of cooperation in the area of trade are:

- (a) the provision of full duty free and quota free market access conditions for goods originating in the ESA States into the market of the EC Party on a secure, long term and predictable basis;
- (b) the promotion of trade between the Parties and the acceleration of export led growth to enable the integration of ESA countries into the global economy;
- (c) the progressive and gradual liberalisation of the goods market in ESA in accordance with the modalities established in this Agreement; and
- (d) the preservation and improvement of market access conditions to ensure that all ESA Member States are better and not worse off.

Article 6

Scope of application

1. Only the Signatory ESA States listed in Annex II shall take commitments under this Chapter.
2. The EC Party's commitments under this Chapter shall only be applicable to goods originating in the Signatory ESA States listed in Annex II.
3. For the purposes of this Chapter and for decisions adopted under this Chapter any reference to the Signatory ESA States or to goods originating in the ESA Signatory States shall extend only to the Signatory ESA States listed in Annex II.
4. When a Signatory ESA State not listed in Annex II wants to join Chapter II, it shall notify its intention to the EPA Committee. The EPA Committee is competent to amend Annex II.
5. The EPA Committee may decide on any transitional measures or amendments that might be necessary in order to facilitate the addition of such Signatory ESA States to Annex II.

TITLE II FREE MOVEMENT OF GOODS

Article 7

Customs duty

For the purposes of elimination of customs duties on imports, 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 in connection with such importation, but does not include:

- (a) charges equivalent to internal taxes levied on both imported and locally produced goods consistent with the provisions of Article 18;
- (b) anti-dumping or countervailing duties applied in accordance with the provisions of Article 19, and safeguard measures applied in accordance with Article 21; and
- (c) fees or other charges levied in accordance with the provisions of Article 10.

Article 8

Classification of goods

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 Harmonised Commodity Description and Coding System ("HS"). The Signatory ESA States will use the COMESA nomenclature.

Article 9

Basic Duty

For each product, the basic customs duty to which the successive reductions are to be applied shall be that specified in each Party's Tariff Schedules.

Article 10

Fees and other charges

Fees and other charges referred to in Article 7(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. They shall be based on specific rates. Trade related fees and charges shall not be imposed for consular services.

Article 11

Customs duties on products originating in the ESA States

Products originating in the ESA States shall be imported into the EC Party free of customs duties under the conditions defined in Annex I.

Article 12

Customs duties on products originating in the EC Party

1. Customs duties on imports of products originating in the EC Party shall be reduced or eliminated in accordance with the schedules of tariff liberalisation in Annex II, which shall contain the schedules of each Signatory ESA State or group of Signatory ESA States.
2. The Parties may review the schedules of tariff liberalisation in Annex II with a view to harmonising them taking into account regional integration processes.
3. Any new schedule of tariff liberalisation for customs duties on imports of products originating in the EC Party submitted after the ratification process of this Agreement has commenced may be annexed to this Agreement in Annex II by decision of the EPA Committee.

Article 13

Rules of origin

For the purposes of this Chapter, "originating" means qualifying under the rules of origin set out in Protocol 1 to this Agreement. For the purposes of the comprehensive EPA, and during the period between the entry into force of this agreement and the entry into force of the comprehensive EPA, the Parties shall review the provisions of this Protocol with a view to their further simplification. In such review the Parties shall take into account the development needs of the ESA States and development of technologies, production processes and all other factors, including on-going reforms of rules of origin, which may require modifications to the provisions of this Protocol. Any such modifications shall be effected by a decision of the EPA Committee.

Article 14

Standstill

Subject to Article 12, the Parties agree not to increase their applied customs duties on products imported from the other Party.

Article 15

Duties, taxes on exports

1. Except as otherwise provided in Annex III and for the duration of this Agreement, the Parties shall not institute any new duties or taxes on or in connection with the exportation of goods to the other Party in excess of those imposed on like products destined for internal sale
2. The EPA Committee may examine a request from any Signatory ESA State for a review of the goods listed in Annex III.

Article 16

More favourable treatment resulting from free trade agreements

1. With respect to the subject matter covered by this Chapter, the EC Party shall accord to the Signatory ESA States any more favourable treatment applicable as a result of the EC Party becoming party to a free trade agreement with third parties after the signature of this Agreement.
2. With respect to the subject matter covered by this Chapter, the Signatory ESA States shall accord to the EC Party any more favourable treatment applicable as a result of the Signatory ESA States becoming party to a free trade agreement with any major trading country after the signature of this Agreement.
3. The provisions of this Chapter 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 third parties on the date of signature of this Agreement.
4. The provisions of paragraph 2 shall not apply in respect of trade agreements between Signatory ESA States with other African countries and regions.
5. For the purposes of this Article, 'free trade agreement' means an agreement substantially liberalising trade and providing for the absence or elimination of substantially all discrimination between or among parties thereto through the elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures, either at the entry into force of that agreement or on the basis of a reasonable time frame.
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 percent in the year before the entry into force of the free trade agreement referred to in paragraph 2, 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 paragraph 2¹

TITLE III NON-TARIFF MEASURES

Article 17

Prohibition of quantitative restrictions

Except as otherwise specified in Annexes I and II of this Agreement, all prohibitions or restrictions in trade on the importation, exportation or sale for export between the Parties, other than customs duties, taxes, fees and other charges provided for under Article 7, whether made effective through quotas, import or export licenses or other measures, shall be eliminated upon the entry into force of this Agreement. No new such measures shall be introduced.

Article 18

National treatment on internal taxation and regulation

¹ For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used.

1. Imported products originating in the other 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 national products. Moreover, the Parties shall not otherwise apply internal taxes or other internal charges so as to afford protection to national production.
2. Imported products originating in the other Party shall be accorded treatment no less favourable than that accorded to like national products 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.
3. No 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, no Party shall otherwise apply internal quantitative regulations so as to afford protection to national production.
4. The provisions of 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 the provisions of this Article and subsidies effected through governmental purchases of national products.
5. The provisions of this Article shall not apply to laws, regulations, procedures or practices governing public procurement.
6. The EPA Committee may decide to authorise a Signatory ESA State to depart from the provisions of this Article to promote the establishment of domestic production and protect infant industry. In this respect the development needs of Signatory ESA States and, in particular, the special needs and concerns of ESA LDCs will be taken into account.
7. A list of provisional derogations is attached as Annex III. Such derogations are granted to the interested Signatory ESA States for the periods of time which are set out in the same Annex.

TITLE IV TRADE DEFENCE MEASURES

Article 19

Anti-dumping and countervailing measures

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the EC Party or Signatory ESA States, 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 ESA States, the EC Party shall consider the possibility of constructive remedies as provided for in the relevant WTO agreements.
3. Where anti-dumping or countervailing measures have been imposed on behalf of two or more Signatory ESA States by a regional authority, there shall be one single forum of judicial review, including at the stage of appeals.
4. Where anti-dumping or countervailing measures can be imposed on a regional or sub-regional basis and on a national basis the Parties shall ensure that such measures are not applied simultaneously in respect of the same product by regional or sub-regional authorities on the one hand, and national authorities on the other.
5. The EC Party shall notify the exporting Signatory ESA States of the receipt of a properly documented complaint before initiating any investigation.
6. The provisions of this Article shall be applicable in all investigations initiated after this Agreement enters into force.
7. The provisions of this Article shall not be subject to the Dispute Settlement provisions of this Agreement.

Article 20

Multilateral safeguards

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the Signatory ESA States and the EC Party from adopting measures in accordance with Article XIX of GATT 1994, the WTO Agreement on Safeguards, and Article 5 of the Agreement on Agriculture. For the purpose of this Article, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.
2. Notwithstanding paragraph 1, the EC Party shall, in the light of the overall development objectives of this Agreement and the small size of the economies of the ESA States, exclude imports from any ESA State from any measures taken pursuant to Article XIX of the GATT 1994, the WTO Agreement on Safeguards and Article 5 of the Agreement on Agriculture.
3. The provisions of paragraph 2 shall apply for a period of five years, beginning with the date of entry into force of this Agreement. Not later than 120 days before the end of this period, the EPA Committee shall review the operation of those provisions in the light of the development needs of the ESA States, with a view to determining whether to extend their application for a further period.
4. The provisions of paragraph 1 shall not be subject to the Dispute Settlement provisions of this Agreement.

Article 21

Bilateral safeguards

1. After having examined alternative solutions, a Party may apply safeguard measures of limited duration which derogate from the provisions of Articles 11, 12 and 17, 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, or;
 - (b) disturbances in a sector of the economy, 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;
 - (c) disturbances in the markets of agricultural like or directly competitive products² or 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 paragraph 2 and 5(b). Those safeguard measures of the importing Party may only consist 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,
 - (b) 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) introduction of tariff quotas on the product concerned.
4. Without prejudice to paragraphs 1, 2 and 3, where any product originating in one or more Signatory ESA States or subgroups 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 EC Party's outermost regions, the EC Party 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.
5.
 - (a) Without prejudice to paragraphs 1, 2 and 3, where any product originating in the EC Party 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 a Signatory ESA State, the Signatory ESA State concerned may take surveillance or safeguard measures limited to its territory in accordance with the procedures laid down in paragraphs 6 to 9.
 - (b) A Signatory ESA State may take safeguard measures where a product originating in the EC Party as a result of the reduction of duties is being imported into its territory in such increased quantities and under such conditions as to cause or threaten to

² For the purpose of this article agricultural products are those covered by Annex I of the WTO Agreement on Agriculture

cause disturbances to an infant industry producing like or directly competitive products. Such provision is only applicable for a period of ten years for non LDCs and fifteen years for LDCs from the date of entry into force of this Agreement. Measures must be taken in accordance with the procedures laid down in paragraphs 6 to 9.

6.

- (a) Safeguard measures referred to in this Article 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) Safeguard measures referred to in this Article shall not be applied for a period exceeding two 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 years. Where the Signatory ESA States or a Signatory ESA State apply a safeguard measure, or where the EC Party applies a measure limited to the territory of one or more of its outermost regions, such measure may however be applied for a period not exceeding four years and, where the circumstances warranting imposition of safeguard measures continue to exist, extended for a further period of four years.
- (c) Safeguard measures referred to in this Article that exceed one year shall contain clear elements progressively leading to their elimination at the end of the set period, at the latest.
- (d) No safeguard measure referred to in this Article shall be applied to the imports of a product that has previously been subject to such a measure, for a period of at least one year since the expiry of the measure.

