

3. Imported products originating in the other Party shall be accorded treatment no less favourable than that accorded to like domestic products of national origin 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.
4. The Parties shall not 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, Parties shall not otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.
5. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.
6. The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

7. The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

8. The Parties recognise that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of Parties supplying imported products. Accordingly, Parties applying such measures shall take account of the interests of exporting Parties with a view to avoiding to the fullest practicable extent such prejudicial effects.

9. The provisions of this Article shall not prevent any Party from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films and meeting the requirements of Article IV of the GATT 1947.

CHAPTER IV

CUSTOMS AND TRADE FACILITATION

ARTICLE 41

Objectives

The objectives of this Chapter are to:

- (a) 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;
- (b) promote harmonisation of customs legislation and procedures;
- (c) 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
- (d) provide the necessary support for the SADC EPA States' customs administrations to effectively implement this Agreement.

ARTICLE 42

Customs and administrative cooperation

1. In order to ensure compliance with the provisions of this Chapter and effectively respond to the objectives laid down in Article 41, the Parties shall:
 - (a) exchange information on customs legislation and procedures;
 - (b) develop joint 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 to improving the service 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 Parties shall prepare and develop an enhanced cooperation on the implementation of the World Customs Organisation (“WCO”) Framework of Standards to Secure and Facilitate Global Trade of 2005. This cooperation shall include initiatives in view of working towards the mutual recognition of the Authorised Economic Operator status and the exchange of advance information to allow an effective risk assessment and management for security purposes.
3. The Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of Protocol 2.

ARTICLE 43

Customs legislation and procedures

1. The Parties agree that their respective trade and customs legislation and procedures shall to the extent possible be based on:
 - (a) the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures of 1999, the substantive elements of the WCO 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 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 Preshipment 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 rulings on customs matters, in particular 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 be maintained, through the application of anti-corruption measures in this field;

- (b) take further steps towards the reduction, simplification and standardization 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. Procedures for appeal shall be easily accessible, including to small or medium enterprises; and
- (e) create an environment for the effective enforcement of legislative requirements.

ARTICLE 44

Facilitation of transit movements

1. The Parties 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 shall:

- (a) 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;
- (b) promote and implement regional transit arrangements;
- (c) use international standards and instruments relevant to transit; and
- (d) promote coordination between all concerned agencies, both internally and across borders.

ARTICLE 45

Relations with the business community

The Parties agree to:

- (a) 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;

- (b) consult, as far as possible, timely and regularly with trade representatives on legislative proposals and procedures related to customs and customs related trade issues;
- (c) introduce, where appropriate, new or amended legislation and procedures and their entry into force 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
- (d) to foster cooperation between operators and relevant administrations through the use of instruments such as memoranda of understanding.

ARTICLE 46

Customs valuation

1. The Agreement on Implementation of Article VII of the GATT 1994 (“WTO Agreement on Customs Valuation”) 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 47

Harmonisation of customs standards at regional level

1. The Parties shall promote harmonisation of customs legislation, procedures, standards and requirements.
2. Each Party shall determine the content and pace of this process.

ARTICLE 48

Support to the SADC EPA States' customs administrations

1. The Parties recognise the importance of supporting the SADC EPA States' customs administrations for the implementation of this Chapter, in line with the provisions of Chapter III of Part I.
2. The priority areas for such 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 43(1)(j);
- (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 49

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 rights and obligations, the SADC EPA States shall benefit from a transitional period of eight (8) years to meet those requirements referred to in Articles 27, 43, 44, and 45 where the need for capacity building exists at the time of entry into force of this Agreement.
3. The Joint Council may decide to extend this transitional period by two (2) years in case the necessary capacity has not yet been attained.

ARTICLE 50

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 include:
- (a) monitoring the implementation and administration of this Chapter and of Protocol I;
 - (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) following up on the implementation of Article 47;
 - (f) determining its own rules of procedure; and
 - (g) addressing 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 V

TECHNICAL BARRIERS TO TRADE

ARTICLE 51

Multilateral obligations

1. The Parties affirm their commitment to the rights and obligations provided for in the Agreement on Technical Barriers to Trade (“WTO TBT Agreement”).

