INTERIM AGREEMENT

WITH A VIEW TO AN ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE ONE PART,

AND THE SADC EPA STATES, OF THE OTHER PART

PREAMBLE

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

MALTA,

THE KINGDOM OF THE NETHERLANDS, THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

CE/SADC/en 3

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE EUROPEAN COMMUNITY (EC),

(hereinafter jointly referred to as the "EC Party"),

Of the one part, and

THE REPUBLIC OF BOTSWANA,

THE KINGDOM OF LESOTHO,

THE REPUBLIC OF MOZAMBIQUE,

THE REPUBLIC OF NAMIBIA

THE KINGDOM OF SWAZILAND

(hereinafter referred to as the "SADC EPA States"),

Of the other part, (1)

A Joint Declaration on Angola and Tanzania is attached to the Agreement.

CONSIDERING the Parties' wish to further strengthen their trade links and establish close and lasting relations based on partnership and cooperation;

RECOGNISING the efforts by the SADC EPA States to ensure economic and social development for the people of the Southern African Development Community (SADC) region;

RECALLING the importance attached by the Parties to the principles and rules which govern the multilateral trading system and to the need to apply them in a transparent and non-discriminatory manner;

TAKING ACCOUNT of the Parties' rights and obligations in terms of their membership of the World Trade Organisation (the 'WTO'), and reaffirming the importance of the multilateral trading system.

RECOGNISING the special needs and interests of the SADC EPA States and the need to address their diverse levels of economic development, and geographic and socio-economic concerns;

BEARING IN MIND the Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States of the other part (hereinafter referred to as "the Cotonou Agreement"), signed on 23 June 2000;

BEARING IN MIND the Trade, Development and Cooperation Agreement (TDCA) between South Africa and the European Community and its Member States, signed on 11 October 1999;

CONFIRMING the Parties' support and encouragement for the process of trade liberalisation;

CONFIRMING the Parties' commitment to and support for economic development in the SADC EPA States to attain the Millennium Development Goals (MDG);

CONFIRMING the Parties' commitment to promote regional cooperation and economic integration in the SADC EPA States, and to encourage the liberalisation of trade between the Parties;

BEARING IN MIND the Parties' commitment to ensure that their mutual arrangements support the process of regional integration under the SADC Treaty;

DESIRING to create new employment opportunities, attract investment and improve living standards in the territories of the Parties while promoting sustainable development;

EMPHASISING the importance of agriculture and sustainable development in poverty alleviation in the SADC EPA States;

RECOGNISING the special circumstances of Botswana, Lesotho, Namibia and Swaziland in the Economic Partnership Agreement (EPA) and the need to take into account the effects on them of trade liberalisation under the TDCA;

RECOGNISING in this regard the particular case of the Southern African Customs Union (SACU) established under the 2002 Southern African Customs Union Agreement;

RECOGNISING the special circumstances and needs of the Least Developed Countries (LDCs) of the SADC EPA States through the use of special and differential treatment and asymmetry;

CONVINCED that this Agreement will further deepen and encourage economic and trade relations between the Parties;

RECOGNISING the importance of development finance cooperation for the implementation of this Agreement;

HAVE AGREED, in pursuit of the above, to conclude the present Agreement (hereinafter referred to as "this Agreement"):

(1) A Joint Declaration on Angola and Tanzania is attached to the Agreement.

Part I. Trade Partnership for Sustainable Development

Chapter 1. General Provisions

Article 1. Objectives

The objectives of this Agreement are to:

(a) contribute to the reduction and eventual eradication of poverty through the establishment of a trade partnership consistent with the objective of sustainable development, the Millennium Development Goals and the Cotonou Agreement;

(b) promote regional integration, economic cooperation and good governance thus establishing and implementing an effective, predictable and transparent regional regulatory framework for trade and investment between the Parties and among the SADC EPA States;

(c) promote the gradual integration of the SADC EPA States into the world economy, in conformity with their political choices and development priorities;

(d) improve the SADC EPA States' capacity in trade policy and trade related issues;

(e) support the conditions for increasing investment and private sector initiative, and enhance supply capacity, competitiveness and economic growth in the SADC EPA States;

(f) strengthen 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, consolidate the implementation of the SADC Protocol on Trade and 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.

Article 2. Principles

1. This Agreement is based on the Fundamental Principles as well as the Essential and Fundamental Elements of the Cotonou Agreement, as set out in Articles 2 and 9 of that Agreement. This Agreement shall build on the achievements of Cotonou and the previous ACP-EC Partnership Agreements in regional cooperation and integration as well as economic and trade cooperation.

2. The Cotonou Agreement and this Agreement shall be implemented in a complementary and Mutually reinforcing manner.

3. The Parties agree to cooperate to implement this Agreement in a manner that is consistent with the development policies and regional integration programmes in which the SADC EPA States are or may be involved.

4. The Parties agree to cooperate in order to fulfil their commitments and obligations and to facilitate the capacity of SADC EPA States to implement this Agreement.

Article 3. Sustainable Development

1. The Parties reaffirm that the objective of sustainable development is to be applied and integrated at every level of their economic partnership, in fulfilment of the overriding commitments set out in Articles 1, 2 and 9 of the Cotonou Agreement, and especially the general commitment to reduce and eventually eradicate poverty in a way that is consistent with the objectives of sustainable development.

2. The Parties understand this objective to apply in the case of this Agreement as a commitment that:

(a) the application of this Agreement shall fully take into account the human, cultural, economic, social, health and environmental best interests of their respective populations and of future generations;

(b) decision-taking methods embrace the fundamental principles of ownership, participation and dialogue.

3. As a result, the Parties agree to work cooperatively towards the realisation of people-centred sustainable development.

Article 4. Regional Integration

1. The Parties recognise that regional integration is an integral element of their partnership and a powerful instrument to achieve the objectives of this Agreement.

2. The Parties reaffirm the importance of regional and sub-regional integration amongst the SADC EPA States to achieve greater economic opportunities, enhanced political stability and to foster the effective integration of developing countries into the world economy. Without prejudice to the commitments undertaken in this Agreement, the pace and content of their regional integration is determined exclusively by the SADC EPA States in the exercise of their sovereignty.

3. The Parties support in particular the integration processes and related development policies and political agendas, based on the Southern African Customs Union Agreement signed on

21 October 2002, the Southern African Development Community Treaty signed on 17 August 1992 and the Constitutive Act of the African Union adopted on 11 July 2000. They aim at building and deepening their partnership on the basis of those processes and at implementing this Agreement in a mutually supportive manner with those instruments, taking into account the respective levels of development, needs, geographical realities and sustainable development strategies.

Article 5. Monitoring

1. The Parties undertake to continuously monitor the operation and impact of this Agreement through appropriate mechanisms and timing within their respective participative processes and institutions, as well as those set up under this Agreement, in order to ensure that the objectives of this Agreement are realised, that it is properly implemented and that the benefits for their people deriving from it, in particular the most vulnerable groups, are maximised.

2. The Parties also undertake to consult each other promptly over any issue concerning the implementation of this Agreement.

Article 6. Cooperation In International Fora

The Parties shall endeavour to cooperate in all international fora where issues relevant to this Agreement are discussed.

Chapter 2. Development Cooperation

Article 7. Development Cooperation Framework

The Parties commit themselves to cooperating in order to implement this Agreement and to support the SADC EPA States' trade and development strategies within the overall SADC regional integration process. The cooperation can take financial and non-financial forms.

Article 8. Development Finance Cooperation

1. The Parties recognise that development cooperation is a crucial element of their partnership and an essential factor for the realisation of the objectives of this Agreement as laid down in Article 1. Development finance cooperation for regional economic cooperation and integration, as provided for in the Cotonou Agreement, shall be carried out so as to support and promote the efforts of the SADC EPA States to achieve the objectives and to maximise the expected benefits of this

Agreement. Areas of cooperation and technical assistance are set out, as appropriate, in Chapter 3 and in the other Chapters of this Agreement. Cooperation shall be implemented according to the modalities provided for in this Article, shall be kept under ongoing review and shall be revised as necessary according to the provisions of Article 108 of this Agreement.

2. The European Community (1) financing pertaining to development cooperation between the SADC EPA States and the European Community supporting 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 and within the framework of the relevant instruments financed by the General Budget of the European Union. In this context, supporting the implementation of this Interim Agreement with a view to an EPA, shall be a priority.

3. The Member States of the European Union collectively undertake to support, by means of their respective development policies and instruments, development cooperation activities for regional economic cooperation and integration and for the implementation of this Agreement in the SADC EPA States and at the regional level, in conformity with the complementarity and aid effectiveness principles.

4. The Parties recognise that adequate resources will be required for the implementation of this Agreement and the fullest realisation of its benefits. In this respect the Parties shall cooperate to enable SADC EPA States to access other financial instruments as well as to facilitate other donors willing to further support the efforts of the SADC EPA States in achieving the objectives of this Agreement.

5. The Parties agree that a regional development financing mechanism such as an EPA fund would provide a useful instrument for efficiently channelling development financial resources and for implementing EPA accompanying measures. The EC Party agrees to support the efforts of the region to set up such a mechanism. The EC Party will contribute to the fund following a satisfactory audit.

(1) Not including Member States.

Chapter 3. Areas of Cooperation

Article 9. Objectives

For the purpose of implementing this Agreement and taking into account the development policies of the SADC EPA States, the Parties agree that the following are priority areas for trade and economic cooperation.