7. For the implementation of the above paragraphs, the following provisions shall apply:

- (a) Where a Party takes the view that one of the circumstances set out in paragraphs 2, 4 and/or 5 exists, it shall immediately refer the matter to the EPA Committee for examination;
- (b) The EPA Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the EPA Committee aimed at remedying the circumstances, or no other satisfactory solution has been reached within 30 days of the matter being referred to the EPA 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 of this Article applies, as soon as possible, the EC Party or the Signatory ESA State concerned shall supply the EPA 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;

- (e) Any safeguard measure taken pursuant to this Article shall be notified immediately to the EPA 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 exceptional circumstances require immediate action, the importing Party concerned, whether the EC Party, the ESA States or a Signatory ESA State as the case may be, may take the measures provided for in paragraph 3, 4 and/or 5 on a provisional basis without complying with the requirements of paragraph 7. Such action may be taken for a maximum period of 180 days where measures are taken by the EC Party and 200 days where measures are taken by the ESA States or a Signatory ESA State, or where measures taken by the EC Party 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. The importing Party concerned shall inform the other Party concerned and shall immediately refer the matter to the EPA Committee 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 EPA Committee without delay.
10. The WTO Agreement shall not be invoked to preclude a Party from adopting safeguard measures in conformity with this Article.

TITLE V ADMINISTRATIVE PROVISIONS

Article 22

Special provision on administrative cooperation

1. The Parties agree that administrative cooperation is essential for the implementation and control of the preferential treatment granted under this Chapter 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 purpose of this Article, a failure to provide administrative cooperation shall mean, *inter alia*:
 - (a) a repeated failure to respect the obligations 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;
 - (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. For the purpose of this Article 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 EPA Committee of its finding together with the objective information and enter into consultations within the EPA Committee, 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 EPA Committee as above and have failed to agree on an acceptable solution within 3 months following the notification, the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned. A temporary suspension shall be notified to the EPA Committee without undue delay.

- c) Temporary suspensions under this Article shall be limited to that necessary to protect the financial interests of the Party concerned. They shall not exceed a period of six months, which may be renewed. Temporary suspensions shall be notified immediately after their adoption to the EPA Committee. They shall be subject to periodic consultations within the EPA Committee in particular with a view to their termination as soon as the conditions for their application are no longer given.
6. At the same time as the notification to the EPA Committee under paragraph 5 a) of this Article, the Party concerned 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 23

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 provisions of Protocol I concerning the definition of the concept of "originating products" and methods of administrative cooperation, where this error leads to consequences in terms of import duties, the Party facing such consequences may request the EPA Committee to examine the possibilities of adopting all appropriate measures with a view to resolving the situation.

Article 24

Custom 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 reciprocal trade between the Parties.
2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

CHAPTER III FISHERIES

TITLE I GENERAL PROVISIONS

Article 25

1. The Parties recognise that fisheries constitute a key economic resource of the ESA region, contribute significantly to the economies of the Signatory ESA States and have great potential for future regional economic development and poverty reduction. It is also an important source of food and foreign exchange.
2. The Parties further recognise that fisheries resources are also of considerable interest to both the EC Party and the Signatory ESA States, and agree to cooperate for the sustainable development and management of the fisheries sector in their mutual interests taking into account the economic, environmental and social impacts.
3. The Parties agree that the appropriate strategy to promote the economic growth of the fisheries sector and to enhance its contribution to the ESA economy, while taking into consideration its long term sustainability, is through increasing value adding activities within the sector.

Article 26

Objectives

The objectives of cooperation in fisheries are to:

- a) promote sustainable development and management of fisheries;
- b) promote and develop regional and international trade based on best practices;
- c) create an enabling environment, including infrastructure and capacity building, for the ESA States to cope with the stringent market requirements for both industrial and small scale fisheries;
- d) support national and regional policies aimed at increasing productivity and competitiveness of the fisheries sector;
- e) build links with other economic sectors.

Article 27

Scope

Cooperation in fisheries trade and development shall cover marine, inland fisheries and aquaculture.

Article 28

Principles

1. The principles of cooperation in fisheries include:
 - a) support for the development and strengthening of regional integration,
 - b) preservation of the *acquis* of the Cotonou Agreement;
 - c) provision of special and differential treatment;
 - d) the need to take into account the best available scientific information for resource assessment and management;
 - e) functioning monitoring system of the environmental, economic and social impacts in Partner Countries;
 - f) conformity with existing national laws and relevant international instruments including United Nations Convention on the Law Of the Sea (UNCLOS), regional and sub-regional agreements; and
 - g) preservation and priority of particular needs of the artisanal/subsistence fishery.
2. These guiding principles should contribute to sustainable and responsible development of the living inland and marine resources, aquaculture, and to optimising the benefits of this sector for present and future generations, through increased investment, capacity building and improved market access.

Article 29

Preferential access

The Parties shall cooperate to ensure that financial and other support will be provided to improve the competitiveness and production capacity of the processing factories, the diversification of the fishing industry and the improvement of port facilities.

TITLE II MARINE FISHERIES

Article 30

Scope

The scope of this Title is the utilisation, conservation and management of marine fisheries resources to optimise the benefits from fisheries for the ESA region through investment capacity building and improved market access.

Article 31

Objectives

The objectives of cooperation are to:

- a) Strengthen cooperation in order to ensure the sustainable exploitation and management of fisheries resources as a strong basis for regional integration, given the straddling and migratory species which are shared among island and coastal States and as, no individual ESA State has the capacity to ensure sustainability of the resource;
- b) Ensure a more equitable share of the benefits derived from the fisheries sector;
- c) Ensure effective monitoring control and surveillance (MCS) necessary for combating illegal, unreported & unregulated (IUU) fishing; and
- d) Promote effective exploitation, conservation and management of the living marine resources in the exclusive economic zone (EEZ) and waters in which ESA States have jurisdiction based on international instruments, including UNCLOS, for the mutual social and economic benefit of the ESA States and the EC Party.

Article 32

Areas of cooperation

1. To achieve the objectives of cooperation in fisheries within the described principles, cooperation will include fisheries management and conservation issues, vessel management and post harvest arrangements and financial and trade measures and development of fisheries and fishery products and marine aquaculture.
2. The EC Party will contribute to the mobilisation of the resources for the implementation of the identified areas of cooperation at national and regional levels, which will also include support for regional capacity building. Furthermore, the EC Party shall contribute to the measures as described in the section concerning financial and trade measures, and on infrastructure development specific for fisheries and marine aquaculture.
 - a) Fisheries Management and Conservation Issues

1. The precautionary approach shall be applied in determining levels of sustainable catch, fishing capacity and other management strategies to avoid or reverse undesirable outcomes such as over-capacity and over-fishing, as well as undesirable impacts on the ecosystems and artisanal fisheries.
2. Each ESA State may take appropriate measures, including seasonal and gear restrictions in order to further protect its territorial waters and ensure the sustainability of the artisanal and coastal fishery.
3. The Parties will promote the membership of all the concerned States to the Indian Ocean Tuna Commission (IOTC) and other relevant fisheries organisations. These countries, with the EC Party, should co-ordinate action to ensure the management and conservation of all fish species, including tuna and tuna-like resources and facilitate relevant scientific research.
4. Where there is insufficient scientific evidence for the competent national management authority to determine limits and target levels of sustainable catch in an ESA EEZ, both Parties in consultation with the competent national authority and together with IOTC and where relevant, other regional fisheries organisations, shall support such scientific analysis.
5. The Parties agree to take appropriate measures where an increase in effort results in catch levels above the target sustainable level established by the competent national authority.
6. In order to conserve and manage straddling stocks and highly migratory fish stocks, the EC Party and the ESA coastal and island States shall ensure compliance by vessels flying their flags with relevant national, regional and sub- regional fisheries management measures and related national laws and regulations.

b) Vessel Management and Post Harvest Arrangements

1. Vessel Management and post harvest arrangements emerging from IOTC and any other relevant regional fisheries organisations will be observed. ESA States and the EC Party shall set out minimum terms and conditions with respect to MCS of EC Party fishing vessels operating in the waters of ESA States, which should include the following:
 - (i) A Vessel Monitoring System (VMS) will be set up for all ESA coastal and island States, and all ESA States will use a compatible VMS. Those ESA States which do not have a VMS will be assisted by the EC Party to set up a compatible VMS.
 - (ii) In addition to a compulsory compatible VMS system, all ESA coastal and island states, in conjunction with the EC Party, will develop other mechanisms to ensure effective MCS and the EC Party will support ESA states to put such an agreed system in place and assist in implementation.
 - (iii) The Parties shall have the right to place observers, whether in national or international waters, with the procedures concerning the deployment of observers being well stipulated. Observers are to be paid by the national governments but all costs on board are to be met by the ship-owner. The EC Party will support the costs of training observers.

- (iv) Common systems of reporting of fishing will be developed and be used throughout the region, with minimum terms set for reporting.
- (v) All vessels that land or tranship their catches within the ESA Coastal or Island State shall do it in ports or outer-port areas. No transhipment shall be allowed at sea, except on particular conditions foreseen by the relevant Regional Fisheries Management Organisations (RFMO). Both Parties shall cooperate to modernise landing or transhipment infrastructure in ports of ESA countries, including development capacity of fish products.
- (vi) All vessels should endeavour to use the facilities of the ESA countries and undertake to make use of local supplies.
- (vii) Discards reporting shall be compulsory. Priority should be given to avoid discards through the use of selective fishing methods in line with the principles of the IOTC and relevant regional fisheries organisations. As far as possible, by-catch shall be brought ashore.

2. The Parties agree to cooperate in developing and implementing national/regional training programmes for ESA nationals in order to facilitate their effective participation in the fishing industry. Where the EC Party has negotiated bilateral fisheries agreements, employment of ACP nationals shall be encouraged. The International Labour Organisation (ILO) Declaration on fundamental principles and rights at work shall apply as of right to seamen signed on Community vessels.

3. Both Parties shall undertake coordinated efforts to improve the means for preventing, deterring, and eliminating IUU fishing and to this end take appropriate measures. Fishing vessels involved in IUU fishing should be prosecuted and should not be allowed to fish again in ESA waters, unless prior authorisation has been obtained from both the flag State and the concerned ESA States as well as, where relevant, the concerned RFMO.

c) Financial and Trade Measures and Development issues

The Parties undertake to cooperate in promoting the setting up of joint ventures in fishing operations, fish processing and port services; to enhance production capacity ; to improve competitiveness of fishing and related industries and services, to downstream processing, development and improvement of port facilities, and to diversify the fishery to include non-tuna species which are under-exploited or not exploited.