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

ARTICLE 52

Objectives

The Parties agree to:

- (a) 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 WTO TBT Agreement;
- (b) cooperate in strengthening regional, and specifically the SADC EPA States' integration and cooperation on matters concerning TBT; and
- (c) establish and enhance the SADC EPA States' technical capacity on matters concerning TBT.

ARTICLE 53

Scope and definitions

1. The provisions of this Chapter shall apply to standards, technical regulations, and conformity assessment procedures as defined in the WTO 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 WTO TBT Agreement shall apply.

ARTICLE 54

Collaboration and regional integration

The Parties agree that collaboration between national and regional authorities dealing with matters concerning TBT, 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 55

Transparency

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

3. The Parties agree to establish an early warning mechanism to ensure that the SADC-EPA States are informed in advance of new measures of the EU that may affect SADC EPA exports to the EU. The Parties shall make optimal use of existing mechanisms and avoid unnecessary duplications to multilateral or unilateral mechanisms.

ARTICLE 56

Measures related to technical barriers to trade

The Parties agree to identify and implement mechanisms among those supported by the WTO TBT Agreement that are the most appropriate for particular priority issues or sectors. Such mechanisms may include:

- (a) intensifying their collaboration to facilitate 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;
- (b) 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;

- (c) identifying and organising sector-specific interventions on standards, technical regulations and conformity assessment procedures to facilitate understanding of and access to their respective markets. These sectors will be chosen taking into account key areas of trade, including priority products;
- (d) developing cooperation activities and measures with a view to supporting the implementation of the rights and obligations under the WTO TBT Agreement;
- (e) 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;
- (f) 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;
- (g) undertaking to consider, in due course, negotiating mutual recognition agreements in sectors of mutual economic interest;
- (h) promoting collaboration between the Parties' organisations responsible for technical regulations, metrology, standardisation, testing, certification, inspection and accreditation; and
- (i) promoting the participation by the SADC EPA States in international standards-setting bodies.

ARTICLE 57

Role of the Trade and Development Committee on TBT matters

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

- (a) monitor and review the implementation of this Chapter;
- (b) provide coordination and consultation on TBT matters;
- (c) identify and review priority sectors and products and the resulting priority areas for cooperation;
- (d) make recommendations for modifications of this Chapter if necessary and appropriate; and
- (e) address any other issues agreed by the Parties in respect of this Chapter.

ARTICLE 58

Capacity building and technical assistance

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 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 the 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 VI

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 59

Multilateral obligations

1. The Parties affirm their commitment to the rights and obligations provided for in the Agreement on the Application of Sanitary and Phytosanitary Measures (“WTO SPS Agreement”), the International Plant Protection Convention (“IPPC”), the Codex Alimentarius Commission and the World Organisation for Animal Health (“OIE”).
2. Those rights and obligations shall underlie the activities of the Parties under this Chapter.

ARTICLE 60

Objectives

The Parties agree to:

- (a) 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 life or health in accordance with the provisions of the WTO SPS Agreement;
- (b) cooperate in strengthening regional integration and specifically SADC EPA States' cooperation on matters concerning sanitary and phytosanitary measures ("SPS measures") and to address problems arising from SPS measures on agreed priority products and sectors as listed in Annex VI, whilst giving due consideration to regional integration;
- (c) promote collaboration aiming at recognition of appropriate levels of protection in SPS measures; and
- (d) 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.

ARTICLE 61

Scope and definitions

1. The provisions of this Chapter shall apply to SPS measures as defined in the WTO SPS Agreement.
2. For the purposes of this Chapter, definitions used in the WTO SPS Agreement and international standard-setting bodies, namely the Codex Alimentarius Commission, the IPPC and the OIE shall apply.

ARTICLE 62

Competent authorities

1. The respective SPS authorities shall be the competent authorities in the Parties for the implementation of the measures referred to in this Chapter.
2. The Parties shall, in accordance with this Agreement, inform each other of their respective competent SPS authorities and any changes thereto.

