



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 22 December 2008**

**17573/08  
ADD 1**

**ACP 261  
WTO 248  
COASI 239  
RELEX 1044**

**COVER NOTE**

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

date of receipt: 16 December 2008

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

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Subject: Interim Partnership Agreement between the Pacific States of the one part, and  
the European Community of the other part  
- Annex I

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Delegations will find attached Commission document COM(2008) 858 final - volume 2.

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Encl.: COM(2008) 858 final - volume 2



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.12.2008  
COM(2008) 858 final

**ANNEX I**

**INTERIM PARTNERSHIP AGREEMENT BETWEEN THE PACIFIC STATES OF  
THE ONE PART, AND THE EUROPEAN COMMUNITY OF THE OTHER PART**

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THE ONE PART, AND THE EUROPEAN COMMUNITY OF THE OTHER PART**

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# PREAMBLE

THE INDEPENDENT STATE OF PAPUA NEW GUINEA, hereafter referred to as Papua New Guinea

THE REPUBLIC OF THE FIJI ISLANDS

of the one part, and

THE EUROPEAN COMMUNITY, of the other part

HAVING REGARD TO 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, signed in Cotonou on 23 June 2000 and revised 2005, referred to as the “Cotonou Agreement”;

HAVING REGARD TO the fact that the trade preferences granted under the Cotonou Agreement will expire on 31 December 2007;

HAVING REGARD TO the negative impact on the exports from members of the Pacific States to the European Community that may result from the expiration of the Cotonou trade preferences in case no WTO compatible successor trade arrangement is in place by the 31 December 2007 and that it is therefore necessary to establish an Interim Partnership Agreement that would safeguard the trade and development interests of the Pacific States affected;

HAVING REGARD TO the fact that the EC Party has offered improved market access within the framework of the negotiations on Economic Partnership Agreements (EPA) and that Pacific States wish to start benefiting from this offer as from 1 January 2008;

REAFFIRMING their continuing commitment to the ongoing negotiations aiming at the conclusion of a comprehensive Economic Partnership Agreement by 31 December 2008 which will contain all relevant elements and include all interested Pacific Islands;

REAFFIRMING that development cooperation will be a crucial element of the comprehensive EPA and an essential factor for the realisation of its objectives.

REAFFIRMING their commitment to the objectives and the implementation of the Cotonou Agreement and desiring to build upon those commitments;

REAFFIRMING their commitment to the respect for human rights, democratic principles, the rule of law and to good governance, which constitute essential and fundamental elements of the Cotonou Agreement, and to sustainable and equitable development, along with greater involvement of an active and organised civil society and the private sector, which, along with the market economy, are the main elements recognised in the Cotonou Agreement as contributing to achieving the objectives of the partnership;

REAFFIRMING their commitment to work together towards the achievement of the objectives of the Cotonou Agreement of poverty eradication, sustainable development and the gradual integration of the Pacific States into the world economy, with due regard for their political choices and development priorities;

REAFFIRMING their commitment to support the regional integration process within the Pacific region, and in particular to foster regional economic integration as a key instrument for their integration into the world economy and helping them face the challenges of globalisation and achieving the economic and social development to which they aim;

DESIRING to cooperate closely at the national level within the framework of the existing structures as set out in the Cotonou Agreement to maximise the synergies between development cooperation and the objectives of this Agreement.

DESIRING to progressively remove barriers to trade between them; while taking into account the principles of asymmetry and flexibility;

DESIRING to establish a framework for improved arrangements for trade between the Pacific States and the European Community that are consistent with their obligations under the World Trade Organization (“WTO”);

DESIRING to establish an institutional framework for their Interim Partnership Agreement and a mechanism to resolve any disputes that might arise in that relationship consistently with the objectives of this Agreement.

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:

# **PART I**

## **TRADE PARTNERSHIP FOR SUSTAINABLE DEVELOPMENT**

### *Article 1*

#### **Objectives**

The objectives of this Agreement are to:

- (a) enable Pacific States to start benefiting from the improved market access offered by the EC Party within the framework of the EPA negotiations and, at the same time, avoid trade disruption between Pacific States and the European Community in view of the expiry of the trade preferences granted under the Cotonou Agreement on 31 December 2007 and pending the conclusion of a comprehensive EPA between the Pacific States and the EC Party, and its Member States as the case may be;
- (b) promote sustainable development and the gradual integration of Pacific States into the world economy, in conformity with their political choices and development priorities;
- (c) establish a free trade area between the Parties based on the common interest, and fulfil this objective by the progressive liberalization of trade in a manner compliant with applicable WTO rules and the principle of asymmetry, commensurate to the specific needs and capacity constraints of the Pacific States, in terms of levels and timing for commitments under this Agreement.
- (d) set up the appropriate dispute settlement arrangements;
- (e) set up the appropriate institutional arrangements.

### *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 spelt out in Articles 2 and 9, respectively, of the Cotonou Agreement. This Agreement shall build on the provisions of the Cotonou Agreement and the previous ACP-EC Partnership Agreements in the area of regional cooperation and integration as well as economic and trade cooperation.
2. The Parties agree that the Cotonou Agreement and this Agreement shall be implemented in a complementary and mutually reinforcing manner.

### *Article 3*

#### **Sustainable development**

1. The Parties reaffirm that the objective of sustainable development shall be an integral part of the provisions of this Agreement, consistent with the overarching objectives and principles set out in Articles 1, 2 and 9 of the Cotonou Agreement, and especially the general commitment to reducing and eventually eradicating 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 the present 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 population 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 realization of a sustainable development centred on the human person, who is the main beneficiary of development.

### *Article 4*

#### **Regional integration**

1. This Agreement builds upon and aims at deepening regional integration and the Parties undertake to cooperate to further develop it.
2. Nothing in this Agreement shall prevent any Party from entering into any Agreement for the establishment of a free trade area, customs union or other free trade Agreement with any third countries.

### *Article 5*

#### **Cooperation in international fora**

1. The Parties shall endeavour to cooperate in all international fora where issues relevant to this Agreement are discussed.
2. The Parties recognise the valuable contribution that regional organisations can make to the achievement of the objectives of this Agreement. The Parties agree to work closely with existing Pacific regional organisations and programmes wherever useful and possible to support the implementation of this Agreement.