TITLE III

INLAND FISHERIES AND AQUACULTURE DEVELOPMENT

Article 33

Scope

The scope of this Title shall cover inland fisheries, coastal and aquaculture development in the ESA region with respect to capacity building, technology transfer, Sanitary and Phytosanitary (SPS) standards, investment, and investment finance, environmental protection as well as legal and regulatory frameworks.

Article 34

Objectives

The objectives of cooperation in inland fisheries and aquaculture development will be to promote sustainable exploitation of inland fisheries resources, enhance aquaculture production, remove supply side constraints, improve fish and fish product quality to meet SPS standards in the EC market, improve access to the EC market, address intra-regional trade barriers, attract capital inflows and investment into the sector, build capacity and enhance access to financial support for the private investors for inland fisheries and aquaculture development

Article 35

Areas of cooperation

The areas of cooperation shall include EC Party contributions to the following:

- a) Capacity building and export market development through:
 - i) Building capacity in industrial and artisanal production, processing and product diversification that strengthen the competitiveness of the region's inland fisheries and aquaculture. This could, for example, be achieved by the creation of R&D centres including the development of aquaculture for commercial fishing farms;
 - ii) Building capacity for managing export market chains, including the introduction and management of certification schemes for specific product lines; and implementation of market promotion, value addition and reduction in post harvest losses in fishery products;
 - iii) Increasing capacity in the region through, for example, improving competent authorities, traders' associations and fishermen's associations in order to participate in fisheries trade with the EC Party and training programs in product development and branding.
- b) Infrastructure
 - i) Developing and improving infrastructure for inland fisheries and aquaculture;
 - ii) Facilitating access to funding for infrastructure, including all types of equipment.
- c) Technology
 - i) Contributing to the development of technical capabilities, including value adding technology promotion, for example, through fisheries technology transfer from the EC Party to the ESA countries;
 - ii) Enhancing fisheries management capacity in the region, for example through research and data collection systems and contribution towards appropriate technologies on harvesting and post harvest management.
- d) Legal and regulatory

- i) Supporting the development of inland fisheries and aquaculture regulations and monitoring control and surveillance systems;
- ii) Supporting ESA in developing appropriate legal and regulatory instruments on IPR and building capacity for their implementation in international trade;
- iii) Eco-labelling and intellectual property protection.

e) Investment and finance

- i) Promoting joint ventures and other forms of mixed investments between stakeholders in ESA countries and the EC Party, for example for the setting up of modalities for identifying investors for joint venture operations in inland fisheries and aquaculture;
- ii) Contributing to providing access to credit facilities for the development of small to medium scale enterprises as well as industrial scale inland fisheries.

f) Environmental and stocks conservation in fisheries

Both Parties shall contribute to measures to ensure that fish trade supports environmental conservation and safeguards against stocks depletion, and to the maintenance of biodiversity and the cautious introduction of exotic species for aquaculture (to be introduced only in managed/closed spaces in consultation with all concerned neighbouring countries).

g) Socioeconomic and poverty alleviation measures

- i) Contributing to the promotion of small and medium scale fishers, processors, and fish traders by building the capacity of ESA States to participate in trade with the EC Party;
- ii) Encouraging participation of marginal groups in the fishing industry, for example, through the promotion of gender equality in fisheries by developing the capacity of women engaged in fisheries, as well as other disadvantaged groups with the potential to engage in fisheries for sustainable social economic development.

CHAPTER IV ECONOMIC AND DEVELOPMENT COOPERATION

TITLE I GENERAL PROVISIONS

Article 36

General provisions

1. The Parties agree to address the developmental needs of the ESA States in order to promote sustained growth in the ESA region, increase production and supply capacity of the States concerned, foster structural transformation and competitiveness of their economies and their diversification and value addition and support regional integration.
2. The Parties commit themselves to cooperating in order to facilitate the implementation of this Agreement and to support regional integration and development strategies. The Parties agree that cooperation will be based on the ESA Development Cooperation Strategy and the jointly agreed Development Matrix. The matrix is attached as Annex IV to this Agreement. The strategy and matrix will be regularly reviewed subject to the provisions of Chapter VI on Dispute Avoidance, Settlement, Institutional, General and Final Provisions. This cooperation will be measured against jointly agreed development benchmarks to be developed and adopted and annexed to this Agreement. The cooperation shall be in form of financial and non financial support to the ESA region.
3. In this regard, the financing pertaining to development cooperation between the ESA Region and the EC Party for 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 within successive financial frameworks of the EU during the period of this Agreement as well as within the frameworks of relevant instruments financed by the General Budget of the EU. In this context, taking into account the new challenges deriving from enhanced regional integration and competition on the global markets, the Parties agree that supporting the implementation of the EPA shall be one of the priorities.
4. Both Parties shall cooperate to mobilise resources additional to the financial framework of the EU, from EU Member States and other donors, in particular expanding Aid for Trade commitments, relating specifically to EPA support requirements and adjustment costs. The programmes/projects proposed for financing will be worked out jointly based on a detailed costed development matrix.
5. Sufficient resources should be mobilised on a predictable, timely and sustainable basis including through grants and concessional loans based on the development matrix. The EC shall contribute to these efforts under its international commitment on the scaling up of Official Development Aid. The Parties agree to monitor and coordinate the use of these resources.

6. Consistent with the Paris Declaration on Aid Effectiveness, the Parties agree to use and support as appropriate nationally and/or regionally owned delivery mechanisms, funds or facilities for channelling and coordinating resources for implementing the EPA. The Parties shall, in that regard, support the establishment of an EPA Fund to channel EPA related resources. The Parties also agree that all forms of aid delivery pertaining to their cooperation under this Agreement shall be guided by the Paris Declaration on aid effectiveness.
7. The trade-related issues to be provided for in the comprehensive EPA shall be the subject of development cooperation in accordance with this Article taking into consideration the Paris Declaration on Aid effectiveness.
8. The Parties agree that EPA monitoring, on the basis of agreed indicators, will need to address all aspects of the EPA, including achievements at the national level and at the level of regional integration and development strategies, as well as the effectiveness of the institutional arrangements and their achievements in meeting Aid effectiveness objectives, including ensuring predictability of the resources
9. The Parties agree that, without prejudice to the provisions of Article 95.4 of the Cotonou Agreement, the review process provided therein will constitute an opportunity for the Parties to review the achievements, constraints and way forward regarding their development cooperation strategies as provided for within the Agreement

Article 37

Objectives

1. Economic and development cooperation shall aim at enhancing the competitiveness of ESA economies, building up supply capacity and enabling Signatory ESA States in implementing the EPA smoothly.
2. Economic and development cooperation shall aim at the structural transformation of ESA economies by establishing a strong, competitive and diversified economic base in the ESA States through enhancing production, distribution, transport, marketing, developing trade capacity of ESA States as well as capacity to attract investment, strengthening the Signatory ESA States' trade and investment policies and regulations and deepening regional integration.

Article 38

Scope

1. The Parties shall set out the development objectives related to the EPA that are specific to the ESA region and needed for the success of regional integration within the areas and sectors highlighted in this Article.
2. The areas that will be addressed by the cooperation are:
 - a) Regional cooperation and integration to ensure trans-regional coordination in all sectors;

- b) Trade policy and regulations in order to assist the ESA States in participating more effectively in trade negotiations, in implementing international trade related conventions, trade related legislation and regulatory reforms amongst others;
- c) Trade development which covers namely business development and activities aimed at improving information management systems, partnerships, linkages, joint ventures and exchange of information and experiences, access to credit and investment finance, trade promotion and market development, institutional support as well as support to trade in services, including financial services;
- d) Trade related infrastructure, including transport, energy and water;
- e) Building productive capacities in relevant sectors of ESA economies;
- f) Research and development, innovation and technology transfer;
- g) Trade related adjustment costs, which include restructuring and social costs arising from the reduction of production by firms in import competing sectors and the loss of fiscal revenues dues to the tariff reductions;
- h) Gender mainstreaming;
- i) Empowerment of local communities, which includes social and cultural development; and
- j) Mainstreaming of environmental issues into trade and development.

3. The cooperation shall, in particular, cover the following sectors:

- a) Private Sector Development, particularly Industrial Development, Micro-enterprises, Small and Medium Sized Enterprises, Mining and Minerals as well as Tourism;
- b) Infrastructure Development, namely in the Transport, Energy, Information and Communications Technology (ICT) sectors;
- c) Natural Resources and Environment, including Water Resources, Biodiversity and d) Environment;
- d) Agriculture;
- e) Fisheries;
- f) Services including Tourism; and
- g) Trade related issues, namely Investment, Competition, Intellectual Property Rights, Standards, Trade Facilitation and Statistics.

TITLE II PRIVATE SECTOR DEVELOPMENT

Article 39

Scope and Objectives

1. The Parties recognise the importance of cooperation to develop the ESA region's private sector as the main engine of wealth creation in view to set up an appropriate enabling environment which is conducive to investment and growth. The Community support and cooperation shall take account of the economic structure of the ESA States and their priorities in strengthening productive capacities and value addition, and the application of Production, Marketing, Distribution, and Transportation (PMDT) functions to improve supply capacities and competitiveness.
2. The scope of cooperation of private sector development will cover, *inter-alia*, investment, industrial development and competitiveness enhancement, micro-enterprises, small and medium sized enterprises development, mining and minerals and tourism development as well as other productive sectors which are directly and indirectly covered by this Agreement.

Article 40

Investment

1. The Parties recognise the importance of investment. The objectives in this area are to:
 - a) Create an environment for sustainable and equitable economic development of ESA through investment, including Foreign Direct Investment (green field or portfolio), technology transfer, capacity building and institutional support from the EC Party;
 - b) Provide deeper cooperation with institutions and intermediary organisations dealing with investment promotion in the EC Party, including the Centre for the Development of Enterprise (CDE) and ESA through, *inter alia*, business dialogue, cooperation and partnership;
 - c) Support, through appropriate instruments, the promotion and encouragement of investment in the ESA region, including establishing a framework for funding and assistance to support economic development programmes in ESA;
 - d) Strengthen and build the capacity of private development institutions such as investment promotion agencies, chambers of commerce, associations and indigenous development organisations in individual ESA States and the region as a whole so as to enable the emergence of a dynamic and vibrant private sector; and
 - e) Develop a legal framework that promotes investment by both Parties, with a view to promoting and protecting investment and work towards harmonised and simplified procedures and administrative practices.