ARTICLE 63

Transparency

1. The Parties reaffirm the principle of transparency in the application of SPS measures, in accordance with the WTO SPS Agreement.
2. The Parties recognise the importance of effective mechanisms for consultation, notification and exchange of information with respect to SPS measures in accordance with the WTO SPS Agreement.
3. The importing Party shall inform the exporting Party of any changes in its 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 64

Exchange of information

1. The Parties agree to establish an early-warning system to ensure that the SADC EPA States are informed in advance of new SPS measures of the EU that may affect SADC EPA exports to the EU. This system shall be based on existing mechanisms where appropriate.
2. The Parties, agree to collaborate in the further development of the epidemiological surveillance network on animal diseases and in the domain of plant health. The Parties will exchange information on the occurrence of pests and diseases of known and immediate danger to the other Party.

ARTICLE 65

Role of the Trade and Development Committee on SPS matters

The Trade and Development Committee shall be competent to:

- (a) monitor and review the implementation of this Chapter;
- (b) advise and make recommendations in order to achieve the objectives of this Chapter through its implementation;

- (c) provide a forum for discussion and exchange of information and issues of cooperation;
- (d) make recommendations for modifications to this Chapter if necessary and appropriate;
- (e) review the list of priority products and sectors included in ANNEX VI as well as the resulting priority areas for cooperation;
- (f) enhance cooperation on the development, application and enforcement of SPS measures; and
- (g) discuss any other relevant matters relating thereto.

ARTICLE 66

Consultations

If either Party considers that the other Party has taken measures which may affect or have affected access to its market, appropriate consultations shall be held to avoid undue delays and to find 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 67

Cooperation, capacity building and technical assistance

The Parties agree to:

- (a) promote cooperation between the equivalent institutions of the Parties;
- (b) 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; and
- (c) cooperate in the following priority areas:
 - (i) building of technical capacity in the public and private sectors of the SADC EPA States to enable sanitary and phytosanitary control, including training and information events for inspection, certification, supervision and control;
 - (ii) building of capacity in the SADC EPA States to maintain and expand their market access opportunities;
 - (iii) 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;

- (iv) enhancement of technical capacity for the implementation and monitoring of SPS measures, including promoting greater use of international standards;
- (v) promotion of cooperation on the implementation of the WTO SPS Agreement, particularly strengthening SADC EPA States' notification procedures and enquiry points as well as other matters concerning relevant international standards setting bodies;
- (vi) 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 the 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
- (vii) support for the participation of the SADC EPA States in relevant international standards setting bodies.

CHAPTER VII

AGRICULTURE

ARTICLE 68

Cooperation on agriculture

1. The Parties underline the importance of the agricultural sector to the SADC EPA States for food security, generating rural employment, increasing incomes of farm households, creating an inclusive rural economy, and as a basis for wider industrialisation and sustainable development, as well as to contribute to the objectives of this Agreement.
2. The use of export subsidies on agricultural goods in the trade between the Parties shall not be allowed from the date of entry into force of this Agreement.
3. An agricultural partnership is established between the EU and the SADC EPA States to facilitate an exchange of views between the Parties on agriculture, *inter alia*, food security, development, regional value chains and integration. The coverage of issues and operational rules for the agricultural partnership shall be established by common agreement of the Parties acting within the Committee referred to in Article 103.

CHAPTER VIII

CURRENT PAYMENTS AND CAPITAL MOVEMENTS

ARTICLE 69

Current payments

- 1 Subject to the provisions of Articles 70 and 71, the Parties undertake to impose no restrictions on and to allow all payments for current transactions between their residents to be made in freely convertible currency.
2. The Parties may take the necessary measures to ensure that the provisions of paragraph 1 are not used to make transfers that are not compliant with a Party's laws and regulations.

ARTICLE 70

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 payments and capital movements that are strictly necessary may be taken by the EU or the SADC EPA State concerned for a period not exceeding six (6) 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.

ARTICLE 71

Balance of payment difficulties

Where one or more Member States of the European Union or a SADC EPA State is in serious balance of payments difficulties or external financial difficulties, or under threat thereof, it may adopt restrictive measures in accordance with the conditions established under the WTO Agreement and the Articles of Agreement of the International Monetary Fund, which shall be of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. The Party having adopted or maintained such measures shall inform the other Party forthwith and shall submit to it as soon as possible a timetable for the elimination of the measures concerned.

CHAPTER IX

TRADE IN SERVICES AND INVESTMENT

ARTICLE 72

Objectives

The Parties recognise the growing importance of trade in services and investment for the development of their economies and reaffirm their commitment regarding services in Articles 41 to 43 of the Cotonou Agreement and their respective rights and obligations under the General Agreement on Trade in Services (“GATS”).