# **PART II**

## **TRADE IN GOODS**

### *Article 6*

#### **Scope**

This Agreement shall apply to products originating in the European Community or in the Pacific States and falling within Chapters 01 to 97 set out in the EC Party's and the Pacific States' respective tariff nomenclatures in conformity with the rules of classification applicable to the Harmonised Commodity Description and Coding System (HS).

### **Chapter 1**

#### **Customs Duties**

### *Article 7*

#### **Customs Duties and Other Charges**

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 23;
  - (b) any antidumping, countervailing or safeguard measure applied consistently with Chapter 2 of Part II;
  - (c) fees or other charges imposed consistently with paragraph 2.
2. Fees and charges referred to paragraph 1(c) 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. Any such fees and charges shall not be applied on an ad valorem basis.

### *Article 8*

#### **Rules of origin**

For the purposes of this Chapter, "originating" means qualifying under the rules of origin set out in Protocol II to this Agreement. In the period of the five years following the entry into force of this Agreement the Parties shall review the operation of these provisions, with a view to further simplifying the concepts and methods used for the purpose of determining origin in the light of the development needs of the Pacific States. In such review, full consideration shall be given to providing certainty for investors, the development of technologies and production processes and all other factors, including on-going reforms of rules of origin and

the establishment of appropriate mechanisms for administrative co-operation between the Parties and the Pacific States as the case may be, which may require modifications to the provisions of this Protocol. Not later than one year before the end of this period, the Parties shall open negotiations on the Protocol with a view to modifying or replacing it. Any such modification or replacement shall be effected by a decision of the Trade Committee.

#### *Article 9*

### **Classification of goods**

The classification of goods in trade between the EC Party and the Pacific States shall be that set out in the respective tariff nomenclatures based on the Harmonised Commodity Description and Coding System.

#### *Article 10*

### **Elimination of customs duties on exports**

Neither the EC Party nor the Pacific States may maintain or institute any duties, taxes or other fees and charges imposed on or in connection with the exportation of goods to the other Party, or any internal taxes, fees and charges on goods exported to the other Party that are in excess of those imposed on like products destined for internal sale, except:

- (a) when these measures are necessary, in conjunction with domestic measures, for ensuring fiscal solvency of a Pacific State or for the protection of the environment; and
- (b) in exceptional circumstances, where a Pacific State can justify specific protection to develop infant industries, that Pacific State may introduce temporary export taxes on a limited number of products destined for the EC market after mutual Agreement with the EC Party<sup>1</sup>.

#### *Article 11*

### **Customs duties on products originating in the Pacific States**

Products originating in the Pacific States shall be imported in the EC Party free of customs duties, except for the products indicated, and under the conditions set out in Annex I.

#### *Article 12*

### **Customs duties on products originating in the EC Party**

Customs duties on imports of products originating in the EC Party shall be reduced or eliminated in accordance with the provisions set out in Annex II.

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<sup>1</sup> The Parties recognise that any such measure shall be applied on an MFN basis.

### *Article 13*

#### **Modification of Tariff Commitments**

In the event of serious difficulties in respect of imports of a given product, the Pacific State facing such difficulty may request that the Trade Committee review the schedule of customs duty reductions and eliminations with a view to modify where necessary the time schedule for reduction or elimination by common accord.

The Trade Committee by Agreement may modify Annex II in any manner deemed appropriate.

The Parties shall ensure that any such modifications do not result in an incompatibility of this Agreement with the requirements of Article XXIV of the GATT 1994.

### *Article 14*

#### **Standstill**

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

### *Article 15*

#### **Circulation of goods**

1. Customs duties shall be levied only once for goods originating in the EC Party or in the Pacific States. Once customs duties have been levied, goods originating in any of the Parties shall circulate within the territory of the EC Party or of the Pacific States respectively without any further payment of customs duties.
2. Notwithstanding paragraph 1 and for goods of tariff headings whose duties have not yet been eliminated in all of the Pacific States, any customs duty paid upon importation in a Pacific State shall be refunded fully and without delay when the goods leave the customs territory of first importation. Such product shall then pay 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 as provided for under Chapter 4.

### *Article 16*

#### **Non Discrimination Clause**

1. With respect to matters covered by this Chapter, the EC Party shall accord to Pacific 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 Pacific States shall accord to the EC Party any more favourable treatment applicable as a result of the Pacific States becoming party to a free trade Agreement with any major trading economy after the signature of this Agreement.
3. Where a Pacific State or the Pacific States can demonstrate that they have been offered by a third Party a substantially more favourable treatment in goods, including rules of origin, than that offered by the EC Party, the Parties will consult and may 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 Pacific State to extend reciprocally any preferential treatment applicable as a result of the EC Party or any Pacific 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, 'free trade agreement' means an agreement substantially liberalizing trade and providing for the absence or elimination of substantially all discrimination between or among parties thereto through the elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures, either at the entry into force of that agreement or on the basis of a reasonable time frame.
6. For the purposes of this article, 'major trading economy' means any developed country, or any country accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the free trade agreement referred to in paragraph 2, or any group of countries acting individually, collectively or through an free trade agreement accounting collectively for a share of world merchandise exports above 1.5 percent in the year before the entry into force of the free trade agreement referred to in paragraph 2.<sup>2</sup>

#### *Article 17*

##### **Special provisions on administrative cooperation in customs matters**

1. The Parties agree that administrative co-operation is essential for the implementation and the control of the preferential treatment granted under this Part and underline their commitment to combat irregularities and fraud in customs and related matters.
2. Where a Party or a Pacific State as the case may be has made a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud, the Party or Pacific State concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned in accordance with this Article.
3. For the purpose of this Article a failure to provide administrative co-operation shall mean, *inter alia*:

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<sup>2</sup> For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used

- (a) a repeated failure to respect the obligations to verify the originating status of the product(s) concerned;
- (b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin;
- (c) a repeated refusal or undue delay in obtaining authorisation to conduct administrative co-operation missions to verify the authenticity of documents or accuracy of information relevant to the granting of the preferential treatment in question.

For the purpose of this Article, a finding of irregularities or fraud may be made, *inter alia*, where there is a rapid increase, without satisfactory explanation, in imports of goods exceeding the usual level of production and the export capacity of the other Party or Pacific State as the case may be, which is linked to objective information concerning irregularities or fraud.