Areas of cooperation

2. Subject to the provisions of Article 36 the Parties agree to cooperate, including by facilitating support, in the following areas:
 - a) Support to policies and strategies for investment to help creating and maintaining a predictable and secure investment climate;
 - b) Support policy reforms and advocacy, human resource development, institutional capacity-building or other forms of institutional support to strengthen the capacities of the private financial and non-financial intermediaries, investment facilitation and promotion and competitiveness enhancement activities;
 - c) Encourage the EU-ESA private sector partnership and joint ventures to promote investment, venture capital financing for greenfield investment and technology transfer;
 - d) Support efforts of the ESA States to attract financing, with particular emphasis on private financing, for infrastructure investments and revenue generating infrastructure critical for the private sector, including SMEs;
 - e) Support to develop regulatory capacity;
 - f) Improve access of ESA enterprises investment finance instruments in the EU such as the European Investment Bank (EIB);
 - g) Establish financial instruments adapted to SMEs of the ESA region;
 - h) Ensure the increasing availability and use of risk insurance as a risk-mitigating mechanism in order to boost investor confidence in the ESA States; and
 - i) Offer guarantees and assist with guarantee funds covering risks for qualified investment.

Article 41

Industrial development and competitiveness

1. The Parties recognise the importance of cooperation in industrial development and competitiveness. The objectives in this area are to:
 - a) Facilitate the establishment, development, restructuring and modernisation of the Signatory ESA States' industry while fostering its competitiveness and self-sustainable and balanced growth taking into account environmental protection, sustainable development and economic empowerment; and
 - b) Establish an environment favourable to the development of private enterprise in order to stimulate the growth and diversification of industrial production.

Areas of Cooperation

2. Subject to the provisions of Article 36, the Parties agree to cooperate, including by facilitating support, in the following areas:

- a) Promote the development of activities in the areas of processing, marketing, distribution and transportation of products;
- b) Transfer of technology, knowledge and research and development;
- c) Support ESA States' financial institutions and the development of the capital market for the purpose of enhancing the private sector access to both short term and long term capital;
- d) Capacity building for public and private sector;
- e) Encourage EU-ESA partnerships, linkages and joint ventures between economic operators; and
- f) Promote and strengthen innovation, diversification and value addition product development and quality.

Article 42

Micro-Enterprises, Small and Medium Sized Enterprises

1. The Parties recognise the importance of cooperation in Micro-Enterprises, Small and Medium Sized Enterprises (MSME). The objectives in this area are to:
 - a) Promote a favourable environment for the development of micro enterprises, MSME and for attracting investment therein; and
 - b) Support MSME to adjust to trade liberalisation.

Areas of Cooperation

2. Subject to the provisions of Article 36, the Parties agree to cooperate, including by facilitating support, in the following areas:
 - a) Capacity building and institutional support;
 - b) Technology development and transfer, innovation, information exchange and networks and marketing;
 - c) Development of MSME databases;
 - d) Access to finance;
 - e) Encourage EU-ESA partnerships, linkages and joint ventures between economic operators;
 - f) Trade and investment promotion;
 - g) Strengthen value chains;
 - h) Promote diversification and value addition.

Article 43

Mining and Minerals

1. The Parties recognise the importance of cooperation in the development and management of the mining and minerals sector. The objectives in this area are to:
 - a) Establish a conducive environment for attracting investment in the sector;
 - b) Promote value addition and environmentally friendly technologies in the mining productive processes; and
 - c) Ensure participation of local communities.

Areas of cooperation

2. Subject to the provisions of Article 36, the Parties agree to cooperate, including by facilitating support, in the following areas:
 - a) Capacity building and institutional support for exploration, exploitation and marketing of minerals;
 - b) Information exchange;
 - c) Encourage EU-ESA partnerships, linkages and joint ventures between economic operators;
 - d) Improve health and safety standards in the mining industry;
 - e) Transfer of technology, knowledge, innovation and Research and Development; and
 - f) Address vulnerability of mineral export dependency.

Article 44

Tourism Development

1. The Parties recognise the importance of cooperation in the development of tourism. The objectives in this area are to:
 - a) Develop and strengthen a competitive tourism industry as a generator of economic growth and empowerment, employment and foreign exchange;
 - b) Strengthen the linkages between tourism and other sectors of the economy; and
 - c) Preserve, safeguard and promote natural, historical and cultural tourist attractions, while respecting the integrity and interests of local communities, particularly in rural areas.

Areas of cooperation

2. Subject to the provisions of Article 36 the Parties agree to cooperate, including by facilitating support, in the following areas:

- a) Establish strategic alliances involving public, private and local community interests in order to ensure the sustainable development of tourism;
- b) Promote partnerships, exchange of know-how and joint operations in areas such as development of products, markets and eco-tourism;
- c) Capacity building in human resources, improvement in service standards, and institutional structures; and
- d) Regional cooperation in tourism promotion.

TITLE III INFRASTRUCTURE

Article 45

Scope and Objectives

1. The Parties recognise the importance of cooperation in the development and management of infrastructure, as a means to overcome the supply-side constraints and strengthen regional integration.
2. The Community support and cooperation for infrastructural development shall take account of priority development areas as articulated in the respective ESA States' national and regional development programmes.
3. The scope of cooperation in infrastructure will cover the development of physical infrastructure, namely transport, energy, information technology and communication.

Article 46

Transport

1. The Parties recognise the importance of cooperation in the development and management of transport. The objectives in this area are to:
 - a) Develop, restructure, rehabilitate upgrade and modernise the ESA region's transport systems on a sustainable basis;
 - b) Improve the movement of people and flow of goods and provide better access to markets through road, air, maritime, inland water and rail transport.

Areas of cooperation

2. Subject to the provisions of Article 36, the Parties agree to cooperate, including by facilitating support, in the following areas:
 - a) Improve management of transport systems;

- b) Improve and develop the state of infrastructure at all levels, including the development of inter-modal infrastructure networks;
- c) Capacity building in human resources, improvement in service standards, and institutional structures;
- d) Technology development and transfer, innovation, information exchange and networks, and marketing;
- e) Encourage EU-ESA partnerships, linkages and joint ventures between economic operators;
- f) Improve safety and reliability of the transport sector, including the management of hazardous goods and emergency response; and
- g) Support to the development of regional transport policies.

Article 47

Energy

1. The Parties recognise the importance of cooperation in the energy sector as a vehicle for supporting the ESA economies' competitiveness at the regional and global levels. The objectives in this area are to:
 - a) Improve the access of ESA States to modern, efficient, reliable, diversified and sustainable and renewable sources of clean energy at competitive prices;
 - b) Enhance the production, distribution and management capacity of energy nationally and regionally; and
 - c) Promote regional energy cooperation.

Areas of cooperation

2. Subject to the provisions of Article 36, the Parties agree to cooperate, including by facilitating support, in the following areas:
 - a) Enhance the production and distribution capacity of existing energy sources, in particular hydro, petroleum and biomass;
 - b) Expand and diversify the energy mix to include other potential sources of energy that are socially and environmentally acceptable and that reduce dependency on oil;
 - c) Support the development of energy infrastructure, including for rural areas;
 - d) Support the development of appropriate energy regulatory and policy reforms, including commercialisation and privatisation;
 - e) Promote regional interconnectivity and cooperation in the production and distribution of energy;

- f) Capacity building in human resources, improvement in management, service standards, and institutional structures;
- g) Support the creation of a conducive environment for attracting investment in the sector;
- h) Technology development and transfer, research and development (R&D), innovation, information exchange, development of databases and networks;
- i) Encourage EU-ESA partnerships, linkages and joint ventures between economic operators.

Article 48

Information and Communications Technology (ICT)

1. The Parties recognise the importance of cooperation in the development of ICT, as a key sector in the modern society to foster competitiveness and innovation, as well as for the smooth transition towards the information society. The objective in this area is to develop the ICT sector and promote its contribution to other socio-economic sectors.

Areas of cooperation

2. Subject to the provisions of Article 36, the Parties agree to cooperate, including by facilitating support, in the following areas:
 - a) Facilitate connectivity at the national, regional and global levels;
 - b) Dissemination of new information and communication technologies;
 - c) Support the development of the legal and regulatory frameworks on ICT;
 - d) Technology development, transfer and applications, R&D, innovation, information exchange and networks, and marketing;
 - e) Capacity building in human resources, improvement in service standards, and institutional structures;
 - f) Encourage and facilitate EU-ESA partnerships, linkages and joint ventures between economic operators;
 - g) Promotion and support for the development of niche markets for ICT-enabled services.

**TITLE IV
NATURAL RESOURCES AND ENVIRONMENT**

Article 49

Scope and objectives

1. The Parties recognise the importance of cooperation in the sustainable management of natural resources and environment. Cooperation in this area shall take account of differentiated and trans-boundary needs of ESA States.
2. The scope of cooperation in natural resources and environment will cover natural assets, including water resources, and environment, including biodiversity, as well as enhancing the linkages between trade and environment. It will also cover support for the implementation of international environmental agreements, conventions and treaties.

Article 50

Water resources

1. The Parties recognise the importance of cooperation in the development of water resources (including irrigation, hydropower and water supply) for the improvement of the livelihoods of the populations. The objectives in this area are:
 - a) The sustainable development and management of water resources in the region;
 - b) Regional cooperation for the sustainable utilisation of trans-boundary water resources.

Areas of cooperation

2. Subject to the provisions of Article 36, the Parties agree to cooperate, including by facilitating support, in the following areas:
 - a) Development of infrastructure of water resources in the region;
 - b) Support the development of the legal and regulatory frameworks;
 - c) Promote integrated water management;
 - d) Capacity building in human resources, improvement in service standards, water management and institutional structures;
 - e) Encourage and facilitate EU-ESA partnerships, linkages, regional water partnerships and joint ventures between economic operators;
 - f) Technology development, transfer and applications, R&D, innovation, information exchange and networks;
 - g) Water pollution control, purification and conservation, wastewater treatment and sanitation; and
 - h) Promotion of sustainable irrigation schemes.