Article 10. Cooperation In Trade In Goods

The aim of cooperation in this area shall be to enhance trade in goods and the SADC EPA States' capacity to trade, including the phasing out of tariffs and customs duties, properly implementing rules of origin, trade defence instruments, non-tariff measures including sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT), and promoting customs cooperation and trade facilitation.

Article 11. Cooperation In Supply-side Competitiveness

The aim of cooperation under this Article shall be to increase the competitiveness of the SADC EPA States and remove supply side constraints at national, institutional and, in particular, at company level. This cooperation includes, amongst others, fields such as production, technology development and innovation, marketing, financing, distribution, transport, diversification of economic base, as well as development of the private sector, improvement of the trade and business environment and support to small and medium enterprises in the fields of agriculture, fisheries, industry and services.

Article 12. Cooperation In Business Enhancing Infrastructure

The aim of cooperation under this Article shall be the development of a competitive business enhancing environment in areas such as information and communication technology (ICT), transport and energy.

Article 13. Cooperation In Trade In Services

The Parties agree to cooperate to develop and enhance trade in services as provided for in Title IV Article 67 of this Agreement.

Article 14. Cooperation In Trade Related Issues

The Parties agree to cooperate to develop and enhance trade related issues as provided for in Title IV Article 67 of this Agreement.

Article 15. Cooperation In Trade Data

The aim of cooperation under this Article shall be to improve the capacity of the SADC EPA States in the area of trade data capture, analysis and dissemination.

Article 16. Cooperation for Epa Institutional Capacity Building

The aim of cooperation under this Article shall be to support institutional structures for EPA implementation management, capacity building for trade negotiations and for trade policy.

Article 17. Cooperation on Fiscal Adjustment

1. The Parties recognise that the phasing out or reduction of customs duties laid down in this Agreement may affect the fiscal revenues of the SADC EPA States and agree to cooperate on this matter.

2. The Parties agree to cooperate in accordance with the provisions of Article 8 in particular:

(a) on support to fiscal reforms; and

(b) on support measures complementary to fiscal reforms for the mitigation of the net fiscal impact of this Agreement that will be determined in accordance with a jointly agreed mechanism.

Article 18. Types of Interventions

Development cooperation under this Agreement may include, but is not limited to the following EPA related interventions:

1. policy development;

2. legislation and regulatory framework development;

3. institutional/organisational development;

4. capacity building and training; (1)

5. technical advisory services;

6. administrative services;

7. support in SPS and TBT areas; and

8. operational support including equipment, materials and related works.

For the purpose of this Article, "capacity building" may include in particular training, institutional development, organisational development (structures and procedures), operational support and inter-institutional communication and cooperation procedures.

(1) For the purpose of this Article, "capacity building" may include in particular training, institutional development, organisational development (structures and procedures), operational support and inter-institutional communication and cooperation procedures.

Part II.

Chapter 4. General Provisions

Part 1. Trade In Goods

Article 19. Free Trade Area

1. This Agreement establishes a free trade area (FTA) between the Parties, in conformity with the General Agreement on Tariffs and Trade (hereinafter referred to as "GATT 1994"), and in particular Article XXIV thereof.

2. The FTA shall respect the principle of asymmetry, commensurate to the specific needs and capacity constraints of the SADC EPA States, in terms of levels and timing for commitments under this Agreement.

3. The FTA will apply to trade between, of the one part, the European Community and, of the other part, the SADC EPA States.

Article 20. Scope

This Chapter shall apply to products:

1. falling within Chapters 01 to 97, with the exception of Chapter 93, set out in each Party's respective tariff nomenclature in conformity with the rules of classification applicable to the Harmonised Commodity Description and Coding System (HS); and

2. originating in the European Community or in the SADC EPA States.

Article 21. Rules of Origin

1. For the purposes of this Chapter, "originating" means qualifying under the rules of origin set out in Protocol 1.

2. Within the first three years of the entry into force of this Agreement, the Parties shall review the provisions of Protocol 1, with a view to further simplifying the concepts and methods used for the purpose of determining origin. In such review the Parties shall take into account the 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 Joint Council as defined in Article 93.

3. Particular attention shall be given to these provisions within the framework of the review foreseen in paragraph 2.

Article 22. Customs Duties

1. A customs duty includes any duty or charge of any kind imposed on, or in connection with, the importation of goods, including any form of surtax or surcharge, but does not include:

(a) internal taxes or other internal charges imposed consistently with Article III of GATT 1994;

(b) any antidumping, countervailing or safeguard measure imposed consistently with Title II;

(c) fees and charges for consular services imposed consistently with paragraph 2; and

(d) fees or other charges imposed consistently with paragraph 2.

2. Fees and charges referred to in paragraph 1(c) and (d) shall be limited in amount to the approximate cost of services rendered and shall not represent indirect protection for domestic products or a taxation of imports for fiscal purposes. They shall be based on specific rates that correspond to the real value of the service rendered.

3. For each product the basic duty, to which the successive reductions set out in the Agreement are to be applied, shall be the most-favoured-nation (hereinafter referred to as "MFN") rate of duty effectively applied at the day of entry into force of this Agreement.

4. In cases where the process of tariff dismantlement does not start at the entry into force of this Agreement the duty to which the successive reductions are to be applied shall be either the basic duty referred to in paragraph 3 of this Article, or the duty applied on an erga omnes basis on the starting day of the relevant tariff dismantlement schedule, whichever is the lower.

5. The reduced duties calculated in accordance with the reduction schedules contained in this Agreement shall be applied rounded to the first decimal place or, in case of specific duties, to the second decimal place.

Article 23. Standstill

No new customs duties shall be introduced, nor shall those already applied be increased in trade between the Parties as from the entry into force of this Agreement for all products subject to liberalisation.

Article 24. Duties, Taxes or other Fees and Charges on Exports

1. No new customs duties on exports or charges having equivalent effect shall be introduced, nor shall those already applied be increased, in the trade between the European Community and the SADC EPA countries from the date of entry into force of this Agreement.

2. In exceptional circumstances where the SADC EPA States can justify specific revenue needs, protection of infant industries, or protection of the environment, these SADC EPA States may introduce, after consultation with the EC Party, temporary export taxes or charges having equivalent effect on a limited number of additional products.

3. The Parties agree to review the provisions of this Article in the Joint Council no later than three years after the entry into force of this Agreement, taking fully into account their impact on development and diversification of the SADC EPA States' economies.

Article 25. Customs Duties on Products Originating In the Sadc Epa States

1. The EC Party shall provide duty free, quota free (DFQF) treatment for all products, except those referred to in paragraph 3, falling within the scope of this Agreement and originating in Botswana, Lesotho, Mozambique, Namibia and Swaziland.

2. Customs duties on imports of products originating in the SADC EPA States shall be reduced or eliminated in accordance with the provisions set out in Annex 1.

3. Imports of products as defined in the Annex 2 will be subject to the transitional regime set out therein.

Article 26. Customs Duties on Products Originating In the Ec

1. Products originating in the EC Party shall be imported into Botswana, Lesotho, Namibia and Swaziland in accordance with the treatment described in Annex 3.

2. Imports of products originating in the EC Party shall be imported into Mozambique in accordance with the treatment described in Annex 4.

3. The Parties agree to merge the two above annexes into a single SADC EPA tariff schedule at the time of Mozambique's introduction of the HS 2007. The merger shall be made effective by a decision of the Joint Council.

Article 27. Free Circulation of Goods

1. Customs duties shall be levied only once for goods originating in the EC Party or in the SADC EPA States in the territory of the other Party.

2. Any duty paid upon importation into an SADC EPA State shall be refunded fully when the goods are re-exported from the customs territory of the SADC EPA State of first importation. Such products shall then be subject to the duty in the country of consumption.

3. The Parties agree to cooperate with a view to facilitating the circulation of goods and simplifying customs procedures.

Article 28. 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 SADC EPA 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 SADC EPA States shall accord to the EC Party any more favourable treatment applicable as a result of the SADC EPA States or any Signatory SADC EPA State becoming party to a free trade agreement with any major trading economy after the signature of this Agreement.

3. Where an SADC EPA State can demonstrate that it has been given by a third Party substantially more favourable treatment than that offered by the EC Party, the Parties will consult and jointly decide how best to implement the provisions

of paragraph 2.

4. The provisions of this Chapter shall not be so construed as to oblige the EC Party or any SADC EPA State to extend reciprocally any preferential treatment applicable as a result of the EC Party or any SADC EPA State being party to a free trade agreement with third parties on the date of signature of this Agreement.

5. 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 economic integration agreement referred to in paragraph 2, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1,5 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 2.

Article 29. Special Provisions on Administrative Cooperation

1. The Parties agree that administrative cooperation is essential for the implementation and the control of the preferential treatment granted under this Title and underline their commitment to combat irregularities and fraud in customs and related matters.

2. The Parties also agree to cooperate in ensuring that the necessary institutional structures enable the responsible authorities to effectively respond to requests for assistance in a timely manner.

3. For the purpose of this Article and without prejudice to Article 9 of Protocol 2, 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 as provided for in Article 34 of Protocol 1;

(b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin as provided for in Article 34 of Protocol 1;

(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 as provided for in Article 7 of Protocol 2.