4. The application of a temporary suspension pursuant to paragraph 2 shall be subject to the following conditions:

- (a) The Party or Pacific State as the case may be which has made a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud shall without undue delay notify the Trade Committee of its finding together with the objective information and enter into consultations within the Trade Committee, on the basis of all relevant information and objective findings, with a view to reaching a solution acceptable to both the EC Party and the Pacific States or State as the case may be.
- (b) Where the Parties have entered into consultations within the Trade Committee as above and have failed to agree on an acceptable solution within 3 months following the notification, the Party or Pacific State concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned. A temporary suspension shall be notified to the Trade Committee without undue delay.
- (c) Temporary suspensions under this article shall be limited to that necessary to protect the financial interests of the Party or Pacific 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 affected Party or Pacific State and the Trade Committee. They shall be subject to periodic consultations within the Trade Committee in particular with a view to their termination as soon as the conditions for their application are no longer given.

5. At the same time as the notification to the Trade Committee under paragraph 4(a) of this Article, the Party or Pacific State concerned should publish a notice to importers in its official gazette or journal. The notice to importers should indicate for the product concerned and of the specific origin concerned that there is a finding, on the

basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud.

*Article 18*

**Management of administrative errors**

The Parties recognize each other rights to correct errors during the implementation of this Agreement. Where errors are identified either Party may request the Trade Committee to examine the possibilities of adopting appropriate measures with a view to resolving the situation.

## **Chapter 2**

### **Trade Defence Instruments**

#### *Article 19*

##### **Anti-dumping and countervailing measures**

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the EC Party or Pacific States, both WTO members and non-WTO members, whether individually or collectively, from adopting anti-dumping or countervailing measures in accordance with the relevant WTO agreements. For the purpose of this Article, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.
2. The EC Party may not impose definitive anti-dumping or countervailing duties in respect of products imported from Pacific States before considering the possibility of constructive remedies foreseen in the relevant WTO agreements, in accordance with EC law. In that respect, the EC Party shall provide appropriate assistance to the exporters from the Pacific States which are proposing such constructive remedies.
3. Where an anti-dumping or countervailing measure has been imposed on behalf of two or more Pacific States by a regional or sub-regional authority, there shall be one single forum of judicial review, including the stage of appeals.
4. Where anti-dumping or countervailing measures can be imposed on a regional or sub-regional basis and on a national basis the Parties or Pacific States as the case may be shall ensure that such measures are not applied simultaneously in respect of the same product by regional or sub-regional authorities on the one hand, and national authorities on the other.
5. The EC Party shall notify the exporting Pacific States of the receipt of a properly documented complaint before initiating any investigation.
6. The provisions of this Article shall be applicable in all investigations initiated after this Agreement enters into force.
7. The provisions of this Article shall not be subject to the Dispute Settlement provisions of this Agreement.

#### *Article 20*

##### **Multilateral safeguards**

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the Pacific States and the EC Party from adopting measures in accordance with Article XIX of the General Agreement on Tariffs and Trade 1994, the Agreement on Safeguards, and Article 5 of the Agreement on Agriculture. For the purpose of this

Article, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.

2. Notwithstanding paragraph 1, the EC Party may, in the light of the overall development objectives of this Agreement and the small size of the economies of the Pacific States, exclude imports from any Pacific State from any measures taken pursuant to Article XIX of the GATT 1994, the WTO Agreement on Safeguards and Article 5 of the Agreement on Agriculture.
3. The provisions of paragraph 2 shall apply for a period of five years, beginning with the date of entry into force of the Agreement. Not later than 120 days before the end of this period, the Parties shall review the operation of those provisions in the light of the development needs of the Pacific States, with a view to determining whether to extend their application for a further period.
4. The provisions of paragraph 1 shall not be subject to the Dispute Settlement provisions of this Agreement.

#### *Article 21*

#### **Bilateral Safeguards**

1. Notwithstanding Article 20, after having examined alternative solutions, the EC Party or a Pacific State may apply safeguard measures of limited duration which derogate from the provisions of Article 11 and 12, under the conditions and in accordance with the procedures laid down in this Article.
2. Safeguard measures referred to in paragraph 1 above may be taken where a product originating in the EC Party or a Pacific State is being imported into the territory of the EC Party or a Pacific State 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 Parties or Pacific States, or
  - (b) disturbances in a sector or industry of the economy, whether of an economic or social nature, or difficulties which could bring about serious deterioration in the economic situation of the importing Parties or Pacific States, or
  - (c) disturbances in the markets of agricultural like or directly competitive products<sup>3</sup> or mechanisms regulating those markets.
3. Safeguard measures referred to in this Article shall not exceed what is necessary to remedy or prevent the serious injury or disturbances, as defined in paragraphs 2 and

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<sup>3</sup> For the purpose of this article agricultural products are those covered by Annex I of the WTO Agreement on Agriculture

5(b). Those safeguard measures of the importing Parties or Pacific States may only consist of one or more of the following:

- (a) suspension of the further reduction of the rate of import duty for the product concerned, as provided for under this Agreement,
- (b) increase in the customs duty on the product concerned up to a level which does not exceed the customs duty applied to imports originating in other WTO Members, and
- (c) introduction of tariff quotas on the product concerned.

4. Without prejudice to paragraphs 1, 2 and 3 above, where any product originating in one or more Pacific State(s) 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) above to one or several of the EC Party's Outermost Regions, the EC Party may take surveillance or safeguard measures limited to the region or regions concerned in accordance with the procedures laid down in paragraphs 6 to 9.

5.

- (a) Without prejudice to paragraphs 1, 2 and 3 above, 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 2(a), (b) and (c) above to a Pacific State, the Pacific State concerned may take surveillance or safeguard measures limited to its territory in accordance with the procedures laid down in paragraphs 6 to 9.
- (b) A Pacific State may take safeguard measures where a product originating in the EC Party as a result of the reduction of duties is being imported into its territory in such increased quantities and under such conditions as to cause or threaten to cause disturbances to an infant industry producing like or directly competitive products. These measures shall be taken in order to promote development of productive and sustainable industries with a view to raising the general standard of living of the people. This provision is only applicable for a period of twenty years from the date of entry into force of this Agreement. Measures must be taken in accordance with the procedures laid down in paragraphs 6 to 9 except that the initial duration of measures may be of seven years in the case of non-LDCs with a joint review for a possible extension for further three years and in the case of Small Islands States and Pacific LDC States for twelve years with joint review for possible extension for further three years. No Pacific State shall, at any time, raise tariffs under this provision on goods originating in the EC Party on more than 3 % of tariff lines or on more than 15 % of the total value of goods originating in the EC Party calculated as the average value of imports over the last three years.