ARTICLE 73

Trade in services

1. The Parties may negotiate trade in services to extend the scope of this Agreement. In this regard, Botswana, Lesotho, Mozambique and Swaziland (“Participating SADC EPA States”) on the one hand, and the EU on the other hand, have started and will continue to negotiate trade in services.

2. The negotiations between the EU and the Participating SADC EPA States shall be guided by the following principles:

- (a) negotiations shall cover definitions and principles for the liberalisation of trade in services;
- (b) negotiations shall cover lists of commitments, setting out the conditions applicable to the liberalisation of trade in services. Such conditions shall be listed per sector liberalised and include, where necessary, limitations on market access and national treatment as well as transition periods for liberalisation;
- (c) negotiations shall also address regulatory provisions supporting the liberalisation of trade in services;
- (d) liberalisation of trade in services shall meet the requirements of Article V of the GATS;
- (e) liberalisation of trade in services shall be reciprocal and asymmetric, taking into account the development needs of the Participating SADC EPA States. This may also result in the inclusion of provisions on cooperation and on special and differential treatment;
- (f) negotiations shall build on the relevant provisions in existing applicable legal frameworks.

3. The EU and the Participating SADC EPA States agree to cooperate on strengthening the regulatory frameworks of the Participating SADC EPA States as well as to support the implementation of the commitments resulting from the negotiations in accordance with Article 13(5). The Parties recognise that in accordance with Article 13(8) trade capacity building can support the development of economic activities.
4. If a Party that is not party to an agreement on trade in services negotiated in accordance with paragraphs 1 and 2 wishes to join, it may negotiate the terms of its entry to that agreement.
5. If any agreement emanating from negotiations envisaged in paragraphs 1 and 4 were to result in outcomes that prove to be incompatible with the future development of a SADC regional services framework, the Parties shall negotiate to bring this Agreement in line with such regional framework while ensuring a balance of benefits.

ARTICLE 74

Trade and investment

1. The EU and the Participating SADC EPA States agree to cooperate on investment in accordance with Article 13(6) and may in future consider negotiating an agreement on investment in economic sectors other than services.
2. If a Party that is not party to an agreement on investment negotiated in accordance with paragraph 1 wishes to join, it may negotiate the terms of its entry to that agreement.

3. If any agreement emanating from negotiations envisaged in paragraphs 1 and 2 were to result in outcomes that prove to be incompatible with the future development of a SADC regional investment framework, the Parties shall jointly endeavour to bring this Agreement in line with such regional framework while ensuring a balance of benefits.

PART III

DISPUTE AVOIDANCE AND SETTLEMENT

CHAPTER I

OBJECTIVE AND SCOPE

ARTICLE 75

Objective

1. The objective of Part III is to avoid or settle any dispute between the Parties concerning the interpretation and application of this Agreement with a view to arrive at, where possible, a mutually agreed solution.

2. For disputes that relate to the collective action of SACU, SACU will act as a collective for the purposes of this Part, and the EU shall act against SACU as such.
3. For disputes that relate to an individual action of a SADC EPA State, the SADC EPA State concerned shall act individually for the purposes of this Part, and the EU shall act only against the specific State that it considers has infringed a provision of this Agreement.

ARTICLE 76

Scope

1. Part III shall apply to any dispute concerning the interpretation and application of this Agreement, except as otherwise expressly provided.
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 Parties.

CHAPTER II

CONSULTATIONS AND MEDIATION

ARTICLE 77

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 76 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 forty (40) days of the date of the receipt of the request. The consultations shall be deemed concluded within sixty (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 fifteen (15) days of the date of the receipt of the request, and shall be deemed concluded within thirty (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 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 79.

ARTICLE 78

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. Unless the Parties agree on a mediator within fifteen (15) days of the date of the agreement to request mediation, the Chairperson of the Trade and Development Committee, or his or her delegate, shall select by lot a mediator from the pool of individuals who are on the list referred to in Article 94 and are not nationals of either Party. The selection shall be made within twenty-five (25) days of the date of the submission of agreement to request mediation and in the presence of a representative of each Party. The mediator will convene a meeting with the Parties no later than thirty (30) days after being selected. The mediator shall receive the submissions of each Party no later than fifteen (15) days before the meeting and notify an opinion no later than forty-five (45) days after having been selected.