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 legitimate 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. Where a Party or an SADC EPA State, as the case may be, 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, in exceptional circumstances, temporarily suspend the relevant preferential treatment of the product(s) concerned, and of their specific origin concerned in accordance with this Article. For the purposes of this Article, exceptional circumstances mean those circumstances which have or might have a significant negative effect on a Party or an SADC EPA State, as the case may be, if a relevant preferential treatment of the product(s) concerned is to be continued.

6. The application of a temporary suspension shall be subject to the following conditions:

(a) The Party or SADC EPA State, as the case may be, 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 Trade and Development Committee of its finding together with the objective information and enter into consultations within the Trade and Development 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 Trade and Development Committee as provided for above and have failed to agree on an acceptable solution within three months following the notification, the Party or SADC EPA State concerned, as the case may be, may temporarily suspend the relevant preferential treatment of the product(s) concerned, and of the specific origin concerned. A temporary suspension shall be notified to the Trade and Development Committee without undue delay.

(c) Temporary suspensions under this Article shall be limited to those necessary to protect the financial interests of the Party or SADC EPA State 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 Trade and Development Committee. They shall be

subject to periodic consultations within the Trade and Development Committee in particular with a view to their termination as soon as the conditions for their application are no longer given.

Article 30. Management of Administrative Errors

The Parties recognise each other's right to correct administrative errors during the implementation of this Agreement. Where errors are identified either Party may request the Trade and Development Committee to examine the possibilities of adopting all appropriate measures with a view to resolving the situation.

Article 31. Customs Unions and Free-trade Areas

1. This Agreement shall not preclude the maintenance or establishment of customs unions, free-trade areas or other arrangements between either of the Parties and third countries, except in so far as they alter the rights and obligations provided for in this Agreement.

2. Consultation between the EC Party and the SADC EPA States shall take place within the Joint Council concerning agreements establishing or adjusting customs unions or free-trade areas and, where required, on other major issues related to their respective trade policy with third countries.

Chapter 5.

Article 32. Anti-dumping and Countervailing Measures

The rights and obligations of the EC Party or the SADC EPA States in respect of the application of antidumping or countervailing measures shall be governed by the relevant WTO Agreements. Any disputes related to these measures can only be settled through WTO Dispute Settlement procedures.

Article 33. Multilateral Safeguards

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the SADC EPA States and the EC Party from adopting measures in accordance with Article XIX of GATT 1994, the WTO Agreement on Safeguards, Article 5 of the Agreement on Agriculture annexed to the Marrakech Agreement Establishing the World Trade Organisation and any other relevant WTO Agreements.

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 SADC EPA States, exclude imports from any SADC EPA State from any measures taken pursuant to Article XIX of 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 from the date of entry into force of the Agreement. Not later than 120 days before the end of this period, the Joint SADC EPA States-EC Council shall review the operation of those provisions in the light of the development needs of the SADC EPA 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 34. Bilateral Safeguard

1. Notwithstanding Article 33, after having examined alternative solutions, a Party may apply safeguard measures of limited duration which derogate from the provisions of Articles 25 and 26, under the conditions and in accordance with the procedures laid down in this Article.

2. Safeguard measures referred to in paragraph 1 of this Article 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 producing like or directly competitive products, 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 like or directly competitive agricultural products (1) or mechanisms regulating those markets.

3. Safeguard measures referred to in this Article shall not exceed what is necessary to remedy or prevent serious injury or disturbances, as defined in paragraph 2 of this Article.

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

4. Those safeguard measures which may be taken by 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 thi s Agreement; or

(b) increase in the customs duty on the product concerned up to a level which does not exceed the WTO bound rate of duty; or

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

5. Without prejudice to paragraphs 1, 2 and 3 of this Article, where any product originating in one or more SADC EPA States 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 2(a), (b) and (c) of this Article to a like or directly competitive production sector of 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.

6. (a) Without prejudice to paragraphs 1, 2 and 3 of this Article, 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(a), (b) and (c) of this Article to an SADC EPA State, the SADC EPA State concerned may take surveillance or safeguard measures limited to its territory in accordance with the procedures laid down in paragraphs 7 to 10 of this Article.

(b) An SADC EPA State may take safeguard measures as provided for in paragraph 2 of this Article, 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 cause disturbances to an infant industry producing like or directly competitive products. Such provision is applicable for a period of 12 years for Botswana, Namibia and Swaziland or 15 years for LDCs from the date of entry into force of this Agreement. This application period can be further extended on review by the Joint Council, in view of the overall level of development achieved by the SADC EPA States. Measures must be taken in accordance with the procedures laid down in paragraphs 6 to 9 of this Article.

7. (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, 5 and 6 of this Article.

(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 one or more SADC EPA States apply a safeguard measure, or where the EC Party applies a measure limited to the territory of one or more of its outermost regions, they may however apply that measure for a period not exceeding four years and, where the circumstances warranting the imposition of safeguard measures continue to exist, extend it 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 import of a product that has previously been subject to such a measure, within a period of at least one year from the expiry of the measure.

8. 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, 5 and/or 6 exists, it shall immediately refer the matter to the Trade and Development Committee for examination.

(b) The Trade and Development Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the Trade and Development Committee aimed at remedying the circumstances, or no other satisfactory solution has been reached within 30 days of the matter being referred to the Trade and Development 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 case to which paragraph 9 of this Article applies, as soon as possible, the Party or the SADC EPA State concerned shall supply the Trade and Development 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 Trade and Development Committee and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for its abolition as soon as circumstances permit.

9. In critical circumstances where delay would cause damage which would be difficult to repair, the importing Party concerned, whether the EC Party, or one or more SADC EPA States as the case may be, may take the measures provided for in paragraphs 3, 5 and/or 6 on a provisional basis without complying with the requirements of paragraph 8. 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 one or more SADC EPA States as the case may be, or where measures taken by the EC Party are limited to the territory of one or more of its outermost region(s). 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 it shall immediately refer the matter to the Trade and Development Committee for examination.

10. 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 Trade and Development Committee without delay.

11. Safeguard measures adopted under the provisions of this Article shall not be subject to WTO Dispute Settlement provisions.

(1) For the purpose of this Article agricultural products are those covered by Annex I of the WTO Agreement on Agriculture.

Chapter 6. Non-tariff Measures

Article 35. Prohibition of Quantitative Restrictions

All prohibitions or restrictions applying to the import or export of goods between the Parties, other than customs duties and taxes, and fees and other charges provided for under Article 22 of this Agreement, whether made effective through quotas, import or export licenses or other measures, shall be eliminated upon the entry into force of this Agreement, unless justified under the exceptions of Article XI of GATT 1994. No new such measures shall be introduced. The provisions of this Article shall be without prejudice to the provisions of Article 32, Title II, on anti-dumping and countervailing measures.

Article 36. National Treatment on Internal Taxation and Regulation

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 and the SADC EPA States 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 or SADC EPA State 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 or SADC EPA State 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.

Chapter 7. Customs and Trade Facilitation

Article 37. Objectives

The objectives of the Parties in this Chapter are to:

1. reinforce cooperation in the area of customs and trade facilitation with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the customs authorities, fulfil the objectives of effective control and the promotion of trade facilitation;

2. promote harmonisation of customs legislation and procedures;

3. ensure that legitimate public policy objectives, including those related to security and the prevention of fraud in the area of customs and trade facilitation shall not be compromised in any way; and

4. provide the necessary support for SADC EPA States customs administrations to effectively implement this Agreement.

Article 38. Customs and Administrative Cooperation

1. In order to ensure compliance with the provisions of this Title and effectively respond to the objectives laid down in Article 37, the Parties shall:

(a) exchange information on customs legislation and procedures;

(b) jointly develop initiatives relating to customs and trade facilitation and the strengthening of administrative capacity;

(c) exchange experience and best practices on combating corruption and fraud in matters relating to this Chapter;

(d) exchange experience and best practices on issues relating to import, export and transit procedures and on issues relating to improving services to the business community;

(e) exchange experience and best practices on facilitating transit;

(f) facilitate the exchange of experts between customs administrations; and

(g) promote coordination between all related agencies, both internally and across borders.

2. The EC Party and SADC EPA States will prepare and develop an enhanced cooperation on the implementation of the World Customs Organisation Framework of Standards to Secure and Facilitate Global Trade. The conditions, as stipulated by the World Customs Organisation, will have to be met and in particular the relevant legislation and measures in this area will have to be implemented in the EC Party and in the said SADC EPA States. This cooperation shall include initiatives aimed at working towards the mutual recognition of the Authorised Economic Operator (AEO) status and the exchange of advance information to allow an effective risk assessment and management for security purposes.

3. Notwithstanding paragraphs 1 and 2, the Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of Protocol 2 on Mutual Administrative Assistance in Customs Matters.