6.

- (a) Safeguard measures referred to in this Article shall only be maintained for such a time as may be necessary to prevent or remedy serious injury or disturbances as defined in paragraphs 2, 4 and 5 above.
- (b) Safeguard measures referred to in this Article shall not be applied for a period exceeding two years. In exceptional circumstances, such measures may be extended for a further period of no more than two years. Where a Pacific State applies a safeguard measure, or where the EC Party apply a measure limited to the territory of one or more of its outermost regions, such measures may however be applied for a period not exceeding four years and, in exceptional circumstances, extended for a further period of four years.
- (c) Safeguard measures referred to in this Article that exceed one year shall contain clear elements progressively leading to their elimination at the end of the set period, at the latest.
- (d) No safeguard measure referred to in this Article shall be applied to the import of a product that has previously been subject to such a measure, for a period of at least one year from the expiry of the measure.

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

- (a) Where the EC Party or a Pacific State takes the view that one of the circumstances set out in paragraphs 2, 4 and/or 5 exists, it shall immediately refer the matter to the Trade Committee for examination.
- (b) The Trade Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the Trade 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 Committee, the importing EC Party or the Pacific State may adopt the appropriate measures to remedy the circumstances in accordance with this Article.
- (c) Before taking any measure provided for in this Article or, in the cases to which paragraph 8 of this Article applies, as soon as possible, the EC Party or the Pacific State concerned shall supply the Trade 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 Committee and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their abolition as soon as circumstances permit.

8. Where exceptional circumstances require immediate action, the importing EC Party or Pacific State concerned may take the measures provided for in paragraph 3, 4 and/or 5 on a provisional basis without complying with the requirements of paragraph 7. Such action may be taken for a maximum period of 180 days where measures are taken by the EC Party and 200 days where measures are taken by the Pacific State, or where measures taken by the EC Party are limited to the territory of one or more of its outermost regions. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraph 6. In the taking of such provisional measures, the interest of the Parties, and especially of Small Island States, shall be taken into account. The importing Party or Pacific State as the case may be shall inform the other party concerned and it shall immediately refer the matter to the Trade Committee for examination.
9. If an importing Party or Pacific State as the case may be 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 Committee without delay.
10. Safeguard measures adopted under the provisions of this Article shall not be subject to WTO Dispute Settlement provisions.

## **Chapter 3**

### **Non-Tariff Measures**

#### *Article 22*

#### **Prohibition of Quantitative Restrictions**

Unless otherwise specified in this Agreement, all prohibitions or restrictions applying on the import or export of goods between the EC Party and the Pacific States, other than customs duties and taxes, and fees and other charges, whether made effective through quotas, import or export licenses or other measures, shall be eliminated upon the entry into force of this Agreement. No such new measures shall be introduced. The provisions of this Article shall be without prejudice to the provisions of Chapter 2 of Part II.

#### *Article 23*

#### **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 shall not otherwise apply internal taxes or other internal charges so as to afford protection to national production.
2. Imported products originating in the other Party shall be accorded treatment no less favourable than that accorded to like national products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.
3. No Party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no Party or Pacific 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 or the granting of tax incentives for the purpose of developing industries 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 implemented through governmental purchases of national products.
5. The provisions of this Article shall not apply to laws, regulations, procedures or practices governing public procurement.

*Article 24*

**Agricultural export subsidies**

1. With regard to any product as defined in paragraph 3 for which the Pacific States have committed to the elimination of customs duties the EC Party undertakes to phase out existing subsidies granted upon the exportation of that product to the territories of the Pacific States.
2. Parties will consult no later than 18 December 2007 with a view to determining the modalities of the elimination of existing subsidies mentioned under Paragraph 1.
3. This Article applies to products as covered by Annex I of the WTO Agreement on Agriculture.

## **Chapter 4**

### **Customs and Trade Facilitation**

#### *Article 25*

#### **Objectives**

The objectives of this Chapter are to:

- (a) assist the integration of the Pacific States into the international economy, and in particular facilitate trade between the Parties;
- (b) reinforce cooperation on customs issues with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations, enable the effective and efficient administration of customs, and facilitate trade.

#### *Article 26*

#### **Relationship with Existing Programmes and Assistance**

The Parties shall endeavour to coordinate and integrate their cooperation on trade facilitation and trade promotion with the work of other actors, regional organisations, and national bodies and organisations with the objective of avoiding unnecessary duplication of existing programmes and maximising the benefits from the resources devoted to trade facilitation, in particular, where appropriate, through:

- (a) sharing of information between the Parties, actors, regional and international organisations and their members;
- (b) utilisation of the expertise and resources of other regional or international organisations;
- (c) cooperation between the Parties with and within other regional and international organisations;
- (d) cooperation with other regional and international organisations in the development, establishment and implementation of international agreements on harmonised standards and procedures, or the establishment of new regional organisations;
- (e) participation of other regional organisations, and their members, in the trade facilitation and trade promotion programme; and
- (f) any other form of cooperation, coordination or integration of activities the Parties decide is appropriate.

*Article 27*

**Customs and administrative cooperation**

1. The Parties agree to:
  - (a) exchange information concerning customs legislation and procedures;
  - (b) develop joint initiatives in mutually agreed areas;
  - (c) establish, wherever possible, common positions on customs issues in international fora;
  - (d) promote co-ordination between all related agencies, both internally and across borders.
2. Notwithstanding paragraph 1, the administrations of the Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of Protocol I.

