

## PART V

### INSTITUTIONAL PROVISIONS

#### ARTICLE 100

##### The Joint Council

A Joint SADC EPA States – EU Council (“Joint Council”) is hereby established, which shall oversee and administer the implementation of this Agreement.

#### ARTICLE 101

##### Composition and functions

1. The Joint Council shall be composed, on the one hand, of the relevant members of the Council of the EU and relevant members of the European Commission or their representatives, and, on the other hand, of the relevant Ministers of the SADC EPA States or their representatives. The first meeting of the Joint Council shall be co-chaired by the Parties.

2. In relation to matters where SACU acts collectively for purposes of this Agreement, SACU shall act collectively in such matters under this provision and the EU shall treat SACU as such. In relation to matters where Member States of SACU act individually in such matters under this provision, the specific SACU Member State shall act in that capacity and the EU shall treat that Member State as such.

3. 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 under 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 its own rules of procedure;
- (i) establish the rules of procedures of the Trade and Development Committee;
- (j) monitor the work of the Trade and Development Committee; and
- (k) perform any other duties under this Agreement.

4. 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 102

### 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 of the Joint Council shall be taken by consensus and shall be binding on the Parties. The Parties shall take all the measures necessary to implement such decisions in accordance with their respective internal rules.

3. For procedural matters and dispute settlement procedures, the Joint Council shall adopt decisions and recommendations by mutual agreement between the Parties.
4. The Joint Council shall meet at regular intervals, not exceeding a period of two (2) years, and extraordinarily whenever circumstances so require, if the Parties so agree.

## ARTICLE 103

### Trade and Development Committee

1. The Joint Council shall be assisted in the performance of its duties by a Trade and Development Committee composed of representatives of the Parties, normally at the level of senior officials.
2. The Trade and Development Committee shall be chaired alternately by a representative of each of the Parties for a period of one year. The first meeting of the Trade and Development Committee shall be co-chaired by the Parties.
3. This Committee may establish any special technical groups to deal with specific matters falling within their competence.
4. This Committee shall establish the rules of procedure of the special technical groups established under paragraph 3.

5. This Committee shall report and be responsible to the Joint Council.
6. This 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.
7. This 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 recommendations to the Joint Council to avoid potential conflicts 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 3;

- (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 under this Agreement and any issue that may 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

### GENERAL AND FINAL PROVISIONS

#### ARTICLE 104

##### Definition of the Parties and fulfilment of obligations

1. The Parties of this Agreement shall be Botswana, Lesotho, Namibia, South Africa, Swaziland and Mozambique, of the one part (“the SADC EPA States”), and the European Union or its Member States or the European Union and its Member States, within their respective areas of competence as derived from the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), of the other part (“the EU”).
2. The term “Party” shall refer to the SADC EPA States individually on the one part or the EU on the other part as the case may be.
3. Where reference is made to SACU in this Agreement, as in Articles 25(1), 34, 35 and 101 and in PART III, Botswana, Lesotho, Namibia, South Africa and Swaziland, shall act collectively as provided for in the SACU Agreement.
4. The Joint Council may decide to modify the application of paragraph 3.

5. The Parties shall adopt any general or specific measures required to fulfil their obligations under this Agreement and shall ensure that they comply with the objectives laid down in this Agreement.

## ARTICLE 105

### Exchange of information

1. In order to facilitate communication relating to the effective implementation of this Agreement, the Parties shall designate a coordinator for the exchange of information upon the entry into force of this Agreement. The designation of a coordinator for the exchange of information is without prejudice to the specific designation of competent authorities under specific provisions of this Agreement.
2. At the request of either Party, the coordinator of the other 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. At the request of either Party, the other Party shall, to the extent legally possible, provide information and reply promptly to any question relating to an actual or proposed measure that might affect trade between the Parties.



## ARTICLE 106

### Transparency

1. A Party 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 the coordinator of the other Party.

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

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 PART III, the panel shall ensure that confidentiality is fully protected.

## ARTICLE 107

### Temporary difficulties in implementation

A Party encountering difficulties in meeting its obligations under this Agreement as a result of factors beyond its control shall immediately bring the matter to the attention of the Joint Council.

## ARTICLE 108

### Regional preferences

1. Nothing in this Agreement shall oblige a Party to extend to the other Party 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 a SADC EPA State to the EU shall be enjoyed by the other SADC EPA States.

## ARTICLE 109

### Outermost regions of the EU

1. Taking account of the geographical proximity of the outermost regions of the EU 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 EU and the SADC EPA States.
2. The objectives of paragraph 1 shall also be pursued, wherever possible, through fostering the joint participation of the SADC EPA States and the outermost regions of the EU in the framework and specific programmes of the EU in areas covered by this Agreement.
3. The EU shall endeavour to ensure coordination between the various financial instruments of the EU's cohesion and development policies in order to foster cooperation between the SADC EPA States and the outermost regions of the EU in the areas covered by this Agreement.
4. Nothing in this Agreement shall prevent the EU from applying existing measures aimed at addressing the structural social and economic situation of its outermost regions pursuant to Article 349 of the TFEU. This provision shall not permit the maintenance of tariffs on trade between the Parties other than those permitted pursuant to paragraph 2 of PART III of ANNEX I.