Article 39. Customs and Legislative Procedures

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

(a) the revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, the substantive elements of the World Customs Organisation Framework of Standards to Secure and Facilitate Global Trade, the International Convention on the Harmonised System and other international instruments and standards applicable in the field of customs and trade;

(b) the need to protect and facilitate legitimate trade;

(c) the need to avoid unnecessary and discriminatory burdens on economic operators, the need to safeguard against fraud and corruption and the need to provide further facilitation for operators that meet a high level of compliance;

(d) the need for each Party to apply a single administrative document or electronic equivalent;

(e) the application of modern customs techniques, including risk assessment, simplified procedures for entry and release of goods, post release controls, and company audits;

(f) transparency, efficiency and proportionality, in order to reduce costs and increase predictability for economic operators;

(g) the need for non-discrimination in terms of requirements and procedures applicable to import, export and goods in transit, though it is accepted that consignments might be treated differently according to objective risk assessment criteria;

(h) the progressive development of systems, including those based upon information technology, for both export and import operations, to facilitate the exchange of information between economic operators, customs administrations and other agencies;

(i) the adoption of systems that facilitate the importation of goods through the use of simplified customs procedures and processes, including pre-arrival clearance;

(j) the elimination of any requirements for the mandatory use of pre-shipment inspections as defined by the WTO Agreement on Pre-shipment Inspection, or their equivalent;

(k) the application of rules that ensure that any penalties imposed for minor breaches of customs regulations or procedural requirements are proportionate and, in their application, do not give rise to undue delays in customs clearance;

(l) a system of binding advance rulings on customs matters, notably on tariff classification and rules of origin, in accordance with rules laid down in their respective legislation;

(m) the facilitation of transit movements;

(n) the elimination of all requirements for the mandatory use of customs brokers; and

(o) transparent, non-discriminatory and proportionate rules in respect of the licensing of customs brokers.

2. In order to improve working methods and to ensure transparency and efficiency of customs

Operations, the Parties shall:

(a) ensure that the highest standards of integrity are maintained, through the application of anti corruption measures in this field;

(b) take further steps towards the reduction, simplification and standardisation of data in the documentation required by customs and other related agencies;

(c) simplify requirements and formalities wherever possible, in respect of the rapid release and clearance of goods;

(d) provide effective, prompt and non-discriminatory procedures enabling the right of appeal against customs and other agency administrative actions, rulings and decisions affecting imports, exports or goods in transit. The procedures for appeal shall be easily accessible to all including small and medium enterprises; and

(e) create the environment for the effective enforcement of legislative requirements.

Article 40. Facilitation of Transit Movements

1. The Parties or the SADC EPA States, as the case may be, shall ensure freedom of transit through their territory via the route most convenient for transit. Any controls or requirements must be non-discriminatory, proportionate and applied uniformly.

2. Without prejudice to legitimate customs control, the Parties shall accord to traffic in transit treatment no less favourable than that accorded to domestic goods, exports and imports, and their movement.

3. The Parties or the SADC EPA States, as the case may be, shall operate bonded transport regimes that allow the transit of goods without payment of duties or other charges, subject to the provision of an appropriate guarantee.

4. The Parties or the SADC EPA States, as the case may be, shall promote and implement regional transit arrangements.

5. The Parties or the SADC EPA States, as the case may be, shall use international standards and instruments relevant to transit.

6. The Parties or the SADC EPA States, as the case may be, shall promote coordination between all concerned agencies, both internally and across borders.

Article 41. Fees and Charges

1. Fees and charges shall be reasonable and shall not be more than the cost of the service provided in relation to any specific transaction. They shall not be calculated on an ad valorem basis.

2. Fees and charges shall not be imposed for consular services.

Article 42.

Relations with the business community

The Parties agree:

1. to ensure that all customs legislation, procedures and fees and charges are made publicly available, as well as whenever possible the necessary explanations, and as far as possible through electronic means;

2. on the need, as far as possible, for timely and regular consultation with trade representatives on legislative proposals and procedures related to customs and customs related trade issues;

3. that, where appropriate, new or amended legislation and procedures and their entry into force are introduced in a way to allow traders to become well prepared for complying with them. The Parties shall make publicly available relevant notices of an administrative nature, including agency requirements and entry procedures, hours of operation and operating procedures for customs offices at ports and border crossing points, and points of contact for information enquiries; and

4. to foster cooperation between operators and relevant administrations through the use of instruments such as Memoranda of Understanding.

Article 43. Customs Valuation

1. The Agreement on the implementation of Article VII of GATT 1994 shall govern customs valuation rules applied to trade covered by this Agreement.

2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

Article 44. Harmonisation of Customs Standards at Regional Level

The Parties shall promote harmonisation of customs legislation, procedures, standards and requirements. The content and pace of this process shall be determined by each Party.

Article 45. Support to Sadc Epa Customs Administrations

1. The Parties recognise the importance of supporting SADC EPA States' customs administrations for the implementation of this Chapter, in line with the provisions of Part I, Chapter 2, of this Agreement.

2. The priority areas for support are:

(a) the application of modern customs techniques, including:

(i) risk management;

(ii) post release controls; and

(iii) automation of customs procedures;

(b) control of customs valuation, classification and rules of origin, including in view of meeting the requirement of Article 39(1)(j) of this Agreement;

(c) the facilitation of transit and the enhancement of the efficiency of regional transit arrangements;

(d) transparency issues relating to the publication and administration of all trade regulations, as well as relevant fees and

formalities;

(e) the introduction and implementation of procedures and practices which reflect international instruments and standards applicable in the field of customs and trade, inter alia the revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures and the WCO Framework of Standards to Secure and Facilitate Global Trade.

3. The Parties recognise the need for specific needs assessment studies taking into account the situation in each country, using WTO and WCO needs assessment instruments or any other mutually agreed instrument.

Article 46. Transitional Arrangements

1. The Parties recognise the need for transitional arrangements to ensure the smooth implementation of the provisions of this Chapter.

2. In view of the need to enhance their capacity in the area of customs and trade facilitation and without prejudice to their WTO commitments, SADC EPA States shall benefit from a transitional period of five years to meet those requirements referred to in Articles 39, 40, 41 and 42 of this Chapter where the need for capacity building exists at the time of entry into force of this Agreement.

3. The Joint Council may accord a two-year extension of this transitional period in case attainment of the necessary capacity has not yet been achieved.

Article 47. Special Committee on Customs and Trade Facilitation

1. The Parties hereby establish a Special Committee on Customs and Trade Facilitation, composed of representatives of the Parties.

2. The functions of the Special Committee on Customs and Trade Facilitation shall, inter alia,

Be the following:

(a) monitoring the implementation and administration of this Chapter and of the Protocol on Rules of Origin;

(b) providing a forum to consult and discuss all issues concerning customs, including rules of origin, general customs procedures, customs valuation, tariff classification, transit and mutual administrative assistance in customs matters;

(c) enhancing cooperation on the development, application and enforcement of rules of origin and related customs procedures, general customs procedures and mutual administrative assistance in customs matters;

(d) enhancing cooperation on capacity building and technical assistance;

(e) follow-up on the implementation of Article 44 of this Agreement; and

(f) any other issues agreed by the Parties in respect of this Chapter.

3. The Special Committee on Customs and Trade Facilitation shall meet on a date and with an

Agenda agreed in advance by the Parties.

4. The Special Committee on Customs and Trade Facilitation shall be chaired alternatively by either Party.

5. The Special Committee on Customs and Trade Facilitation shall report to the Trade and Development Committee.

Chapter 8. Technical Barriers to Trade

Article 48. Multilateral Obligations

1. The Parties confirm their commitment to the rights and obligations provided for in the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as "the TBT Agreement").

2. These rights and obligations shall underlie the activities of the Parties under this Chapter.

Article 49. Objectives

1. The Parties agree to cooperate in order to facilitate and increase trade in goods between them, by identifying, preventing and eliminating unnecessary barriers to trade within the terms of the TBT Agreement.

2. The Parties undertake to cooperate in strengthening regional, and specifically SADC EPA States' integration and cooperation on matters concerning technical barriers to trade.

3. The Parties undertake to establish and enhance SADC EPA States' technical capacity on matters concerning technical barriers to trade.

Article 50. Scope and Definitions

1. The provisions of this Chapter shall apply to technical regulations, standards and conformity assessment procedures as defined in the TBT Agreement in so far as they affect trade covered by this Agreement.

2. For the purposes of this Chapter, the definitions used by the TBT Agreement shall apply.

Article 51. Collaboration and Regional Integration

The Parties agree that collaboration between national and regional authorities dealing with TBT matters, in both the public and private sector, is important to facilitate trade in the region and between the Parties, as well as for the overall process of regional integration and undertake to cooperate to this end.

Article 52. Transparency

The Parties reaffirm the principle of transparency in the application of technical regulations and standards in accordance with the TBT Agreement.

The Parties recognise the importance of effective mechanisms for consultation, notification and exchange of information with respect to technical regulations and standards in accordance with the TBT Agreement.

Article 53. Measures for Identifying, Preventing and Eliminating Technical Barriers to Trade

The Parties agree to identify and implement mechanisms among those supported by the TBT

Agreement that are the most appropriate for particular priority issues or sectors. Such mechanisms

May include:

1. intensifying their collaboration, with a view to facilitating access to their respective markets, by increasing the mutual knowledge and understanding of their respective systems in the field of technical regulations, standards, metrology, accreditation and conformity assessment;

2. exchanging information, identifying and implementing appropriate mechanisms for particular issues or sectors, i.

e. alignment with international standards, reliance on the supplier's declaration of conformity, the use of internationally recognised accreditation to qualify conformity assessment bodies and the use of international product testing and certification schemes;

3. identifying and organising sector-specific interventions on technical regulations and conformity assessment with a view to facilitating understanding of and access to their respective markets. These sectors will be chosen taking into account key areas of trade, including priority products;

4. developing cooperation activities and measures with a view to supporting the implementation of the rights and obligations under the TBT Agreement;

5. developing common views and approaches on technical regulatory practices, including transparency, consultation, necessity and proportionality, the use of international standards, conformity assessment requirements, the use of impact and risk assessment, enforcement and market surveillance, where appropriate;

6. promoting harmonisation, whenever possible and in areas of mutual interest, towards international standards, and the use of such standards in the development of technical regulations and conformity assessment procedures;

7. undertaking to consider, in due course, negotiating mutual recognition agreements in sectors of mutual economic interest;

8. promoting collaboration between the Parties' and SADC EPA States', as the case may be, organisations responsible for technical regulations, metrology, standardisation, testing, certification, inspection and accreditation; and

9. promoting the participation by the SADC EPA States in international standards-setting bodies.