3. 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.
4. The Parties may agree to amend the time limits referred to in paragraph 2. The mediator may also decide to amend these time limits upon request of any of the Parties or on his own initiative, given the particular difficulties experienced by the Party concerned or the complexities of the case.
5. The proceedings involving mediation, in particular all information disclosed and positions taken by the Parties during these proceedings, shall remain confidential.

CHAPTER III

DISPUTE SETTLEMENT PROCEDURES

ARTICLE 79

Initiation of the arbitration procedure

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 77, or by recourse to mediation as provided for in Article 78, 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 80

Establishment of the arbitration panel

1. An arbitration panel shall be composed of three (3) arbitrators.
2. Each Party shall appoint one arbitrator within ten (10) days of the date of the receipt of the request for the establishment of an arbitration panel. The two (2) arbitrators shall appoint a third arbitrator, who shall be the chairperson of the arbitration panel, within twenty (20) days of the receipt of the request for the establishment of a panel. The chairperson of the arbitration panel shall not be a national of the Parties nor permanently reside in the territory of the Parties.

3. If all three (3) arbitrators are not appointed within twenty (20) days, or if, within ten (10) days of the appointment of the third arbitrator, either Party submits a reasoned written objection to the appointed arbitrators 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 (3) members by lot from the list established under Article 94, 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 (5) days of receipt of the request made by either Party referred to in paragraph 3 and 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 (3) arbitrators are finally selected.

ARTICLE 81

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 one hundred and twenty (120) days from the date of establishment of the arbitration panel. In cases of urgency, the time limit shall be reduced to sixty (60) days. Any Party may submit written comments to the arbitration panel on precise aspects of its interim report within fifteen (15) days of the notification of the report.

ARTICLE 82

Arbitral ruling

1. The arbitration panel shall notify its ruling to the Parties and to the Trade and Development Committee within one hundred and fifty (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 one hundred and eighty (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 ninety (90) days from the date of its establishment. The arbitration panel may give a preliminary ruling within ten (10) 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 could bring itself into compliance.

ARTICLE 83

Compliance with the arbitral ruling

The Party complained against shall take any steps necessary to comply with the arbitral ruling and the Parties shall seek to agree on the period of time to comply with that ruling.

ARTICLE 84

The reasonable period of time for compliance

1. No later than thirty (30) days after the receipt of notification of the arbitral 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 arbitral ruling.

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 arbitral ruling, the complaining Party shall, within thirty (30) days of the notification made under paragraph 1, request in writing the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the Party complained against 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 thirty (30) days from the date of the receipt of the request.
3. The arbitration panel shall, 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 to adopt comparable legislative or administrative measures to those identified by such Party 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 by the Party complained against.
4. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 80 shall apply. The time limit for notifying the ruling shall be forty-five (45) days from the date of the receipt of the request referred to in paragraph 2.
5. The reasonable period of time may be extended by agreement of the Parties.

ARTICLE 85

Review of any measure taken to comply with the arbitral ruling

1. The Party complained against shall notify the complaining 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 arbitral ruling.
2. In the event of a disagreement between the Parties concerning the compatibility of any measure notified under paragraph 1 with the provisions of this Agreement, the complaining Party may request in writing the original 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 ninety (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 forty-five (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 80 shall apply. The time limit for notifying the ruling shall be one hundred and five (105) days from the date of the receipt of the request referred to in paragraph 2.

ARTICLE 86

Temporary remedies in case of non-compliance

1. If the Party complained against fails to notify any measure taken to comply with the arbitral ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 85(1) is not compatible with the provisions of this Agreement, the Party complained against 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 to offer such financial compensation.
2. If no agreement on compensation is reached within thirty (30) days of the end of the reasonable period of time or of the arbitral ruling under Article 85 that a measure taken to comply is not compatible with this Agreement, the complaining Party shall be entitled, upon notification to the Party complained against, to adopt appropriate measures.
3. In adopting such measures the complaining Party 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. If the EU fails to notify any measure taken to comply with the arbitral 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 85(1) is not compatible with that Party's obligations under this Agreement, and the complaining Party asserts that the adoption of appropriate measures would result in significant damage to its economy, the EU shall consider providing financial compensation.