Article 51

Environment

1. The Parties recognise the importance of cooperation in the protection and sustainable management of the environment and implementation of trade-related environmental policies. The objectives in this area are to:
 - a) Protect, restore and conserve the environment and biodiversity: flora, fauna and microbial genetic resources, including their ecosystems;
 - b) Develop new ESA industries related to the environment; and
 - c) Reduce environmental degradation, including clean air and desertification.

Areas of cooperation

2. Subject to the provisions of Article 36, the Parties agree to cooperate, including by facilitating support, in the following areas:
 - a) Support the implementation of international environmental agreements, conventions and treaties;
 - b) Strengthen and promote sustainable environmental management systems;
 - c) Sustainable utilisation of biodiversity, forestry and wildlife resources;
 - d) Reinforcing institutional and legal frameworks and the capacity to develop, implement, administer and enforce environmental laws, regulations, standards and policies;
 - e) Capacity building in human resources and institutional structures to comply with environmental and biodiversity requirements;
 - f) Encourage and facilitate EU-ESA partnerships, linkages and joint ventures between economic operators;
 - g) Mitigation of natural disasters, prevention of environmental disasters and the loss of biodiversity;
 - h) Technology development and adaptation, transfer and applications, R&D and innovation;
 - i) Protection and management of coastal and marine resources and domestic and wild indigenous biological resources;
 - j) Support the development of alternative environmentally friendly activities and livelihoods;
 - k) Support the production and facilitate trade of goods and services for which eco-labelling is important;
 - l) Exchange of information and networking on products and their requirements in terms of production process, transport, marketing and labelling;
 - m) Support the development of infrastructure facilities on environmental friendly products;

- n) Integration of local communities in the management of biodiversity, forestry and wildlife resources;
- o) Waste management and disposal of industrial and toxic wastes; and
- p) Sustainable management of forests and similar mechanisms.

Article 52

Financial undertakings

1. The EC Party shall put at the disposal of ESA financial assistance to contribute to implement the programmes and projects to be developed under the areas of cooperation identified in this Agreement and relevant chapters and under the detailed Development Matrix.
2. The Parties agree to establish adequate joint institutional arrangements to effectively monitor the implementation of the development cooperation of this Agreement. Such arrangements shall include the establishment of a joint development committee.
3. The Parties agree that the institutional arrangements shall remain flexible to adapt to the evolving national and regional needs.

CHAPTER V

AREAS FOR FUTURE NEGOTIATIONS

Article 53

Rendez-vous Clause

Building on the Cotonou Agreement and taking account of the progress made in the negotiations of a comprehensive EPA, the Parties agree to continue negotiations in accordance with Article 3 with a view to concluding a full and comprehensive EPA covering 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 defense measures, including outermost regions;
- 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, including consultations under Article 12 of the Cotonou Agreement.

CHAPTER VI DISPUTE AVOIDANCE, SETTLEMENT, INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

TITLE I DISPUTE AVOIDANCE AND SETTLEMENT

Article 54

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 55

Dispute settlement

1. If consultations do not succeed in settling the dispute within the 60 days or 30 days referred to in Article 54, either Party may request settlement of the dispute by arbitration. To this end, each Party shall appoint an arbitrator within thirty 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 laid down in the optional arbitration regulation of the Permanent Court of Arbitration for International

Organisations and States. 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.
5. Notwithstanding Paragraph 1, the procedure set out in Article 98 of the Cotonou Agreement shall be applicable in the event of a dispute concerning development finance cooperation as provided for by the Cotonou Agreement.

TITLE II GENERAL EXCEPTIONS

Article 56

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 EC Party, 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 57

Security exceptions

1. Nothing in this Agreement shall be construed:
 - (a) to require the EC Party 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 EC Party 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 international relations.
 - (c) to prevent the EC Party 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 58

Taxation

1. Nothing in this Agreement or in any arrangement adopted under this Agreement shall be construed to prevent the EC Party 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 EC Party 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 59

Relations between this Agreement and comprehensive EPA

In case there is any inconsistency between the comprehensive EPA and this Interim Agreement, the comprehensive EPA shall prevail to the extent of such inconsistency.

Article 60

Outermost Regions of the European Community

1. Taking account of the geographical proximity of the outermost regions of the EC and the ESA States and in order to reinforce economic and social links between these regions and the ESA States, the Parties shall endeavour to facilitate cooperation in all areas covered by this Agreement as well as to build and improve on existing trade in goods and services, promote investment and encourage transport and communication links between the outermost regions and the ESA States.
2. The objectives enunciated in Paragraph 1 shall also be pursued, wherever possible, through fostering the joint participation of the ESA States and the outermost regions in framework and specific programmes of the EC in areas covered by this Agreement.
3. The EC Party shall endeavour to ensure coordination between the different financial instruments of the EC's cohesion and development policies in order to foster cooperation between ESA States and the outermost regions of the EC in the areas covered by this Agreement
4. Nothing in this Agreement shall prevent the EC Party from applying existing measures aimed at addressing the structural social and economic situation of the outermost regions pursuant to Article 299 (2) of the Treaty establishing the European Community.

Article 61

Definition of the Parties and fulfilment of obligations

1. Contracting Parties of this Agreement shall be Union of Comoros, Madagascar, Republic of Mauritius, Republic of Seychelles, Republic of Zambia and Republic of Zimbabwe

hereinafter referred to as the "ESA States", on the one part, and the EC or its Member states or the EC and its Member States within their respective areas of competence as derived from the Treaty establishing the European Community, and hereinafter referred to as the "EC Party", 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 62

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 the first day of the first month following the deposit of the last instrument of ratification, acceptance or approval.
3. Notifications of ratification, acceptance or approval shall be sent to the Secretary General of the Council of the European Union and to the Secretary General of the Common Market of Eastern and Southern Africa, who shall be the depositaries of this Agreement.
4. Pending entry into force of the Agreement, the EC Party 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 depositaries. This Agreement shall be applied provisionally 10 days after the last receipt of notification of provisional application from the EC or of ratification or provisional application from all Signatory ESA States listed in Annex II.
6. Notwithstanding paragraphs 2 and 4, the EC Party and Signatory ESA States may unilaterally take steps to apply the agreement, before provisional application, to the extent feasible.
7. The EC Party 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.

9. This Agreement shall remain in force until the comprehensive EPA enters into force.

Article 63

Territorial application

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, 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 64

EPA Committee

1. An EPA Committee is hereby established.
2. The EPA Committee shall be responsible for the administration of all matters under this Agreement, including development cooperation as provided for under Article 36 and for the fulfilment of any of the tasks mentioned in this Agreement.
3. The EPA Committee shall be composed of representatives of the Parties. Each Party determines the organisation of its representation.
4. The EPA Committee shall adopt its rules of procedure within three months of entry into force of the Interim Agreement.

Article 65

Relationships with other agreements

1. Nothing in this Agreement shall prejudice the application of measures deemed appropriate as provided for under Articles 11b, 96 and 97 of the Cotonou Agreement and according to procedures set by these articles.
2. In the case of any inconsistency between the provisions of this Agreement and the provisions of Title II of Part 3 of the Cotonou Agreement, with the exception of the development cooperation provisions contained therein, the provisions of this Agreement shall prevail.
3. 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 parties to the WTO.
4. 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 66

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 EC Party and the ESA States and the acceding country. The EC shall endeavour to apply this Agreement to the acceding country as soon as possible.
2. 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.
3. The EPA Committee may lay down the conditions and specific arrangements of the state referred to in Paragraph 2 for its accession.
4. This Agreement shall enter into force in relation to an acceding state on the date its instrument of accession is deposited.

Article 67

Accession of new Member States to the European Union

1. The EPA Committee 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 EC Party shall provide the ESA States with any relevant information and they in turn shall convey their concerns to the EC Party so that it can take them fully into account. The ESA States shall be notified by the EC Party of any accession to the EU.
2. Any new Member State of the EU shall accede to this Agreement from the date of its accession by means of a clause to that effect in the act of accession. If the act of accession to the EU does not provide for such automatic accession to this Agreement, the EU Member State concerned shall accede by depositing an act of accession with the two depositaries, which shall arrange for certified copies to be sent to the ESA States.
3. The Parties shall review the effects of the accession of new EU Member States on this Agreement. The EPA Committee may decide on any transitional or amending measures that might be necessary.

Article 68

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 69

Authentic texts

This Agreement is drawn up in duplicate in the Bulgarian, 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 these texts being equally authentic.

Article 70

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.

- Annex I Customs duties on products originating in ESA States into the EU
- Annex II List of ESA States taking commitments under Chapter II and customs duties on products originating in EU States into the Signatory ESA States
- Annex III ESA States exceptions on duties, taxes on exports, national treatment on internal taxation and regulation
- Annex IV Development matrix
- Protocol I Rules of origin
- Protocol II Mutual Administrative assistance in customs matters

ANNEX I
CUSTOMS DUTIES ON PRODUCTS ORIGINATING IN ESA STATES

1. Without prejudice to paragraphs 2, 4, 5, 6 and 7 customs duties of the EC Party (hereinafter "EC customs duties") shall be entirely eliminated on all products of Chapters 1 to 97 of the Harmonized System, except those of Chapter 93 thereof, originating in a ESA State upon the entry into force of this Agreement. For products of Chapter 93 the EC Party shall continue to impose the applied MFN duties. For indicative purposes the schedule of EC customs duties applicable to products originating in a ESA State is appended to this Annex.
2. EC customs duties on the products of tariff heading 1006 originating in the ESA States shall be eliminated as from 1 January 2010, with the exception of EC customs duties on the products of subheading 1006 10 10 which shall be eliminated as from the entry into force of this Agreement.
3. The EC Party and the Signatory ESA States agree that the provisions of Protocol 3 of the Cotonou Agreement (hereinafter the "Sugar Protocol") shall remain applicable until 30 September 2009, and that thereafter the Sugar Protocol shall no longer be in force between them. For the purposes of Article 4(1) of the Sugar Protocol, the delivery period 2008/9 will last from 1 July 2008 to 30 September 2009. The guaranteed price for 1 July-30 September 2009 shall be decided following the negotiation provided for in Article 5(4).
4. EC Customs duties on products of tariff heading 1701 originating in an ESA State shall be eliminated as from 1 October 2009. Until EC customs duties are entirely eliminated, and in addition to the allocations of tariff rate quotas at zero duty set out in the Sugar Protocol, a tariff rate quota at zero duty of 75000 tonnes shall be opened for marketing year³ 2008/2009 for products of tariff heading 1701, white sugar equivalent, originating in the ESA States. No import license shall be granted with regard to products to be imported under this additional tariff rate quota, unless the importer undertakes to purchase such products at a price at least equal to the guaranteed prices fixed for sugar imported into the EC Party under Sugar Protocol.
5.
 - (a) The EC Party may, during the period between 1 October 2009 and 30 September 2015 impose the applied Most Favoured Nation duty on the products originating in ESA States of tariff heading 1701 [sugar] imported in excess of the following levels expressed in white sugar equivalent, which are deemed to cause a disturbance in the EC Party sugar market:
 - (i) 3.5 million tonnes in a marketing year of such products originating in States members of the African, Caribbean and Pacific Group of States (ACP States) signatory to the Cotonou Agreement, and
 - (ii) 1.38 million tonnes in marketing year 2009/2010 of such products originating in ACP States that are not recognised by the United Nations as least developed countries. The figure of 1.38 million tonnes shall increase to 1.45 million

³ For the purpose of paragraphs 4, 5, 6 and 7 "marketing year" means the period between 1 October and 30 September

tonnes in marketing year 2010/2011, and 1.6 million tonnes in the following four marketing years.