Article 54. Implementation

The Parties agree that the Trade and Development Committee shall be competent under this Chapter to:

1. monitor and review its implementation;

2. provide coordination and consultation on TBT issues;

3. identify and review priority sectors and products and the resulting priority areas for cooperation; and

4. make recommendations for modifications to it if necessary and appropriate.

Article 55. Capacity Building and Technical Assistance Concerning Technical Barriers to Trade

1. The Parties recognise the importance of cooperating in the areas of technical regulations, standards, metrology, accreditation and conformity assessment in order to achieve the objectives of this Chapter;

2. The Parties agree that the following are priority areas for cooperation:

(a) the establishment of appropriate arrangements for the sharing of expertise, including appropriate training intended to ensure adequate and enduring technical competence of the relevant standardisation and conformity assessment bodies of the SADC EPA States and mutual understanding between such bodies in the territories of the Parties;

(b) the development of capacities of the SADC EPA States in the fields of technical regulations, metrology, standards, accreditation and conformity assessment including through the upgrading or setting up of laboratories and other equipment. In this regard, the Parties acknowledge the importance of strengthening regional cooperation and the need to take into account priority products and sectors;

(c) the development and adoption, within the SADC EPA States, of harmonised technical regulations, standards, metrology, accreditation and conformity assessment procedures based on relevant international standards;

(d) the support for the participation of SADC EPA States in international standardisation, accreditation and metrology activities; and

(e) the development of TBT enquiry and notification points within the SADC EPA States.

Chapter 9. Sanitary and Phytosanitary Measures

Article 56. Multilateral Obligations

1. The Parties reaffirm the principles and objectives of the WTO SPS Agreement (hereinafter referred to as "the SPS Agreement"), the International Plant Protection Convention (IPPC), the Codex Alimentarius Commission and the World Organisation for Animal Health (OIE).

2. These principles and objectives shall underlie the activities of the Parties and the SADC EPA States, as the case may be, under this Chapter.

Article 57. Objectives

1. The Parties agree to facilitate trade and investment within the SADC EPA States and between the Parties while ensuring that measures adopted shall apply only to the extent necessary to protect human, animal or plant health or life in accordance with the provisions of the SPS Agreement.

2. The Parties undertake to cooperate in strengthening regional integration and specifically SADC EPA States' cooperation on

matters concerning sanitary and phytosanitary measures (hereinafter referred to as "SPS measures") and to address problems arising from SPS measures on agreed priority sectors and products (1) whilst giving due consideration to regional integration.

3. As a result thereof, the Parties agree to promote bi-regional collaboration aiming at recognition of appropriate levels of protection in SPS measures.

4. The Parties agree to establish and enhance SADC EPA States' technical capacity to implement and monitor SPS measures, including promoting greater use of international standards and other matters concerning SPS.

(1) The priority products and sector list annexed to this Chapter.

Article 58. Scope and Definitions

For the purposes of this Chapter, definitions used in the SPS Agreement and international standard-setting bodies, namely the Codex Alimentarius Commission, the International Plant Protection Convention (IPPC) and the World Organisation for Animal Health (OIE) shall apply.

The priority products and sector list annexed to this Chapter.

Article 59. Competent Authorities

1. The respective SPS authorities shall be the competent authorities in the SADC EPA States and the EC Party for the implementation of the measures referred to in this Chapter.

2. The Parties or the SADC EPA States, as the case may be, shall, in accordance with this Agreement, inform each other of their respective competent SPS authorities and any changes thereto.

Article 60. Transparency

1. The Parties reaffirm the principle of transparency in the application of SPS measures, in accordance with the SPS Agreement.

2. The Parties recognise the importance of effective mechanisms for consultation, notification and exchange of information with respect to SPS measures in accordance with the SPS Agreement.

3. The importing Party shall inform the exporting Party of any changes in its sanitary and phytosanitary import requirements that may affect trade falling under the scope of this Chapter. The Parties undertake to establish mechanisms for the exchange of such information where appropriate.

4. The Parties will apply the principle of zoning or compartmentalisation when defining import conditions, taking into account international standards. Zones or compartments of defined sanitary or phytosanitary status may also be identified and proposed jointly by the Parties, on a case by case basis, wherever possible, in order to avoid disruption to trade.

Article 61. Information Exchange

1. The Parties agree to establish an early-warning system to ensure that the SADC EPA States are informed in advance of new EC SPS measures that may affect SADC EPA exports to the EU. This system shall be based on existing mechanisms where appropriate.

2. The Parties or the SADC EPA States, as the case may be, agree to collaborate in the further development of the epidemiological surveillance network on animal disease and in the domain of plant health. The Parties will exchange information on the occurrence of pests of known and immediate danger to the other Party.

Article 62. Implementation

The Parties agree that the Trade and Development Committee shall be competent under this Chapter to:

1. monitor and review its implementation;

2. advise and make recommendations for the implementation aimed at achieving its objectives;

3. provide a forum for discussion and exchange of information as well as issues of cooperation;

4. make recommendations for modifications to it if necessary and appropriate;

5. review the list of priority sectors and products and the resulting priority areas for cooperation;

6. enhance cooperation on the development, application and enforcement of SPS measures; and

7. any other relevant matters relating thereto.

Article 63. Consultations

If either Party or an SADC EPA State, as the case may be, considers that another Party has taken measures which are likely to affect, or have affected, access to its market, appropriate consultations will be held with a view to avoiding undue delays and finding an appropriate solution in conformity with the WTO SPS Agreement. In this regard, the Parties shall exchange names and addresses of contact points with sanitary and phytosanitary expertise in order to facilitate communication and the exchange of information.

Article 64. Cooperation, Capacity Building and Technical Assistance on Sanitary and Phytosanitary Measures

1. The Parties agree to promote cooperation between SADC EPA States' SPS institutions and equivalent EC Party institutions.

2. The Parties agree to cooperate in facilitating regional harmonisation of measures and the development of appropriate regulatory frameworks and policies within and between the SADC EPA States, thereby enhancing intra-regional trade and investment.

3. The Parties agree that the following are priority areas for cooperation:

(a) the building of technical capacity in the public and private sectors of SADC EPA States to enable sanitary and phytosanitary control, including training and information events for inspection, certification, supervision and control;

(b) the building of capacity in SADC EPA States to maintain and expand their market access opportunities;

(c) the building of capacity to ensure that measures adopted do not become unnecessary barriers to trade, while recognising the Parties' rights to set their own appropriate levels of protection;

(d) the enhancement of technical capacity for the implementation and monitoring of SPS measures, including promoting greater use of international standards;

(e) the promotion of cooperation on the implementation of the SPS Agreement, particularly strengthening SADC EPA States' notification and enquiry points as well as other matters concerning relevant international standards setting bodies;

(f) the development of capacities for risk analysis, harmonisation, compliance, testing, certification, residue monitoring, traceability and accreditation including through the upgrading or setting up of laboratories and other equipment to help SADC EPA States comply with international standards. In this regard, the Parties acknowledge the importance of strengthening regional cooperation and the need to take into account the priority products and sectors identified in accordance with this Chapter; and

(g) the support for the participation of SADC EPA States in relevant international standards setting bodies.

Chapter 10.

Article 65. Current Payments

1 Subject to the provisions of Article 66 of this Agreement, the SADC EPA States and the EC Party undertake to impose no restrictions and to allow all payments for current transactions between residents of the EC Party and of the SADC EPA States to be made in freely convertible currency.

2. SADC EPA States may take the necessary measures to ensure that the provisions of paragraph 1 of this Article, which liberalise current payments, are not used by its residents to make unauthorised capital outflows.

Article 66. Safeguard Measures

1. Where, in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in one or more SADC EPA States or one or more Member States of the European Union, safeguard measures with regard to capital movements that are strictly necessary may be taken by the EC Party or the concerned SADC EPA State for a period not exceeding six months.

2. The Joint Council shall be informed forthwith of the adoption of any safeguard measure and, as soon as possible, of a time schedule for its removal.

Chapter 11. Ongoing Negotiations for a Full Epa

Article 67. Second Stage of Negotiations

The Parties agree to continue negotiations in 2008 to extend the scope of this Agreement. For the purpose of this Title, the SADC EPA States will be constituted of Botswana, Lesotho, Mozambique and Swaziland. The remaining SADC EPA States may join the process of negotiation on a similar basis. To this end, they will notify in writing the EC Party and the other SADC EPA States.

1. Trade in Services

(a) The Parties recognise the growing importance of trade in services for the development of their economies and reaffirm their respective rights and obligations under the General Agreement on Trade in Services (GATS).