*Article 28*

**Customs procedures**

1. The EC Party and the Pacific States agree that their respective customs legislation, provisions and procedures shall draw upon the international instruments and standards applicable in the field of customs and trade, including the substantive elements of the revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures, the WCO Framework of Standards to Secure and Facilitate Global Trade, the WCO data set and the Convention on the Harmonized Commodity Description and Coding System.
2. The EC Party and the Pacific States agree that their respective trade and customs legislation, provisions and procedures shall be based upon:
  - (a) the need to protect and facilitate legitimate trade through effective enforcement of and compliance with legislative requirements;
  - (b) the need to avoid unnecessary or discriminatory burdens on economic operators, to provide safeguards against fraud, to provide simplified procedures for compliant traders and to encourage compliance, as well as the need to avoid applying excessive penalties for minor breaches of customs regulations or procedural requirements;
  - (c) the application of modern customs techniques, including risk assessment, simplified procedures for entry and release of goods, post release controls, and company audit methods;
  - (d) the progressive development of systems, including those based upon Information Technology, to facilitate the electronic exchange of data between traders, customs administrations and other related agencies;

- (e) the need to facilitate transit movements;
  - (f) the need to avoid any requirement for the mandatory use of customs brokers. Transparent, non-discriminatory and proportionate rules in respect of the licensing of customs brokers shall apply;
  - (g) the need to avoid, except in exceptional circumstances, any requirements for the mandatory use of pre-shipment inspections, as defined by the WTO Agreement on Pre-Shipment Inspections, or their equivalent.
3. The implementation of the paragraphs 1 and 2 (c) and (d) of this Article by Small Island States shall be done as appropriate, taking into account the small size and capacity of their administrations.
4. The Parties agree that:
- (a) a single administrative document or electronic equivalent should be applied in the EC Party and the Pacific States respectively. The Pacific States will continue efforts to this end, with a view to implementation at an early stage during the life of this Agreement. A joint review of the situation will be carried out 5 years after the entry into force of the Agreement;
  - (b) a system of binding rulings on customs matters should be provided, notably on tariff classification and rules of origin, in accordance with rules laid down in their respective legislation.
5. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, the Parties or the Pacific States, as the case may be, shall:
- (a) 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 any costs shall be reasonable and commensurate with costs in providing for appeals;
  - (b) ensure that measures are put in place in order to achieve high standards of integrity in the customs service, in line with the relevant international conventions and instruments in this field.

#### *Article 29*

#### **Relations of customs with the Business Community**

The EC Party and Pacific States agree:

- (a) to foster co-operation between operators and relevant administrations;

- (b) to ensure that all legislation, procedures and fees and charges are made publicly available, wherever possible through electronic means, together where appropriate and possible with the justification for them;
- (c) to 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;
- (d) on the need, wherever possible, for timely and regular consultation with business community on legislative proposals and procedures related to customs and trade issues. To this end, appropriate mechanisms for regular consultations between administrations and the business community, shall be established by each Party;
- (e) that new or amended legislation and procedures and their entry into force should be introduced in a way that provides traders with sufficient information in order to become well prepared for complying with them;
- (f) to work to ensure that their respective customs and related requirements and procedures continue to meet the needs of the trading community, follow best practices, and remain as little trade-restrictive as possible.

#### *Article 30*

#### **Customs valuation**

1. The Parties agree to apply Article VII of the GATT 1994 and the Agreement on the Implementation of Article VII of the GATT 1994 to trade in goods covered by Part II of this Agreement.
2. Notwithstanding paragraph 1, the Pacific States which are not members of the WTO on the date of entry into force of this Agreement shall apply rules on customs valuation consistently with Article VII of the GATT 1994 and the Agreement on the Implementation of Article VII of the GATT 1994 to trade in goods covered by Part II of this Agreement within 5 years of this Agreement coming into force.

#### *Article 31*

#### **Harmonisation of customs standards at regional level**

1. The Parties shall promote regional integration in the field of customs and shall strive to develop common legislation, procedures and requirements, in line with the relevant international standards.
2. A regular follow-up of the implementation of the provisions of this article shall be carried out.

*Article 32*

**Review clause**

The Parties agree to review the implementation of this Chapter no later than 3 years after the entry into force of this Agreement, with a view to determining further steps to be taken.

## **Chapter 5**

# **Technical Barriers To Trade And Sanitary And Phytosanitary Measures**

### *Article 33*

#### **Scope and definitions**

1. The provisions of this Chapter shall apply to technical regulations, standards and conformity assessment procedures (hereinafter referred to as TBT measures), as defined in the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as the TBT Agreement), and to Sanitary and Phytosanitary Measures (hereinafter referred to as SPS measures), as defined in the WTO Agreement on Sanitary and Phytosanitary Measures (hereinafter referred to as the SPS Agreement), in so far as they affect trade covered by Part II of this Agreement.
2. For the purposes of this Chapter the definitions used by the TBT Agreement and the SPS Agreement shall apply.

### *Article 34*

#### **Objectives**

1. The Parties agree to cooperate in order to facilitate and increase trade in goods between them, by identifying, preventing and eliminating obstacles to trade arising from TBT and SPS measures.
2. The Parties agree to cooperate to strengthen regional and specifically Pacific trade, regional integration and cooperation on matters concerning TBT and SPS measures.
3. The Parties shall cooperate to facilitate compliance with SPS measures applying to exports, whilst safeguarding human, animal and plant safety and health, in particular through building the capacity of the public and private sectors in the Pacific States and assisting the Pacific States to improve their regulatory frameworks and related institutions.
4. The Parties shall cooperate with a view to reinforcing regional integration and promoting the capacity of private and public sectors to comply with TBT and SPS measures.

### *Article 35*

#### **Priority Products**

To better achieve the objectives of this Chapter, the Parties agree to define a list of priority products for export from the Pacific States to the EC Party and a list of priority products for trade among the Pacific States. These lists shall be contained in Annex III.A and III.B

respectively, which shall be reviewed and may be modified by a decision of the Trade Committee as and when appropriate.

#### *Article 36*

### **Rights and Obligations**

1. The Parties agree to apply the SPS and TBT agreements to trade in goods covered by Part II of this Agreement.
2. Notwithstanding paragraph 1, the SPS and TBT-related measures of the Pacific States that are not WTO members on the date of entry into force of this Agreement, shall be applied in accordance with the requirements of the SPS and TBT agreements.
3. The EC Party will take full account of the capacity constraints in the short-term of non-WTO members to comply with the provisions of this Article.
4. Where necessary and possible, the Parties agree that the provisions concerning special and differential treatment in the WTO SPS and TBT agreements are applicable to the trade between the Parties to this Agreement, including Pacific States that are not WTO members.

#### *Article 37*

### **Equivalence**

1. The Parties recognise the importance of making operational the provisions of Article 4 of the SPS Agreement and to enable the Pacific Parties to have the equivalence of their SPS measures recognised by developed importing countries.
2. The Parties reaffirm the Decision on the implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures of 23 July 2004 of the WTO Committee on Sanitary and Phytosanitary Measures. The EC Party agrees to give due consideration to reasonable requests from one or more of the Pacific States to examine the equivalence of their SPS measures in areas of particular export interest to the Pacific States.