- (b) The importation of products of tariff heading 1701 originating in any ESA State that is recognised by the United Nations as a least developed country shall not be subject to the provisions of sub-paragraph 5(a). However, such imports shall remain subject to the provisions of Article 21 (safeguard clause)⁴.
 - (c) The imposition of the applied Most Favoured Nation duty shall cease at the end of the marketing year during which it was introduced.
 - (d) Any measure taken pursuant to this paragraph shall be notified immediately to the Joint ESA-EC Implementation Committee and shall be the subject of periodic consultations within that body.
6. As of 1 October 2015, for the purpose of the application of the provisions of Article 21 (safeguard clause), disturbances in the markets of products of tariff heading 1701 may be deemed to arise in situations where the European Community market price of white sugar falls during two consecutive months below 80 percent of the European Community market price for white sugar prevailing during the previous marketing year.
7. From 1 January 2008 until 30 September 2015 products of tariff heading 1704 90 99, 1806 10 30, 1806 10 90, 2106 90 59 and 2106 90 98 shall be subject to a special surveillance mechanism in order to ensure the arrangements provided for in paragraph 4 and 5 are not circumvented. In the event of a cumulative increase of imports of such products originating in ESA States by more than 20 percent in volume during a period of 12 consecutive months compared to the average of the yearly imports over the three previous 12 month periods, the EC Party shall analyse the pattern of trade, the economic justification and the sugar content of such imports and, if it considers that such imports are used to circumvent the arrangements provided for in paragraphs 4 and 5, it may suspend the preferential treatment and introduce the specific MFN duty applied to imports pursuant to the European Community Common Customs Tariff for products of tariff heading 1704 90 99, 1806 10 30, 1806 10 90, 2106 90 59 and 2106 90 98 originating in ESA States. Sub-paragraphs 5(b), (c) and (d) shall apply mutatis mutandis to action under this paragraph.
8. Between 1 October 2009 and 30 September 2012 with regard to the products of tariff heading 1701, no preferential import license shall be granted unless the importer undertakes to purchase such products at a price not lower than 90 percent of the reference price set by the EC Party for the relevant marketing year. The Parties take note that at the time of initialling of the Agreement the reference price is contained in Regulation (EC) 318/2006.
9. Paragraph 1, 3 and 4 shall not apply to products of tariff heading 1701 originating in ESA States and released for free circulation in the French overseas departments. This provision shall be applicable for a period of 10 years. This period shall be extended for a further period of 10 years unless the Parties agree otherwise.

⁴ For this purpose and by derogation to article 21, individual State recognised by the United Nations as a least developed country may be subject to safeguard measures

ANNEX II
LIST OF ESA STATES TAKING COMMITMENTS UNDER CHAPTER II
AND
CUSTOMS DUTIES ON PRODUCTS ORIGINATING IN EU STATES INTO THE
SIGNATORY ESA STATES

The countries referred to in Article 6.1 shall be

Union of Comoros

Madagascar

Republic of Mauritius

Republic of Seychelles

Republic of Zambia

Republic of Zimbabwe

ANNEX III
ESA STATES EXCEPTIONS ON DUTIES, TAXES ON EXPORTS,
NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATION

i) exceptions on national treatment on internal taxation and regulation

A: Seychelles: Price controls on imports as provided for under the "trades tax act of 1992" – Duration for exception – 10 years

B: Zimbabwe: None

C: Mauritius : None

D: Madagascar: None

E: Comoros: None

F: Zambia: None

ii) exceptions on duties, taxes on exports:

A: Seychelles: None

B: Zimbabwe: None

C: Mauritius : None

D: Madagascar: None

E: Comoros: None

F: Zambia: Export duties on the following tariff lines, as provided on 30th September 2008 under Ninth schedule (Section 72A), Export Tariff, Amendment Act 2008, Customs and Excise Act Chapter 322 of the Law of Zambia

1207.20.00 15%

Cotton seed

5201.00.00 15%

Cotton, not carded or combed

2603.00.00 15%

Copper ores and concentrates

7204

Ferrous waste and scrap. Remelting scrape ingots of iron or steel.

7204.10.00 25% or 80,000 (eighty thousand kwacha) per tonne whichever is greater Waste of cast iron

7204.21.00 25% or 80,000 (eighty thousand kwacha) per tonne whichever is greater

- Waste and scrap alloy steel: - Of stainless steel

7204.29.00 25% or 80,000 (eighty thousand kwacha) per tonne whichever is greater- Waste and scrap alloy steel: Other

7204.30.00 25% or 80,000 (eighty thousand kwacha) per tonne whichever is greater

Waste and scrap of tinned iron or steel

7204.41.00 25% or 80,000 (eighty thousand kwacha) per tonne whichever is greater

Other waste and scrap - - Turnings, shavings, chips, milling waste, sawdust, fillings, trimmings and stampings, whether or not in bundles

7204.49.00 25% or 80,000 (eighty thousand kwacha) per tonne whichever is greater

Other waste and scrap – Other

7204.50.00 25% or 80,000 (eighty thousand kwacha) per tonne whichever is greater

Other waste and scrap - Remelting scrap ingots

7401.00.00 15%

Copper mattes; cement copper (precipitated copper)

7402.00.00 15%

Unrefined copper; copper anodes for electrolytic refining

7404.00.00 25% or 1,000,000 (one million kwacha) per tonne whichever is greater

Copper waste and scrap.

7602.00.00 25% or 1,000,000 (one million kwacha) per tonne whichever is greater

Aluminum waste.

7902.00.00 25% or 1,000,000 (one million kwacha) per tonne whichever is greater

Zinc waste and scrap

ANNEX IV DEVELOPMENT MATRIX

Key Areas	Objective and illustrative activities
1. Infrastructure Development	Improve existing and priority needs in infrastructure. Develop new infrastructure, in particular shared infrastructure. Secure financing from appropriate sources
a. Energy	Increasing the regions energy generation capacity, regional networks, distribution and transmission. Activities could be: <ul style="list-style-type: none">(i) Expansion of energy generation, transmission and distribution infrastructure and networks to facilitate regional energy trade(ii) Research and development of alternative environmentally sustainable sources of energy, innovation and technology transfer including improving energy efficiency and reduction of cost(iii) Legal and regulatory frameworks for establishment/strengthening and harmonization of regional and national energy institutions to provide frameworks for cross border energy trade(iv) Capacity building and design of instruments to mobilize resources for investment
b. Transport (Roads, Railways, Air and waterways,)	Improving national and regional connectivity to facilitate deepening of regional integration in the movement of people, flow of goods and services and better access to markets Activities could be: <ul style="list-style-type: none">(i) Construction of, modernization, rehabilitation and up grading of national and regional transport corridors and ports and related transport facilities(ii) Research and development of suitable and affordable construction materials; service standards; inter-modal transport, transit systems and technology transfer(iii) Establish, strengthen and reform national and identified regional institutions for research, training, policy dialogue and service delivery(iv) Improve enforcement procedures, as well as undertake policy, legal and regulatory transport reforms including policies to facilitate EU-ESA partnerships, linkages and joint ventures(v) Liberalization of the air transport services, provision of common management systems and institutions(vi) Design instruments for attracting/mobilizing resources for investment
c. Telecommunications	Strengthening of the telecommunication networks, notably the improvement of the ICT infrastructure to foster competitiveness, innovation and smooth transition to an information society Activities could be: <ul style="list-style-type: none">(i) Development and harmonization of ICT policy and infrastructure sharing, reforms in legal and regulatory frameworks and systems(ii) Capacity building for human resource development; service standards to facilitate trade, commerce and business transactions; ICT enabled services particularly for young professionals and institutional reforms to allow for integrated electronic information systems(iii) Development of the backbone ICT infrastructure through EU ESA partnerships, innovation and joint ventures for regional connectivity and to facility infrastructure sharing in public and private sector

(iv) Design of instruments to facilitate EU ESA partnerships, innovation and joint ventures to mobilize resources for investment and facilitate private sector investment in ICT infrastructure

d. Water Supply for production **Develop water supply infrastructure for water harnessing, treatment and disposal management systems and sustainable utilization of trans-boundary water resources for productive purposes**

Activities could be:

(i) Construction of water dams, irrigation and hydro-electric infrastructure and promotion of sustainable irrigation schemes, programmes for pollution control, reuse and recycling of waste water

(ii) Establishment of strategic water catchments and water storage areas in rural and urban areas

(iii) Technical assistance for exchange programmes and capacity building on water governance, service standards and regional water partnerships

(iv) Facilitate EU ESA partnerships, innovations and joint ventures between economic operators and under "Water for Life Initiative".