(b) No later than 31 December 2008, the Parties will complete negotiations on services liberalisation on the basis of the following:

(i) a liberalisation schedule for one service sector for each participating SADC EPA State;

(ii) a commitment to a standstill as specified in Article V(1)(b)(ii) GATS, for all services sectors; and

(iii) an agreement to negotiate progressive liberalisation with substantial sectoral coverage within a period of three years following the conclusion of a full EPA.

2. Cooperation in Services

(a) The Parties recognise that trade capacity building can support the development of economic activities, in particular in services sectors. To this end, the EC Party agrees to support capacity building aimed at strengthening the regulatory framework of the participating SADC EPA States.

(b) By the time of laying down the necessary arrangements for the liberalisation of trade in services, the Parties will define the specific cooperation objectives, principles and procedures that will accompany trade liberalisation.

3. Investment

The Parties agree to negotiate an Investment Chapter, taking into account the relevant provisions of the SADC Protocol on Finance and Investment, no later than 31 December 2008.

4. Cooperation on Investment

The EC Party agrees to provide adequate technical assistance to facilitate negotiations and implementation of the Investment Chapter.

5. Competition and Government Procurement

The EC Party agrees to cooperate with a view to strengthening regional capacity in the areas of competition and government procurement. Negotiations will only be envisaged once adequate regional capacity has been built.

Part III.

Chapter 12. Dispute Avoidance and Settlement

Article 68. Objective

The objective of this Part is to avoid or settle any dispute between the Parties.

Article 69. Scope

1. This Part shall apply to any dispute concerning the interpretation and application of this Agreement except as otherwise expressly provided for in this Agreement.

2. Notwithstanding paragraph 1, the procedure set out in Article 98 of the Cotonou Agreement shall be applicable in the event of a dispute concerning the financing pertaining to development cooperation between the SADC EPA States and the EC Party.

Article 70. Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 69 by entering into consultations in good faith with the aim of reaching an amicable solution.

2. A Party shall seek consultations by means of a written request to the other Party, copied to the Trade and Development Committee, identifying the measure at issue and the provisions of this Agreement with which it considers the measure not to be in conformity.

3. Consultations shall be held within 40 days of the date of the receipt of the request. The consultations shall be deemed concluded within 60 days of the date of the receipt of the request, unless both Parties agree to continue consultations. All information disclosed during 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 receipt of the request, and shall be deemed concluded within 30 days of the date of the receipt of the request.

5. If consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if consultations have been concluded and no mutually agreed solution has been reached, the complaining Party may request the establishment of an arbitration panel in accordance with Article 73.

Article 71. Mediation

1. If consultations fail to produce a mutually agreed solution, the Parties may, by agreement, seek recourse to a mediator. Unless the Parties agree otherwise, the terms of reference for the mediation shall be the matter referred to in the request for consultations.

2. The mediator's opinion may include a recommendation on how to resolve the dispute consistent with the provisions of this Agreement. The mediator's opinion is non-binding.

3. The proceedings involving mediation, in particular all information disclosed and positions taken by the Parties during these proceedings, shall remain confidential.

Article 72. Initiation of the Arbitration Procedure

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 70, or by recourse to mediation as provided for in Article 71, the complaining Party may request the establishment of an arbitration panel.

2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and the Trade and Development Committee. The complaining Party shall identify in its request the specific measures at issue, and it shall explain how such measures constitute a breach of the provisions of this Agreement.

Article 73. Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three arbitrators.

2. Each party to the dispute shall appoint one arbitrator within ten days of the date of the receipt of the request for the establishment of an arbitration panel. The two arbitrators shall appoint a third arbitrator, who shall be the chairperson of the arbitration panel, within 20 days of the receipt of the request for the establishment of a panel. The Chairperson shall not be a national of the Parties nor permanently reside in the territory of the Parties.

3. If all three arbitrators are not appointed within 20 days, or if, within ten days of the appointment of the third arbitrator either Party submits a reasoned written objection to the arbitrators chosen to the Trade and Development Committee, either Party may request the chairperson of the Trade and Development Committee, or her or his delegate, to select all three members by lot from the list established under Article 87 of this Agreement, one among the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against and one among the individuals selected by the Parties to act as chairperson. Where the Parties agree on one or more of the members of the arbitration panel, any remaining members shall be selected by the procedure laid down in this paragraph.

4. The chairperson of the Trade and Development Committee, or her or his delegate, shall select the arbitrators within five days of receipt of the request made by either Party referred to in paragraph 3 of this Article. The selection shall be done in the presence of a representative of each Party.

5. The date of establishment of the arbitration panel shall be the date on which the three arbitrators are finally selected.

Article 74. Interim Panel Report

The arbitration panel shall notify to the Parties an interim report containing both the descriptive section and its findings and conclusions, as a general rule not later than 120 days from the date of establishment of the arbitration panel. In cases of urgency, the time limit shall be reduced to 60 days. Any Party may submit written comments to the arbitration panel on precise aspects of its interim report within 15 days of the notification of the report.

Article 75. Arbitration Panel Ruling

1. The arbitration panel shall notify its ruling to the Parties and to the Trade and Development Committee within 150 days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Trade and Development Committee in writing, stating the reasons for the delay and the date on which the panel plans to conclude its work. Under no circumstances should the ruling be notified later than 180 days from the date of the establishment of the arbitration panel.

2. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel shall make every effort to notify its ruling within 90 days from the date of its establishment. The arbitration panel may give a preliminary ruling within ten days of its establishment on whether it deems the case to be urgent.

3. Either Party may request the arbitration panel to provide a recommendation as to how the Party complained against, or as the case may be, the relevant SADC EPA State, could bring itself into compliance.

Article 76. Compliance with the Arbitration Panel Ruling

The Party complained against, or as the case may be, the relevant SADC EPA State, shall take any measure necessary to comply with the arbitration panel ruling and the Parties shall seek to agree on the period of time to comply with the ruling.

Article 77. The Reasonable Period of Time for Compliance

1. No later than 30 days after the notification of the arbitration panel ruling to the Parties, the Party complained against shall notify the complaining Party and the Trade and Development Committee of the reasonable period of time it will require to bring itself into compliance with the ruling of the arbitration panel.

2. Upon notification by the Party complained against, the Parties shall seek to agree on such a reasonable period of time. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within 30 days of the notification made under paragraph 1 of this Article, request the arbitration panel in writing to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the Trade and Development Committee. The arbitration panel shall notify its ruling to the Parties and to the Trade and Development Committee within 30 days from the date of the receipt of the request.

3. The arbitration panel will, in determining the length of the reasonable period of time, take into consideration the length of time that it will normally take the Party complained against, or as the case may be, the relevant SADC EPA State, to adopt comparable legislative or administrative measures to those identified by the Party complained against, or as the case may be, the relevant SADC EPA State, as being necessary to ensure compliance. The arbitration panel shall also take into consideration capacity constraints and the different level of development which may affect the adoption of the necessary measures.

4. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 73 of this Agreement shall apply. The time limit for notifying the ruling shall be 45 days from the date of the receipt of the request referred to in paragraph 2 of this Article.

5. The reasonable period of time may be extended by agreement of the parties to the dispute.

Article 78. Review of Any Measure Taken to Comply with the Arbitration Panel Ruling

1. The Party complained against shall notify the other Party and the Trade and Development Committee, before the end of the reasonable period of time, of any measure that it has taken to comply with the arbitration panel ruling.

2. In the event that there is disagreement between the Parties concerning the compatibility of any measure notified under paragraph 1 of this Article with the provisions of this Agreement, the complaining Party may request in writing the arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and it shall explain how such measure is incompatible with the provisions of this Agreement. The arbitration panel shall notify its ruling within 90 days of the date of the receipt of the request. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel shall notify its ruling within 45 days of the date of the receipt of the request.

3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 73 of this Agreement shall apply. The time limit for notifying the ruling shall be 105 days from the date of the receipt of the request referred to in paragraph 2 of this Article.

Article 79. Temporary Remedies In Case of Non-compliance

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 78 paragraph 1 is not compatible with the provisions of this Agreement, the Party complained against or, as the case may be, the relevant SADC EPA State shall, if so requested by the complaining Party, present an offer for compensation. Such compensation may include or consist of financial compensation although nothing in this Agreement shall oblige the Party complained against, or as the case may be, the relevant SADC EPA State, to offer such financial compensation.

2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of the arbitration panel's ruling under Article 78 that a measure taken to comply is not compatible with this Agreement, the complaining Party shall be entitled, upon notification to the other Party, to adopt appropriate measures. Such measures may be adopted either by the complaining Party, or as the case may be, the relevant SADC EPA State.

3. In adopting such measures the complaining Party or, as the case may be, the relevant SADC EPA State, shall seek to select measures proportionate to the violation which least affect the attainment of the objectives of this Agreement and shall take into consideration their impact on the economy of the Party complained against and on the individual SADC EPA States.

4. In the event that the EC Party fails to notify any measure taken to comply with the arbitration panel ruling by the expiry of the reasonable period of time at the latest, or if the arbitration panel rules that the measure notified under Article 78 paragraph 1 is not compatible with that Party's obligations under this Agreement, and the complaining Party asserts that adopting appropriate measures would result in significant damage to its economy, the EC Party shall consider providing financial compensation.

5. The EC Party shall exercise due restraint in asking for compensation or adopting appropriate measures pursuant to paragraph 1 or 2 of this Article.