#### *Article 38*

### **Competent Authorities**

1. The respective SPS authorities of the Parties shall be the competent authorities in the Pacific States and the EC Party 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 39*

#### **Resolution of SPS and TBT Problems**

1. The Parties shall provide the necessary information to facilitate access to information on TBT-related and SPS measures and their implementation and enforcement, and future developments in these areas, and to facilitate the avoidance and/or resolution of any difficulties that might arise between the EC Party and the Pacific States.
2. The Parties shall inform and consult each other as early as possible with a view to finding a mutually agreed solution when a TBT or SPS measure results in a barrier to trade.
3. Nothing in this Chapter shall impair the rights of the Parties under other international agreements, including the right to resort to the good offices or dispute settlement mechanisms of international organizations or those established under any international agreement.

### *Article 40*

#### **Transparency and exchange of information**

1. The Parties confirm their commitments to implementing the transparency provisions set out in the SPS Agreement and the TBT Agreement to facilitate access to relevant information on TBT or SPS measures.
2. The EC Party agrees to cooperate with initiatives of the Pacific States to establish a mechanism to permit efficient notifications of TBT and SPS measures at a regional level.
3. The Parties shall endeavour to inform each other at an early stage of proposals to modify or introduce TBT or SPS measures that may affect trade between the Parties, where appropriate making use of existing systems.
4. In particular with regard to TBT measures, the Parties agree, inter alia, to:
  - (a) Intensify 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;
  - (b) Exchange information, identify and implement appropriate mechanisms for particular issues or sectors, e.g., alignment to international standards and reliance on the supplier's declaration of conformity;
  - (c) Develop common views and approaches on technical regulatory practices, including transparency, consultation, proportionality, the use of international standards, conformity assessment, and market surveillance.

*Article 41*

**Implementation**

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

- (a) Monitor and review its implementation;
- (b) Provide coordination and consultation on TBT and SPS issues;
- (c) Identify and review priority sectors and products and the resulting priority areas for cooperation; and
- (d) Make recommendations for modifications to this Chapter.

## Chapter 6 Exceptions

### *Article 42*

#### **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 Pacific States of measures which:

- (a) are necessary to protect public security and public morals or to maintain public order;
- (b) are necessary to protect human, animal or plant life or health;
- (c) are necessary to secure compliance with laws or regulations not inconsistent with the provisions of this Agreement, including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety;
  - (iv) customs enforcement, or
  - (v) protection of intellectual property rights;
- (d) relate to the importation or exportation of gold or silver;
- (e) are necessary to the protection of national treasures of artistic, historic or archaeological value;
- (f) relate to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption of goods, domestic supply or consumption of services and on domestic investors;
- (g) relate to the products of prison labour; or
- (h) are inconsistent with Article 23, 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, investors or service suppliers of the EC Party or a Pacific State.

### *Article 43*

#### **Security exceptions**

1. Nothing in this Agreement shall be construed:
  - (a) to require the EC Party or a Pacific State to furnish any information the disclosure of which it considers contrary to its essential security interests;
  - (b) to prevent the EC Party or a Pacific State from taking any action which it considers necessary for the protection of its essential security interests:
    - (i) relating to fissionable and fusionable materials or the materials from which they are derived;
    - (ii) relating to economic activities carried out directly or indirectly for the purpose of supplying or provisioning a military establishment;
    - (iii) connected with the production of or trade in arms, munitions and war materials;
    - (iv) relating to government procurement indispensable for national security or for national defence purposes; or
    - (v) taken in time of war or other emergency in international relations; or
  - (c) to prevent the EC Party or a Pacific State from taking any action in order to carry out obligations it has accepted for the purpose of maintaining international peace and security.
2. The Trade Committee shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

### *Article 44*

#### **Taxation**

1. Nothing in this Agreement or in any arrangement adopted under this Agreement shall be construed to prevent the EC Party or a Pacific State from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.
2. Nothing in this Agreement or in any arrangement adopted under this Agreement shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic fiscal legislation.
3. Nothing in this Agreement shall affect the rights and obligations of the EC Party or a Pacific State under any tax convention. In the event of any inconsistency between

this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

*Article 45*

**Balance of payments difficulties**

1. Where a Pacific State or the EC Party is in serious balance of payments and external financial difficulties, or under threat thereof, and in particular where a Party or Pacific State determines that:
  - (a) there is a serious decline or an imminent threat of serious decline in its monetary reserves; or
  - (b) in the case of a Pacific State with very low monetary reserves, its monetary reserves have failed to achieve a reasonable rate of increase;
  - (c) there is a serious decline in its fiscal position due to a decline in government revenue from the collection of customs duties; or
  - (d) there has been a natural disaster that has or is likely to cause a serious decline in government revenue or private sector revenue;
  - (e) that Party or Pacific State may impose or increase tariffs for the minimum period necessary and to the minimum extent necessary to arrest or prevent the serious decline in reserves, or to enable reserves to increase at a reasonable rate, or to arrest or prevent a serious decline in the fiscal position.
2. The Pacific States and the EC Party shall endeavour to avoid the application of the restrictive measures referred to in paragraph 1.
3. Parties or Pacific States applying restrictions under this Article may determine the incidence of the restrictions on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential.
4. Any restrictive measure adopted or maintained under this Article shall be consistent with any WTO and IMF obligations of the Party or Pacific State adopting or maintaining the restrictive measure. The Party or Pacific State adopting and maintaining the restrictive measure shall take all reasonable steps to ensure that the measure does not disproportionately impact on imports covered by this Agreement from another Party.
5. Any restricted measure adopted or maintained under this Article shall be non-discriminatory, of limited duration, shall not go beyond what is necessary to remedy the balance of payments and external financial situation and shall:
  - (a) avoid unnecessary damage to the commercial or economic interests of any other Party or Pacific State;
  - (b) not prevent unreasonably the importing of any goods in minimum commercial quantities, the exclusion of which would impair regular channels of trade; and

- (c) not prevent the importing of commercial samples or prevent compliance with patent, trade mark, copyright, or similar procedures.
6. Any Pacific State or the EC Party maintaining or having adopted restrictive measures, or any changes thereto, shall promptly notify them to the Party or Pacific States from which the affected imports originate and present, as soon as possible, a time schedule for their removal.
  7. Consultation shall be held promptly between the Party or Pacific State adopting and maintaining the restrictive measure and Party or Pacific States from which the affected imports originate. Such consultations shall assess the balance of payments situation of the concerned Pacific State or the EC Party and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:
    - (a) the nature and extent of the balance of payments and the external financial difficulties;
    - (b) the external economic and trading environment;
    - (c) alternative corrective measures which may be available.