(v) Establishment of a regional research centre and other centres of excellence in R&D

2. Productive Sectors **Increase competitiveness of the productive sectors in the areas of Processing (value addition), Marketing and Distribution of products and services**

a) Agriculture and Livestock **Promote sustainable agriculture, Improve production, productivity and diversification, develop agro-industry, trade, and ensure food security**

Activities could be:

(i) Development of harmonized regional policies, legal and regulatory frameworks, Standards and Quality Assurance and certification instruments accredited to international standards and capacity building on sustainable production systems

(ii) Construct and improve irrigation facilities and infrastructure, rural infrastructure linking production areas to markets, cold storage chains and related infrastructure

(iii) Promotion of Agricultural/Livestock R&D and its implementation; gender mainstreaming in access to production factors; strengthening of the value chain and technology transfer

(iv) Development of special vehicle insurance schemes and instruments for access to finance

(v) Establish and strengthen institutions to promote modalities of disease handling, implement national and trans-boundary disease control programme and establishment of national and regional early warning systems and centres of excellence for agricultural workers

b) Fisheries **Promote, and ensure sustainable utilization of fishery resources including fish farming development and market technical standards requirements**

Activities could be:

(i) Institutional strengthening for standards development and related capacity building and quality assurance programmes to meet market technical requirements in accordance with international standards

(ii) Support for updating policy, legal and regulatory reforms and institutional developments and reforms to meet the international standards

(iii) Capacity building on fish production, productivity, food safety and hygiene, marketing, aquaculture farming, post harvest handling technologies for both large and artisan fishers. And capacity building for fishery officers in public sector

(iv) R&D on fish stock assessments and conservation, monitoring, control and surveillance programmes for sustainable fish resource utilization and development and improvement of infrastructure for inland fisheries

and aquaculture farming; export market chains; product development, diversification and branding

(v) Support and facilitation of private sector participation in the establishment of cold storage chains

(vi) Design policies and instruments to facilitate EU ESA partnerships, innovations, joint ventures; and related finance facilities for industrial and SME fishers

c) Mining

Address vulnerability of mineral dependent countries, ensure environmentally sustainable mining and improve investment climate to facilitate private sector participation and protect small scale miners and community rights

Activities could be:

(i) Design policies and regulatory frameworks to promote EU ESA partnerships, linkages and joint ventures for technology transfer

(ii) Capacity building and institutional support for exploration, exploitation, marketing and information exchange; R&D, value addition and product diversification; promotion of health and safety standards

(iii) Support programmes that ensure local community participation and protect small scale miners and community rights

(iv) Information exchange on mining and mineral resources and geo-science to aid in exploration and mining investment and institutional and enterprise support for adoption of environmental friendly technologies in the mining productive processes

(v) TA to create mineral beneficiation and processing capacities and in particular support value addition and establish training programmes in the manufacture of jewellery and lapidary industries. Establishment of a regional post-graduate training centre on mineral law and administration, mineral and resource economics and business management

(vi) Develop policy and mechanisms to manage vulnerability of mineral export dependency countries

d) Services

Expand services and improve existing including quality, access and competitiveness. Facilitate trade in services

Activities could be:

(i) Policy and legal framework to support trade in services in the region

(ii) Enhance ICT infrastructure sharing and capacity building on ICT enabled services

(iii) Rehabilitation and upgrading of institutional infrastructures and establishing institutions to coordinate private sector trade in services

(iv) Support to carry out studies for selective liberalization and support to deepen financial reforms; and diversification of financial instruments

(v) Support for centres of excellence for quality leadership training, management and entrepreneurship; establish training centres for service providers and strengthen statistics institutions. Training on Monetary Policy and the Financial Sector

(vi) Macro econometric Modelling in the services sector

e) Tourism

Sustainable development of a competitive tourism industry nationally and regionally; linked to other economic sectors while preserving, safeguarding and promoting natural, historic, cultural, integrity and interests of local communities

Activities could be:

(i) Development of sustainable, harmonized tourism policies that link public, private and local communities

- (ii) Joint development and promotion of diversified tourism products in partnership with local communities
- (iii) Support to public/private in the expansion of tourism infrastructure in high potential areas
- (iv) Establishment of Regional Tourism Centres of excellence for leadership training, management and entrepreneurship and support for participation in international tourism promotion fairs and exhibitions
- (v) Capacity building in human resources, improvement in service standards and institutional structures

f) Manufacturing (Industry) Create a conducive investment climate with complementary capacity and institutional frameworks

Activities could be:

- (i) Policy, legal and regulatory reforms, capacities and strategies to create and maintain a predictable and secure investment climate in support of regional integration and globalization
- (ii) Support the development of appropriate instruments, institutions and intermediary organizations to promote investment, EU ESA public/public sector partnerships, access to finances- in particular to access EC financial institutions and investment funds. Support R&D in research institutions
- (iii) Develop and strengthen national and identified regional centres of excellence for human resource development, skills training, strengthen institutional capacities of investment promotional agencies, business associations and chambers of commerce
- (iv) Capacity building for business support services to SME sector in product/design development, modernization of the manufacturing sector; entrepreneurship development; marketing, technology innovations development. Technology for increased productivity in both large and SMEs sectors
- (v) Support to promote the development of activities in areas in the areas of processing, marketing, distribution and transportation and promotion of productivity programmes, value addition and harmonization of national/regional SQMT standards
- (vi) Support for the establishment/adoption/upgrading of environmental protection plants for treatment of industrial effluent, uptake of clean air production technology for environmental protection

g) Gender Promotion of female entrepreneurship through targeted interventions

Activities could be:

- (i) Support Programmes that help women improve access to all resources in particular those for trade and development
- (ii) Promote female entrepreneurship to facilitate participation in regional and global markets

3.Regional Integration Strengthen and deepen regional integration

a) Regional economic integration Development of regional markets, harmonization of policies, strengthening of fiscal administrations and policy, macroeconomic stability, trade facilitation, harmonization of standards, enforcement and arbitration, facilitate movement of people, goods and services, and capital; and establish and invest in regional institutions and structures

Activities could be:

- (i) Support for development and harmonization of regional trade/ investment/ fiscal and financial policies and regulatory frameworks consistent with WTO rules, instruments and standards
- (ii) Facilitate trade in services and right of establishment and movement of goods, services, capital and people and support to exploit fully trans-boundary opportunities, improve coordination, cooperation and communication including support for e-commerce
- (iii) Support to establish/strengthen institutions of regulatory bodies for enforcement and arbitration and support towards amending and development of commercial laws to address emerging trade arrangements

and products/services. Support towards R&D, in particular to centres of excellence

(iv) Harmonization of statistical methods of data collection, analysis and interpretation and support to increase human resource capacity

(v) Budgetary support for sequenced liberalization linked to regional integration. Development of facilities and instruments for mobilizing resources for trade and investment

(vi) Support to build human and institutional capacities and strengthen related institutional governance to facilitate faster implementation of customs administration and procedures to meet emerging security requirements,

b) Management of Trans-boundary programmes

Facilitate movement of people, goods and services and capital. Exploit fully trans-boundary opportunities; improve coordination, cooperation and communication among ESA countries

Activities could be:

(i) Coordinated approach to regional/continental management of trans-boundary programmes which include among others disease control and environmental management

(ii) Support towards regional programmes that facilitate free movement of people, goods, services and capital and support to establish or strengthen regional/continental institutions coordinating trans-boundary programmes

(iii) Strengthening regulatory frameworks for trans-boundary programmes

c) Management of the environment and natural resources

Protect the environment and enhance biodiversity conservation, genetic preservation, protection and sustainable utilization of natural resources; and facilitate and encourage sustainable utilization of shared natural resources taking into account the linkage between trade and environment

Activities could be:

(i) TA to implement Bonn Guidelines and facilitate participation in international environment agreements, conventions and treaties and support for stakeholder awareness programmes and support for building partnerships. Promotion of joint ventures, partnerships and linkages between ESA and EU institutions and enterprises

(ii) Support to strengthen environment policy, strategies, legislation, administration and resource management and sustainable development; and institutional capacity to enforce environment legislations and standards and programmes to involve communities in the management of natural resources

(iii) Support towards the development of infrastructure and technology transfer, and support for water pollution control, purification and conservation, solid and water waste management, treatment and sanitation; and disposal of industrial and toxic wastes. TA for R&D, management and capacity building on environmental standards

(iv) Support to mitigate against natural disasters, prevention of environmental disasters and loss of biodiversity

(v) Promotion and protection of indigenous/traditional knowledge associated with biological resources and eco-systems

d) Regional peace, stability and security.

Promote and enhance regional initiatives on peace and security

Activities could be:

(i) Capacity building for conflict prevention actors (public sector, security forces, civil society and politicians)

(ii) Promote appropriate mechanisms for early warning and promote appropriate mechanisms for conflict management and resolution

(iii) Support to institutions that are the backbone to peace and security (media, civil society and public)

(iv) Enhance capacities for peace keeping

e) Cultural development Promote and protect culture, heritage and indigenous traditional knowledge and practices for development

Activities could be:

(i) Develop and promote cultural industries and enhance market access of indigenous products

4. Trade policy and Regulations Strengthen business and support enterprise development

a) Support to regional trade arrangements and Negotiations Analyze and implement Multilateral Trade Agreements and financing. Strengthen partnerships in the region and between the region and the EC

Activities could be:

(i) Support to strengthen analytical capacities for policy making and negotiations and support successful towards implementation of regional and international agreements

(ii) Stakeholder sensitization programmes regional/multilateral trade agreements including financing mechanisms in place

(iii) Strengthen regional partnerships and improve the national and regional negotiation

b) Trade Facilitation Improve efficiency, governance and smooth transit arrangements. Support trade/investment facilitating organizations/institutions and the putting in place of guarantee funds and risk capital

Activities could be:

(i) Built regional policies and institutional capacities to facilitate regional trade in TRI, consumer protection

(ii) Implementation of one-stop transit arrangements and where applicable customs collections at first port of entry including improvement of ports capacities with the private sector to provide quality services

(iii) Compliance and enforcement of internationally accredited harmonized standards, technical regulations and simplification of ROO and safeguard mechanisms for ease of application

(iv) Employment of technology (scanners, computerization) for effective service provision and enhanced capacities of trade/investment facilitating organization and institutions and business support services

(v) Establishment of guarantee funds and risk capital to the business communities

c) Disputes settlement mechanisms Establish new and strengthen existing national and regional dispute settlement institutions. National and International recognition of arbitration decisions

Activities could be:

(i) Establishment/ strengthening of arbitration institutions and safeguard mechanisms

(ii) Training and capacity building for trade lawyers to interpret and enforce trade laws, settle disputes arising thereof

(iii) Domestication of international agreements/conventions/treaties to facilitate international obligations and recognition of arbitration decisions