6. Compensation or appropriate measures shall be temporary and shall be applied only until any measure found to violate the provisions of this Agreement has been withdrawn or amended so as to bring it into conformity with those provisions or until the Parties have agreed to settle the dispute.

Article 80. Review of Any Measure Taken to Comply after the Adoption of Appropriate Measures

1. The Party complained against shall notify the other Party and the Trade and Development Committee of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to application of appropriate measures by the complaining Party or the relevant SADC EPA State, as the case may be.

2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions of this Agreement within 30 days of the date of notification, the complaining Party shall request in writing the arbitration panel to

rule on the matter. Such request shall be notified to the other Party and to the Committee. The arbitration panel ruling shall be notified to the Parties and to the Committee within 45 days of the date of the receipt of the request. If the arbitration panel rules that any measure taken to comply is not in conformity with the provisions of this Agreement, the arbitration panel will determine whether the complaining Party or, as the case may be, the relevant SADC EPA State, can continue to apply appropriate measures. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions of this Agreement, the appropriate measures shall be terminated.

3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 73 of this Agreement shall apply. The period for notifying the ruling shall be 60 days from the date of the receipt of the request referred to in paragraph 2 of this Article.

Article 81. Mutually Agreed Solution

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall notify the Trade and Development Committee of any such solution. Upon adoption of the mutually agreed solution, the dispute settlement procedure shall be terminated.

Article 82. Rules of Procedure and Code of Conduct

1. The Parties shall agree on Rules of Procedure and a Code of Conduct by 1 July 2008 which shall be adopted by the Joint Council. The Rules of Procedure shall address the issue of opening arbitration panel hearings to the public.

2. Any meeting of the arbitration panel shall be open to the public in accordance with the Rules of Procedure, unless the arbitration panel decides otherwise on its own motion or at the request of the Parties. The arbitration panel shall meet in closed session when the submissions or arguments of a Party contain confidential information.

Article 83. Information and Technical Advice

At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source, including the Parties involved in the dispute, it deems appropriate for the arbitration proceeding. The arbitration panel shall also have the right to seek the opinion of relevant experts as it deems appropriate. Interested entities are authorised to submit amicus curiae briefs to the arbitration panel in accordance with the Rules of Procedure. Any information obtained in this manner must be disclosed to the Parties to the dispute and submitted for their comments.

Article 84. Languages of the Submissions

1. The written and oral submissions of the Parties shall be made in any official language of the Parties.

2. The Parties shall endeavour to agree on a common working language for any specific proceedings under this Part. If the Parties are unable to agree on a common working language, each Party shall arrange for and bear the costs of the translation of its written submissions and interpretation at the hearings into the language chosen by the Party complained against, unless such language is an official language of that Party. The EC Party shall, when seeking to agree on a common working language, take into account the potential impact of such costs on SADC EPA States.

Article 85. Rules of Interpretation

An arbitration panel shall settle a dispute in accordance with the provisions of this Agreement and the customary rules of interpretation of public international law, including those set out in the Vienna Convention on the Law of Treaties. The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in this Agreement.

Article 86. Arbitration Panel Rulings

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote.

2. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the reasoning behind any findings and conclusions that it makes. The Trade and Development Committee shall make the arbitration panel rulings publicly available unless it decides not to do so.

Article 87. List of Arbitrators

1. The Trade and Development Committee shall, no later than three months after the provisional application of this Agreement, establish a list of 21 individuals who are willing and able to serve as arbitrators. Each of the Parties shall select eight individuals to serve as arbitrators. The Parties shall also agree on five individuals who are not nationals of either Party and who shall act as chairperson of the arbitration panel. The Committee will ensure that the list is always maintained in accordance with this Article.

2. Arbitrators shall have specialised knowledge of or experience in law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the governments of any of the Parties, and shall comply with the Code of Conduct annexed to the Rules of Procedures.

3. The Committee may establish an additional list of 15 individuals having a sectoral expertise in specific matters covered by this Agreement. When recourse is made to the selection procedure of Article 73 of this Agreement, the chairperson of the Committee may use such a sectoral list upon agreement of both Parties.

Article 88. Relation with Wto Obligations

1. Arbitration bodies set up under this Agreement shall not arbitrate disputes on a Party's, or as the case may be, the relevant SADC EPA State's, rights and obligations under the Agreement establishing the WTO.

2. Recourse to the dispute settlement provisions of this Agreement shall be without prejudice to any action in the WTO framework, including dispute settlement action. However, where a Party or the relevant SADC EPA State, as the case may be, has, with regard to a particular measure, initiated a dispute settlement proceeding under this Agreement or under the WTO Agreement, it may not initiate a dispute settlement proceeding regarding the same measure until the first proceeding has ended. For the purposes of this paragraph, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's or the relevant SADC EPA State's request, as the case may be, for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO.

3. Nothing in this Agreement shall preclude a Party or SADC EPA State from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO.

Article 89. Time Limits

1. All time limits laid down in Part III of this Agreement, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days from the day following the act or fact to which they refer.

2. Any time limit referred to in this Part may be extended by mutual agreement of the Parties.

Part IV.

Chapter 13. General Exceptions

Article 90. 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 trade in goods, services or establishment, nothing in this Agreement shall be construed to prevent the adoption or enforcement by the EC Party or the SADC EPA States of measures which:

(a) are necessary to protect public morals or to maintain public order and public security or;

(b) are necessary to secure compliance with laws or regulations which are not inconsistent with this Agreement, including those relating to customs enforcement, the protection of intellectual property rights, and the prevention of deceptive practices or;

(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; or

(d) relate to the importation or exportation of gold or silver; or

(e) relate to the protection of national treasures of artistic, historic or archaeological value; or

(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; or

(g) relate to the products of prison labour; or

(h) are inconsistent with Article 36 of this Agreement, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities or investors of the other Party.

Article 91. Security Exceptions

1. Nothing in this Agreement shall be construed:

(a) to require the EC Party or the SADC EPA States to furnish any information the disclosure of which it considers contrary to its essential security interests;

(b) to prevent the EC Party or the SADC EPA States 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) relating to government procurement indispensable for national security or for national defence purposes; or

(iv) taken in time of war or other emergency in international relations; or

(c) to prevent the EC Party or the SADC EPA States from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Trade and Development Committee shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

Article 92. Taxation

1. Nothing in this Agreement, or in any arrangement adopted under this Agreement, shall be construed to prevent the EC Party or the SADC EPA States 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 the SADC EPA States 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.

Part V. Institutional Provisions

Chapter 14. Institutional Provisions

Article 93. Establishment of a Joint Institution

For purposes of this Agreement a Joint SADC EPA States - EC Council ("the Joint Council") is hereby established, which shall oversee and administer the implementation of this Agreement.

Article 94. Composition and Functions

1. The Joint Council shall be composed, on the one hand, of the members of the Council of the European Union and relevant members of the European Commission or their representatives, and, on the other hand, the Ministers of the SADC EPA States or their representatives.

2. Without prejudice to the functions of the Council of Ministers as defined in Article 15 of the

Cotonou Agreement, the functions of the Joint Council shall be to:

(a) be responsible for the operation and implementation of this Agreement and monitor the fulfilment of its objectives;

(b) examine any major issues arising within the framework of this Agreement that are of common interest and affect trade between the Parties;

(c) examine proposals and recommendations from the Parties for the review of this Agreement;

(d) make appropriate recommendations;

(e) monitor the development of economic and trade relations between the Parties;

(f) monitor and assess the impact of the cooperation provisions of this Agreement on sustainable development;

(g) monitor and review progress on all matters covered by this Agreement;

(h) establish the rules of procedures of the Trade and Development Committee;

(i) monitor the work of the Trade and Development Committee; and

(j) perform any other duties under this Agreement.

3. The Joint Council may provide periodic reports on the operation of this Agreement to the Council of Ministers established in accordance with Article 15 of the Cotonou Agreement.

Article 95. Decision-making Powers and Procedures

1. In order to attain the objectives of this Agreement, the Joint Council shall have the power to take decisions in respect of all matters covered by this Agreement.

2. The decisions taken shall be by consensus between all the Parties and such decisions shall be binding on the Parties and each of the SADC EPA States, as the case may be. The Parties shall take all the measures necessary to implement such decisions in accordance with each Party's and the SADC EPA States' internal rules.

3. For procedural matters and dispute settlement procedures, the SADC EPA States agree to act collectively and the Joint Council shall adopt decisions and recommendations by mutual agreement between the Parties. For the matters for which the SADC EPA States have not agreed to act collectively, adoption of any decision shall require the agreement of the SADC EPA State concerned.

4. The Joint Council shall meet at regular intervals, not exceeding a period of two years, and extraordinarily whenever circumstances so require, if the Parties so agree.

5. The Joint Council shall determine its own rules of procedure.

Article 96. Trade and Development Committee (the Committee)

1. The Joint Council shall be assisted in the performance of its duties by a Committee composed of representatives of the Parties, normally at senior officials' level.

2. The Committee may establish any special technical groups to deal with specific matters falling within their competence.

3. The Committee shall determine the rules of procedure of the special technical groups established under paragraph 2 of this Article.

4. The Committee shall report and be responsible to the Joint Council.

5. The Committee shall take decisions or make recommendations in the cases provided for in this Agreement or where such power has been delegated to it by the Joint Council. In this event the Committee shall take its decisions by consensus.