5. The EU shall exercise due restraint in asking for compensation or adopting appropriate measures pursuant to paragraphs 1 or 2.

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.

7. For the purposes of Articles 86 and 87, appropriate measures refer to measures similar to those available under Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement ("DSU").

ARTICLE 87

Review of any measure taken to comply after the adoption of appropriate measures

1. The Party complained against shall notify the complaining Party and the Trade and Development Committee of any measure it has taken to comply with the arbitral ruling and of its request to end the application of appropriate measures by the complaining Party.
2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions of this Agreement within thirty (30) days of the date of notification, the complaining Party shall request in writing the original arbitration panel to rule on the matter. Such request shall be notified to the Party complained against and to the Trade and Development Committee. The arbitral ruling shall be notified to the Parties and to the Trade and Development Committee within forty-five (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 shall determine whether the complaining Party may 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 80 shall apply. The period for notifying the ruling shall be sixty (60) days from the date of the receipt of the request referred to in paragraph 2.

CHAPTER IV

COMMON PROVISIONS

ARTICLE 88

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 and the arbitration panel, if any, of such a solution. Upon adoption of the mutually agreed solution, the dispute settlement procedure shall be terminated.

ARTICLE 89

Rules of Procedure and Code of Conduct

1. The Parties shall agree on Rules of Procedure and a Code of Conduct within twelve (12) months of the entry into force of this Agreement which shall be adopted by the Joint Council.

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 90

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 and submitted for their comments.

ARTICLE 91

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 EU shall, when seeking to agree on a common working language, take into account the potential impact of such costs on the SADC EPA States.

ARTICLE 92

Rules of interpretation

The arbitration panel shall interpret the provisions of this Agreement in accordance with the customary rules of interpretation of public international law, including those codified 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 93

Arbitral 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 arbitral ruling publicly available unless it decides not to do so.

ARTICLE 94

List of arbitrators

1. The Trade and Development Committee shall, no later than three (3) months after the entry into force of this Agreement, establish a list of twenty-one (21) individuals who are willing and able to serve as arbitrators. Each of the Parties shall select eight (8) individuals to serve as arbitrators. The Parties shall also agree on five (5) individuals who are not nationals of either Party and who shall act as chairperson of the arbitration panel. The Trade and Development Committee will ensure that the list is always maintained in accordance with this Article.

2. Arbitrators shall have specialised knowledge on matters covered by this Agreement 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 Trade and Development Committee may establish an additional list of fifteen (15) individuals having a sectoral expertise in specific matters covered by this Agreement. When recourse is made to the selection procedure of Article 80, the Chairperson of the Trade and Development Committee may use such a sectoral list upon agreement of both Parties.

ARTICLE 95

Relation with WTO obligations

1. Arbitration bodies set up under this Agreement shall not arbitrate disputes on a Party's rights and obligations under the WTO Agreement.

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 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 in the other forum 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 request for the establishment of a panel under Article 6 of the DSU.
3. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO.

ARTICLE 96

Time limits

1. Any time limits referred to in this Part, 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 limits referred to in this Part may be extended by mutual agreement of the Parties.

PART IV

GENERAL EXCEPTIONS

ARTICLE 97

General exception clause

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importation or exportation of gold or silver;

- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII of the GATT, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
- (e) relating to the products of prison labour;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the GATT Contracting Parties and not disapproved by them or which is itself so submitted and not so disapproved;¹

¹ The exception provided for in this sub-paragraph extends to any commodity agreement which conforms to the principles approved by the Economic and Social Council in its resolution 30 (IV) of 28 March 1947.

- (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination; or
- (j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that the Parties and the SADC EPA States are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

ARTICLE 98

Security exceptions

1. Nothing in this Agreement shall be construed to:
 - (a) require either Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

- (b) prevent either Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to fissionable materials or the materials from which they are derived; or
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or
 - (iii) taken in time of war or other emergency in international relations; or
 - (c) prevent either Party 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 of measures taken under paragraph 1(b) and (c) and of their termination.

ARTICLE 99

Taxation

1. Nothing in this Agreement, or in any arrangement adopted under this Agreement, shall be construed to prevent either Party 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 either Party 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.