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

8. If there is a persistent and widespread application of restrictions under this Article, indicating the existence of a general disequilibrium which is restricting international trade, the EC Party and the Pacific States shall review the Agreement to consider whether other measures might be taken to remove the underlying causes of the disequilibrium.

#### *Article 46*

#### **Food security**

1. The Parties acknowledge that the removal of barriers to trade between the Parties, as envisaged in this Agreement, may pose significant challenges to producers in the agricultural and food sectors of a Party or a Pacific State, and agree to consult with each other on these issues.
2. Where compliance with the provisions of this Agreement leads to problems with the availability of, or access to, foodstuffs or other products essential to ensure food security of a Party or Pacific State and where this situation gives rise or is likely to give rise to major difficulties for such a Party or Pacific State, that Party or Pacific State may take appropriate measures in accordance with the procedures laid down in Article 21, Paragraph 2(c).

# **PART III**

## **DISPUTE AVOIDANCE AND SETTLEMENT**

### **Chapter 1**

#### **Objective And Scope**

##### *Article 47*

##### **Objective**

The objective of this Part is to avoid and settle any dispute between the EC party and the Pacific States with a view to arriving at a mutually agreed solution.

##### *Article 48*

##### **Scope**

1. This Part shall apply to any dispute concerning the interpretation and application of this Agreement except where 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 development finance cooperation as provided for by the Cotonou Agreement.

### **Chapter 2**

#### **Consultations And Mediation**

##### *Article 49*

##### **Consultations**

1. The Parties shall endeavour to resolve any dispute referred to in Article 48 by entering into consultations in good faith with the aim of reaching an agreed solution.
2. A Party shall seek consultations by means of a written request to the other Party, copied to the Trade Committee, identifying the measure at issue and the provisions of the Agreement that it considers the measure not to be in conformity with.
3. Consultations shall be held within 40 days of the date of the submission of the request. The consultations shall be deemed concluded within 60 days of the date of the submission of the request, unless both Parties to the dispute 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 submission of the

request, and shall be deemed concluded within 30 days of the date of the submission of the request.

5. If consultations are not held within the timeframes laid down in this Article, or if consultations have been concluded and no agreement has been reached on a mutually agreed solution, the complaining Party may request the establishment of an arbitration panel in accordance with Article 51.

#### *Article 50*

#### **Mediation**

1. If consultations fail to produce a mutually agreed solution, the Parties to the dispute may, by agreement, seek recourse to a mediator. Unless the Parties to the dispute agree otherwise, the terms of reference for the mediation shall be the matter referred to in the request for consultations.
2. Unless the Parties to the dispute agree on a mediator within 10 days of the date of the agreement to request mediation, the presiding co-chair of the Trade 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 65 and are not nationals of either Party to the dispute. The selection shall be made within 20 days of the date of the submission of agreement to request mediation and in the presence of a representative of each Party to the dispute. The mediator will convene a meeting with the Parties to the dispute no later than 30 days after being selected. The mediator shall receive the submissions of each Party to the dispute no later than 15 days before the meeting and notify an opinion no later than 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 to the dispute 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 to the dispute 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 to the dispute during these proceedings shall remain confidential.

## **Chapter 3**

### **Dispute Settlement Procedures**

#### **SECTION I – ARBITRATION PROCEDURE**

##### *Article 51*

##### **Initiation of the arbitration procedure**

1. Where the Parties to the dispute have failed to resolve the dispute by recourse to consultations as provided for in Article 49, and, if applicable, by recourse to mediation as provided for in Article 50, 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 Committee. The complaining Party or Pacific State shall identify in its request the specific measures at issue, and it shall explain how such measure constitutes a breach of the provisions of this Agreement.

##### *Article 52*

##### **Establishment of the arbitration panel**

1. An arbitration panel shall be composed of three arbitrators.
2. Within 10 days of the date of the submission of the request for the establishment of an arbitration panel to the Trade Committee, the Parties to the dispute shall consult in order to reach an agreement on the composition of the arbitration panel.
3. In the event that the Parties to the dispute are unable to agree on its composition within the time frame laid down in paragraph 2, either Party may request the presiding co-chair of the Trade Committee, or her or his delegate, to select all three members by lot from the list established under Article 65, one among the individuals proposed by the complaining Party or Pacific State, one among the individuals proposed by the Party or Pacific State 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 same procedure.
4. The presiding co-chair of the Trade Committee, or her or his delegate, shall select the arbitrators within five days of the request referred to in paragraph 3 by either Party 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 arbitrators are selected.

*Article 53*

**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. Any Party to the dispute 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 54*

**Arbitration panel ruling**

1. The arbitration panel shall notify its ruling to the Parties to the dispute and to the Trade 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 to the dispute and the Trade 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 75 days from the date of its establishment. Under no circumstance should it take longer than 90 days from its establishment. The arbitration panel may give a preliminary ruling within 10 days of its establishment on whether it deems the case to be urgent.

**SECTION II - COMPLIANCE**

*Article 55*

**Compliance with the arbitration panel ruling**

Each Party to the dispute or as the case may be, the relevant Pacific State shall take any measure necessary to comply with the arbitration panel ruling, and the Parties to the dispute will endeavour to agree on the period of time to comply with the ruling

*Article 56*

**The reasonable period of time for compliance**

1. No later than 30 days after the notification of the arbitration panel ruling to the Parties to the dispute, the Party complained against shall notify the complaining Party and the Trade Committee of the time it will require for compliance (reasonable period of time).
2. If there is disagreement between the Parties to the dispute on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within 20 days of the notification made under paragraph 1, request in writing the arbitration

panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party to the dispute and to the Trade Committee. The arbitration panel shall notify its ruling to the Parties to the dispute and to the Trade Committee within 30 days from the date of the submission 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 defending Party or as the case may be, the relevant Pacific State to adopt comparable legislative or administrative measures to those identified by the defending Party or as the case may be, the relevant Pacific State as being necessary to ensure compliance. The arbitration panel shall also take into consideration capacity constraints which may affect the defending Party's 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 52 shall apply. The time limit for notifying the ruling shall be 45 days from the date of the submission of the request referred to in paragraph 2.
5. The reasonable period of time may be extended by agreement of the Parties to the dispute.