6. The Committee shall have, in particular, the following functions:

(a) In the area of trade, to:

(i) monitor and evaluate the implementation of the decisions of the Joint Council;

(ii) facilitate and supervise the implementation of the provisions of this Agreement;

(iii) consider and recommend cooperation priorities to the Joint Council;

(iv) make appropriate recommendations to the Joint Council to avoid potential conflicts which might arise in areas covered by this Agreement;

(v) carry out any other function assigned to it by the Joint Council;

(vi) supervise the work of the special technical groups as referred to in paragraph 2 of this Article;

(vii) monitor the development of regional integration and of economic and trade relations between the Parties;

(viii) discuss and undertake actions that may facilitate trade, investment and business opportunities between the Parties; and

(ix) discuss any matters pertaining to this Agreement and any issue liable to affect the attainment of its objectives.

(b) In the area of development cooperation, to:

(i) monitor the implementation of the cooperation provisions laid down in this Agreement and coordinate such action with third party donors;

(ii) make recommendations on trade-related cooperation between the Parties;

(iii) keep under periodic review the cooperation priorities set out in this Agreement, and make recommendations on the inclusion of new priorities, as appropriate;

(iv) review and discuss cooperation issues pertaining to regional integration and implementation of this Agreement; and

(v) monitor and assess the impact of the implementation of this Agreement on the sustainable development of the Parties.

Part VI.

Chapter 15. General and Final Provisions

Article 97. Definition of the Parties and Fulfilment of Obligations

1. The Contracting Parties of this Agreement shall be Botswana, Lesotho, Namibia, Swaziland and Mozambique hereinafter referred to, for ease of reference, as the "SADC EPA States", of the one part, and the European Community or its Member States or the European Community and its Member States, within their respective areas of competence as derived from the Treaty establishing the European Community, hereinafter referred to as the "EC Party", of the other part.

2. For the purposes of this Agreement:

(a) the term "Parties" shall refer to the SADC EPA States acting collectively and the EC Party. The term "Party" shall refer to the SADC EPA States acting collectively or the EC Party as the case may be;

(b) the term "SADC EPA States" shall refer to the SADC EPA States acting individually.

3. The SADC EPA States and the EC Party 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.

Article 98. Exchange of Information

1. In order to facilitate communication relating to the effective implementation of this Agreement, the Parties shall designate a focal point for the exchange of information upon entry into force of this Agreement. The designation of a focal point for the exchange of information is without prejudice to the specific designation of competent authorities under specific Titles or Chapters of this Agreement.

2. On the request of the focal points for exchange of information, each Party shall indicate the office or official responsible for any matter pertaining to the implementation of this Agreement and provide the required support to facilitate communication with the requesting Party.

3. On request of the other Party, and to the extent legally possible, each Party or the SADC EPA States, as the case may be, shall provide information and reply promptly to any question from the other Party relating to an actual or proposed measure that might affect trade between the Parties.

Article 99. Transparency

1. A Party, or an SADC EPA State, as the case may be, shall publish or make publicly available its laws, regulations, procedures and administrative rulings of general application as well as any other commitments under an international agreement relating to any trade matter covered by this Agreement. Any such measures adopted after the entry into force of this Agreement shall be brought to the attention of the other Party.

2. Without prejudice to specific transparency provisions in this Agreement, the information referred to under this Article shall be considered to have been brought to the attention of the other Party when the information has been made available:

(a) by appropriate notification to the WTO; or

(b) on the official, fee-free and publicly accessible website; or

(c) to a focal point of the other Party.

However, where the EC Party has provided such information and it has not been notified to the WTO through an official, fee-free and publicly accessible website, an SADC EPA State, which, because of capacity constraints, has difficulties accessing such a website, may request the EC Party to provide such information to the relevant focal point.

3. Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private, except to the extent that it may be necessary to be disclosed in the context of a dispute settlement proceeding under this Agreement. Where such disclosure is considered necessary by a panel established under this Agreement, the panel shall ensure that confidentiality is fully protected.

Article 100. Temporary Difficulties In Implementation

In the event that a Party, as a result of factors beyond its control, encounters difficulties in meeting its obligations under this Agreement, it shall immediately bring the matter to the attention of the Joint Council.

Article 101. Regional Preferences

1. Nothing in this Agreement shall oblige a Party to extend to the other Party to this Agreement any more favourable treatment which is applied by a Party as part of its respective regional integration process.

2. Any more favourable treatment and advantage that may be granted under this Agreement by any SADC EPA State to the EC Party shall be enjoyed by the other SADC EPA States.

Article 102. Outermost Regions of the European Community

1. Taking account of the geographical proximity of the outermost regions of the European

Community and the SADC EPA States and in order to reinforce economic and social links between those regions and the SADC EPA States, the Parties shall endeavour to facilitate cooperation in all areas covered by this Agreement between the outermost regions of the European Community and the SADC EPA States.

2. The objectives enunciated in paragraph 1 of this Article shall also be pursued, wherever possible, through fostering the joint participation of the SADC EPA States and the outermost regions of the European Community in the framework and

specific programmes of the European Community in areas covered by this Agreement.

3. The EC Party shall endeavour to ensure coordination between the different financial instruments of the European Community's cohesion and development policies in order to foster cooperation between SADC EPA States and the outermost regions of the European Community 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 its outermost regions pursuant to Article 299(2) of the Treaty establishing the European Community. This provision shall not permit the maintenance of tariffs on trade between the Parties other than those permitted pursuant to paragraph 9 of Annex 2 of this Agreement.

Article 103. Relations with the Cotonou Agreement

1. With the exception of development cooperation provided for in Title II of Part III of the Cotonou Agreement, in case of any inconsistency between the provisions of this Agreement and the provisions of Title II of Part III of the Cotonou Agreement, the provisions of this Agreement shall prevail to the extent of such inconsistency.

2. Nothing in this Agreement shall be construed so as to prevent the adoption by the EC Party or an SADC EPA State of appropriate measures pursuant to the Cotonou Agreement.

Article 104. Relations with the Wto Agreement

The Parties agree that nothing in this Agreement requires them or the SADC EPA States to act in a manner inconsistent with their WTO obligations.

Article 105. Entry Into Force

1. This Agreement shall be signed, ratified or approved in accordance with the applicable constitutional or internal rules and procedures of each Party or SADC EPA State as the case may be.

2. This Agreement shall enter into force on the first day of the second month following the deposit of the last instrument of ratification, acceptance or approval.

3. Notifications shall be sent to the Secretary-General of the Council of the European Union, who shall be the depository of this Agreement.

4. Pending entry into force of this Agreement, the European Community and the SADC EPA 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 depositary. This Agreement shall be applied provisionally ten days after either the receipt of notification of provisional application from the European Community or of ratification or provisional application from all the SADC EPA States, whichever is the later.

6. Notwithstanding paragraph 4, the European Community, the EC Party and SADC EPA States may unilaterally take steps to apply this Agreement, before provisional application, to the extent feasible.

Article 106. Duration

1. This Agreement shall be valid indefinitely.

2. The EC Party or an SADC EPA State may give written notice of its intention to denounce this Agreement.

3. Denunciation shall take effect six months after the notification referred to in paragraph 2 of this Article.

Article 107. 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 the SADC EPA States.

Article 108. Revision Clause

1. Without prejudice to Article 67, the Parties agree to review this Agreement no later than five years after its entry into force.

2. As regards the implementation of this Agreement, either Party may make suggestions oriented towards adjusting trade related cooperation, taking into account the experience acquired during the implementation thereof.

3. The Parties agree that this Agreement may need to be reviewed in light of further developments in international economic relations and in the light of the expiration of the Cotonou Agreement.

Article 109. Amendments

1. Any Party may submit proposals for amendments to this Agreement to the Joint Council for consideration and approval.

2. Amendments to this Agreement shall, after approval by the Joint Council, be submitted to the Parties for ratification, acceptance or approval in accordance with their respective constitutional or internal legal requirements.

Article 110. Accession of New Eu Member States

1. The Joint Council shall be advised of any request made by a third state to become a member of the European Union. During the negotiations between the Union and the applicant State, the EC Party shall provide the SADC EPA 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 SADC EPA States shall be notified by the EC Party of any accession to the European Union (EU).

2. Any new Member State of the EU shall accede to this Agreement from the date of its accession to the EU 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 of the EU Member State to this Agreement, the EU Member State concerned shall accede by depositing an act of accession with the General Secretariat of the Council of the European Union, which shall send certified copies to the SADC EPA States.

3. The Parties shall review the effects of the accession of new EU Member States on this Agreement. The Joint Council may decide on any transitional or amending measures that might be necessary.

Article 111. Accession

1. A third state or organisation having competence for the matters covered by this Agreement, may request to accede to this Agreement. If the Joint Council agrees to consider such a request, the Parties and the state or organisation requesting to accede shall conduct negotiations on the terms of accession. The Protocol of Accession shall be approved by the Joint Council and then submitted for ratification, acceptance or approval in accordance with the Parties' respective constitutional or internal legal requirements.

2. The Parties shall review the effects of such accession on this Agreement. The Joint Council may decide on any transitional or amending measures that might be necessary.

Article 112. Languages and 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. In the event of a contradiction, reference shall be made to the language in which this Agreement was negotiated, namely English.

Article 113. Annexes

The Annexes and Protocols to this Agreement shall form an integral part thereof.

In witness whereof, the undersigned Plenipotentiaries have affixed their signatures below this Agreement.