(iv) Support to create awareness to stakeholders on dispute settlement mechanisms

d) Legal and Regulatory Frameworks **Support strengthening of judicial security and legality of private investment. Harmonization of commercial laws. Development and adoption of employment laws. Facilitate and protect foreign investments. Protection of Consumer rights and Intellectual Property Rights including folklore and traditional knowledge**

Activities could be:

(i) Domestication of international agreements/conventions/treaties to strengthen judicial security and private investment

(ii) Support for capacity building for the development of legal frameworks responsive to Agreements on trade and investments and support for modernization and development of commercial laws and for creating awareness of legal and regulatory frameworks

5. Trade Development **Improve and encourage an enabling business climate, and access to business related services**

a) Business climate **Support policy development (of business friendly laws and regulations). Facilitate removal of barriers to trade**

Activities could be:

(i) Review business laws/commercial laws

(ii) Enhance capacities of enforcement agencies and personnel to reduce barriers to trade

b) Business Support Services and Institutions **Establish mechanisms to encourage Public Private Partnerships and Community Private Partnerships. Develop and strengthen intermediary institutions/organizations. Develop and strengthen management information systems. Strengthen research and development capacities**

Activities could be:

(i) Capacity and institutional development to entrench public/private sector and local community partnerships and sharing of benefits from trade and sustainable exploitation of natural resources

(ii) Development of appropriate financial and intermediary institutions/organizations for business support services and strengthen networked information management systems to facilitate trade

(iii) Strengthen research capacities and institutions to inform business decisions

c) Access to trade finance **Establish, promote and strengthen finance institutions. Facilitate and improve access to finance. Development of innovative financing**

Activities could be:

(i) Establish, promote and strengthen financial institutions and deepen financial reforms to assist in mobilizing resources for trade and investment

(ii) Design of instruments for businesses to access trade/investment resources and innovating financing mechanisms

d) Trade promotion and market development in the productive and services sectors **Develop and enhance institutional and enterprise development**

Activities could be:

(i) Establish/ enhance, restructure and commercialize trade/ investment agencies

(ii) Development of entrepreneurship

(iii) Strengthen capacities of business service providers

e) Private Development **Sector** **To support in particular industrial development, MSMEs, mining, minerals and tourism. Identify and support privatization/ commercialisation as appropriate**

Activities could be:

- (i) Capacity strengthening of business institutions in public and private sector and civil society
- (ii) Strengthen and facilitate trade information access, networks and information sharing and training for professionals on trade facilitation, export promotion and market research etc
- (iii) Development of facilities and institutions for private sector participation
- (iv) Facilitation for adoption of new technology particularly for the micro and SMEs

6. Adjustment Cost **To mitigate against fiscal revenue losses and economic costs of adjustment**

a) Restructuring of industries, trade and policies and support to social services **Ensure competitiveness and ensure alignment of policies. Provide support for social sector development, social services and human resource development and education**

Activities could be:

- (i) Restructuring of industrial sector and adoption of economic policies for competitiveness and diversification into new economic sectors
- (ii) Retraining of redundant labour to acquire new skills for restructured industries and new economic section

b) Loss of fiscal revenue **Macroeconomic support to mitigate against revenue loss, protect basic service sectors e.g health & education and provide interventions for net food importing countries**

Activities could be:

- (i) Provision of resources for loss of revenue from tariff dismantling, deepening of regional integration and negative implication of BOP
- (ii) Provision of safety net for social sector development, social services, human resource development and net food importing countries

c) Debt Relief **Debt swap particularly for non-LDCs who have not benefited from HIPC**

7. Institutions **Support capacity building for trade and investment promotion to ensure the effective implementation of EPAs and the regional reforms through the national regional and international private sector**

Activities could be:

- (i) Refocusing the activities of EPA preparatory institutional arrangements towards monitoring EPA related commitments
- (ii) Strengthen partnerships at national and regional level

PROTOCOL I
**CONCERNING THE DEFINITION OF THE CONCEPT OF 'ORIGINATING
PRODUCTS' AND METHODS OF ADMINISTRATIVE COOPERATION**

See separate document for Protocol I

PROTOCOL II
MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

Article 1

Definitions

For the purposes of this Protocol:

- (a) ‘Goods’ means all goods falling within the scope of the Harmonized System, irrespective of the scope of the Economic Partnership Agreement concluded between the European Union States and the Signatory ESA States;
- (b) ‘Customs legislation’ means any legal or regulatory provisions applicable in the territories of the Parties, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;
- (c) ‘Applicant Authority’ means a competent administrative authority which has been designated by the Parties for this purpose and which makes a request for assistance on the basis of this Protocol;
- (d) ‘Requested Authority’ means a competent administrative authority which has been designated by the Parties for this purpose and which receives a request for assistance on the basis of this Protocol;
- (e) ‘Personal data’ means all information relating to an identified or identifiable individual;
- (f) ‘Operation in breach of customs legislation’ means any violation or attempted violation of customs legislation.

Article 2

Scope

1. The Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of the customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.
2. Assistance in customs matters, as provided for in this Protocol, shall apply to any administrative authority of the Parties which is competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information has the prior authorisation of that authority.
3. Assistance in recovery proceedings regarding duties, taxes or fines is not covered by this Protocol.

Article 3

Assistance on Request

1. At the request of the Applicant Authority, the Requested Authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.
2. At the request of the Applicant Authority, the Requested Authority shall inform it:
 - (a) whether goods exported from the territory of the Party have been lawfully imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;
 - (b) whether goods imported into the territory of the Party have been lawfully exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.
3. At the request of the Applicant Authority, the Requested Authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:
 - (a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
 - (b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation;
 - (c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation; and
 - (d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

Article 4

Spontaneous assistance

The Parties shall assist each other, at their own initiative and in accordance with their legal or regulatory provisions, if they consider that to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:

- (a) operations which are or appear to be in breach of customs legislation and which may be of interest to the other Party,
- (b) new means or methods employed in carrying out operations in breach of customs legislation,

- (c) goods known to be subject to operations in breach of customs legislation,
- (d) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation, and
- (e) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

Article 5

Delivery and notification

1. At the request of the Applicant Authority, the Requested Authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order:
 - (a) to deliver any documents emanating from the Applicant Authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the Requested Authority, and, where appropriate;
 - (b) to notify any decisions emanating from the Applicant Authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the Requested Authority.
2. Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the Requested Authority or in a language acceptable to that authority.

Article 6

Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately. Requests may also be communicated in electronic form.
2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the name of the Applicant Authority;
 - (b) the measure requested;
 - (c) the object of and the reason for the request;
 - (d) the legal or regulatory provisions and other legal elements involved;
 - (e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations; and

- (f) a summary of the relevant facts and of the enquiries already carried out.
- 3. Requests shall be submitted in an official language of the Requested Authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.
- 4. If a request does not meet the formal requirements set out above, its correction or completion may be requested; in the meantime precautionary measures may be ordered.

Article 7

Execution of requests

- 1. In order to comply with a request for assistance, the Requested Authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the Requested Authority when the latter cannot act on its own.
- 2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.
- 3. Duly authorised officials of a Party may, with the agreement of the other Party involved and subject to the conditions laid down by the latter:
 - (a) be present to obtain in the offices of the Requested Authority or any other concerned authority in accordance with paragraph 1, information relating to activities that are or may be operations in breach of customs legislation which the Applicant Authority needs for the purposes of this Protocol.
 - (b) be present at enquiries carried out in the latter's territory.

Article 8

Form in which information is to be communicated

- 1. The Requested Authority shall communicate results of enquiries to the Applicant Authority in writing together with relevant documents, certified copies or other items.
- 2. If requested, the information provided for in paragraph 1 may be in electronic form.
- 3. Original documents shall be transmitted only upon request in cases where certified copies would be insufficient. These originals shall be returned at the earliest opportunity.

Article 9

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party concerned is of the opinion that assistance under this Protocol would:
 - (a) be likely to prejudice the sovereignty of a Signatory ESA State or that of a Member State of the European Community which has been requested to provide assistance under this Protocol; or
 - (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10(2); or
 - (c) violate an industrial, commercial or professional secret.
2. Assistance may be postponed by the Requested Authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the Requested Authority shall consult with the Applicant Authority to determine if assistance can be given subject to such terms or conditions as the Requested Authority may require.
3. Where the Applicant Authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the Requested Authority to decide how to respond to such a request.
4. For the cases referred to in paragraphs 1 and 2, the decision of the Requested Authority and the reasons must be communicated to the Applicant Authority without delay.

Article 10

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Parties. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party that received it and the corresponding provisions applying to the European Community authorities.
2. Personal data may be exchanged only where the Party which may receive them agrees to ensure an adequate level of protection of such data then undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party that may supply them. To that end, Parties shall communicate to each other information on their applicable rules, including, where appropriate, legal provisions in force in the Member States of the European Community.
3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Protocol, is

considered to be for the purposes of this Protocol. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

4. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

Article 11

Experts and witnesses

An official of a Requested Authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

Article 12

Assistance expenses

The Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses to experts and witnesses, and those to interpreters and translators who are not public service employees.

Article 13

Implementation

1. The implementation of this Protocol shall be entrusted on the one hand to the customs authorities of the Signatory ESA States and on the other hand to the competent services of the Commission of the European Communities and the customs authorities of the Member States as appropriate. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in particular in the field of data protection.
2. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

Article 14

Amendments

The Parties may recommend to the competent bodies amendments which they consider should be made to this Protocol.

Article 15

Final Provisions

1. This Protocol shall complement and not impede application of any agreements on mutual administrative assistance which have been concluded or may be concluded between the Parties nor shall it preclude more extensive mutual assistance granted under such agreements.
2. The provisions of this Protocol shall not affect the obligations of the Parties under any other international Agreement or Convention.
3. The provisions of this Protocol shall not affect the European Community provisions governing the communication between the competent services of the Commission of the European Communities and the customs authorities of the Member States of the European Community of any information obtained under this Protocol which could be of interest to the European Community.
4. Notwithstanding the provisions of paragraph 1, the provisions of this Protocol shall take precedence over the provisions of any bilateral Agreement on mutual assistance which has been or may be concluded between individual Member States of the European Community and any Signatory ESA State in so far as the provisions of the latter are incompatible with those of this Protocol.
5. In respect of questions relating to the applicability of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the EPA Committee.