## ARTICLE 110

### Relations with the Cotonou Agreement

1. With the exception of development cooperation provisions provided for in Title II of Part 3 of the Cotonou Agreement, in case of any inconsistency between the provisions of this Agreement and the provisions of Title II of Part 3 of the Cotonou Agreement, 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 either Party of appropriate measures pursuant to the Cotonou Agreement.

## ARTICLE 111

### Relations with the TDCA

The relationship between this Agreement and the TDCA shall be governed by the provisions of Protocol 4.

## ARTICLE 112

### Relations with the WTO Agreement

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

## ARTICLE 113

### Entry into force<sup>1</sup>

1. This Agreement shall be signed, ratified or approved in accordance with the applicable constitutional or internal rules and procedures of each Party.
2. This Agreement shall enter into force thirty (30) days following the deposit of the last instrument of ratification, acceptance or approval.

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<sup>1</sup> The Parties to the attached Protocol on Geographical indications and on trade in wines and spirits shall implement the undertakings therein.

3. Pending entry into force of this Agreement, the EU 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.
4. This Agreement shall be applied provisionally between the EU and a SADC EPA state ten (10) days after either the receipt of notification of provisional application from the EU or of ratification or provisional application from that SADC EPA state, whichever is the later.
5. Provisional application of this Agreement between the EU and a Member of SACU shall exclude the agricultural market access concessions and the fisheries market access concessions referred to in Article 24(2) and Article 25(1), that are denoted by an asterisk (\*) in the tariff schedules as set out in Annexes I and II, until such time as all members of SACU have ratified or provisionally applied this Agreement.
6. Provisional application or entry into force of this Agreement between the EU and a Member of SACU shall exclude the agricultural market access concessions referred to in Article 24(2) and Article 25(1), that are denoted by an asterisk (\*) in the tariff schedules as set out in Annexes I and II, until such time as the conditions set out in Article 16 of Protocol 3 are met.

7. Notifications regarding the provisional application or ratification shall be sent to the Secretary-General of the Council of the European Union, who shall be the depository of this Agreement. Certified copies of the notifications shall be lodged with the Executive Secretary of the SADC Secretariat

8. If pending the entry into force of this Agreement, the Parties decide to apply it provisionally, all references in this Agreement to the date of entry into force shall be deemed to refer to the date such provisional application takes effect.

#### ARTICLE 114

##### Duration

1. This Agreement shall be valid indefinitely.
2. Either Party may give written notice of its intention to denounce this Agreement.
3. Denunciation shall take effect six (6) months after the notification referred to in paragraph 2.

## ARTICLE 115

### Territorial application

1. This Agreement shall apply, on the one hand, to the territories in which the TEU and TFEU are applied and under the conditions laid down in those Treaties, and, on the other hand, to the territories of the SADC EPA States.
2. References in this Agreement to “territory” shall be understood in this sense.

## ARTICLE 116

### Revision clause

1. The Parties agree to review this Agreement in its entirety no later than five (5) years after its entry into force. Such review is without prejudice to instances of adjustments, reviews or revisions otherwise provided for in this Agreement, such as those contemplated under Articles 12(2), 16(8), 17(5), 18(5), 26(10), 33(3), 35(6) and 65(e).
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 117

### Amendments

1. Any Party may submit proposals for amendments to this Agreement to the Joint Council for consideration and adoption.
2. Amendments to this Agreement shall, after adoption 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 118

### 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 EU. During the negotiations between the EU and the applicant State, the EU shall provide the SADC EPA States with any relevant information. The SADC EPA states shall convey their concerns, and may request consultations, to the EU so that the EU can take them fully into account. The SADC EPA States shall be notified by the EU of any accession to the EU.
2. Any new Member State of the European Union 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 Union 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 119

### 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 adopted by the Joint Council and 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.
3. Notwithstanding paragraph 1, the Parties agree that in the case of a request from Angola to the Joint Council to accede to this Agreement, negotiations concerning the terms of accession should be conducted on the basis of this Agreement, taking into account the specific situation of Angola.

## ARTICLE 120

### Languages and authentic texts

This Agreement is drawn up in duplicate in the English , Portuguese, Bulgarian, Croatian, Czech, Danish, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of those texts being equally authentic. In the event of a contradiction, reference shall be made to the language in which this Agreement was negotiated.

## ARTICLE 121

### Annexes

The Annexes, Protocols and footnotes to this Agreement shall form an integral part of this Agreement.

## ARTICLE 122

### Rights and obligations under this Agreement

Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons, other than those created between the Parties under public international law.

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

## LIST OF ANNEXES AND PROTOCOLS

ANNEX I:	Customs duties of the EU on products originating in the SADC EPA States
ANNEX II:	Customs duties of SACU on products originating in the EU
ANNEX III:	Customs duties of Mozambique on products originating in the EU
ANNEX IV:	Agricultural safeguards
ANNEX V:	BLNS transitional safeguards
ANNEX VI:	SPS priority products and sectors
PROTOCOL 1:	Concerning the Definition of the Concept of “Originating Products” and Methods of Administrative Cooperation
PROTOCOL 2:	Mutual Administrative Assistance in Customs Matters
PROTOCOL 3:	Geographical Indications and Trade in Wines and Spirits
PROTOCOL 4:	Concerning the relationship between the TDCA and this Agreement
FINAL ACT	