#### *Article 57*

#### **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 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 to the dispute concerning the compatibility of any measure notified under paragraph 1, 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 submission 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 submission 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 52 shall apply. The time limit for notifying the ruling shall be 105 days from the date of the submission of the request referred to in paragraph 2.

#### *Article 58*

#### **Temporary remedies in case of non-compliance**

1. If the Party or Pacific State concerned 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 57, paragraph 1 is not compatible with the provisions of this Agreement, the Party complained against or, as the case may be, the relevant Pacific State shall, if so requested by the complaining Party or Pacific State, 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 Pacific 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 57 that a measure taken to comply is not compatible with the provisions of this Agreement, the complaining Party or Pacific State 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 Pacific State.
3. In adopting appropriate measures the complaining Party, or as the case may be, the relevant Pacific State, shall select measures proportionate to the violation that least affect the attainment of the objectives of this Agreement and shall take into consideration their impact on the economy or development of the Party or individual Pacific States complained against.
4. The EC Party shall exercise due restraint in adopting appropriate measures pursuant to paragraphs 1 and 2 of this Article, in particular, where the failure to comply with the Agreement stems from capacity constraints.
5. 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 59*

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

1. The Party or Pacific State complained against shall notify the other Party or Pacific State to the dispute and the Trade 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 Pacific State.
2. If the Parties to the dispute 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 the submission of the notification, the complaining Party or Pacific State shall request in writing the arbitration panel to rule on the matter. Such request shall be notified to the other Party or Pacific State to the dispute and to the Trade Committee. The arbitration panel ruling shall be notified to the Parties to the dispute and to the Trade Committee within 45 days of the date of the submission of the request. If the arbitration panel rules that any measure taken to comply is not in conformity with the provisions referred to in this Agreement, the arbitration panel will determine whether the complaining Party or as the case may be, the relevant Pacific 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 52 shall apply. The period for notifying the ruling shall be 60 days from the date of the submission of the request referred to in paragraph 2.

### **SECTION III - COMMON PROVISIONS**

#### *Article 60*

##### **Mutually agreed solution**

The Parties to the dispute may reach an agreed solution to a dispute under Part III at any time. They shall notify the Trade Committee of any such solution. Upon adoption of the mutually agreed solution, the procedure shall be terminated.

#### *Article 61*

##### **Rules of procedure and Code of Conduct**

1. Dispute settlement procedures under Part III of this Agreement shall be governed by the Rules of Procedure and the Code of Conduct which shall be adopted by the Parties.
2. The Parties may decide to modify the Rules of Procedure and the Code of Conduct.
3. 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 to the dispute.

#### *Article 62*

##### **Information and technical advice**

At the request of a Party to the dispute, 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 panel proceeding. The arbitration shall also have the right to seek the relevant opinion of experts as it deems appropriate. Interested parties are authorised to submit amicus curiae briefs to the arbitration panels in accordance with the Rules of Procedure. Any information obtained in this manner must be disclosed to each of the Parties to the dispute and submitted for their comments.

#### *Article 63*

##### **Languages of the submissions**

1. The written and oral submissions of the Parties to the dispute shall be made in any official languages 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 or Pacific State shall arrange for and bear the costs of the translation of its documents submitted and interpretation at the hearings into the language chosen by the Party or Pacific State complained against, unless such language is an official language of that Party or Pacific State<sup>4</sup>

#### *Article 64*

##### **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 Committee shall make the arbitration panel rulings publicly available unless it decides not to do so.

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<sup>4</sup> The official languages of the Pacific States are English and the official language of the EC Party are those indicated in Article 81.

## **Chapter 4**

### **General Provisions**

#### *Article 65*

##### **List of arbitrators**

1. The Trade Committee shall, no later than three months after the provisional application of this Agreement, establish a list of 15 individuals who are willing and able to serve as arbitrators. Each of the Parties shall select five individuals to serve as arbitrators. The two Parties shall also agree on five individuals that are not nationals of either Party and who shall act as chairperson to the arbitration panel. The Trade Committee will ensure that the list is always maintained at this level.
2. Arbitrators shall have specialised knowledge or experience of 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 government of any of the Parties, and shall comply with the Code of Conduct annexed to the Rules of Procedures.

#### *Article 66*

##### **Relation with WTO obligations**

1. Arbitration bodies set up under this Agreement shall not arbitrate disputes on each Party's or, as the case may be, the relevant Pacific States' rights and obligations under the Agreement establishing the World Trade Organisation (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 as the case may be, the relevant Pacific State has, with regard to a particular measure, instituted a dispute settlement proceeding, either under Article 51(1) of this Agreement or under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. For purposes of this paragraph, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's or, where the case may be, Pacific State's request 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 Pacific State from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO. Nothing in the WTO Agreement shall preclude Parties from suspending benefits under this Agreement.

*Article 67*

**Time lines**

1. All time limits laid down 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 limit referred to in this Part may be extended by mutual agreement of the Parties to the dispute.

## **PART IV INSTITUTIONAL PROVISIONS**

### *Article 68*

#### **Trade Committee**

1. A Trade Committee is hereby established that is composed of representatives of the Parties.
2. The Trade Committee shall establish its rules of procedures and be co-chaired by a representative of the EC Party and a representative from the Pacific States. The two co-chairs shall alternate in presiding the meetings. Whoever is presiding a meeting shall be considered "presiding co-chair" for the purposes of this Agreement until the moment in time when the next meeting commences and the role of a presiding co-chair shall be assumed by the other Party.
3. The Trade Committee shall deal with all matters necessary for the implementation of this Agreement.
4. In the performance of its functions, the Trade Committee may:
  - (a) set up and oversee any special committees or bodies necessary for the implementation of this Agreement;
  - (b) the Trade Committee will delegate specific implementing decision-making powers to the special committees as provided for in the relevant provisions of the Agreement, in particular the Special Committee on Customs Cooperation and Rules of Origin;
  - (c) meet at any time agreed by the Parties;
  - (d) consider any issues under this Agreement and take appropriate action in the exercise of its functions; and
  - (e) take decisions or make recommendations in cases provided for in this Agreement.

## **PART V**

### **GENERAL AND FINAL PROVISIONS**

#### *Article 69*

##### **Modalities for the continuation of negotiations**

1. The EC Party and the Pacific States covered by this Agreement are committed to the continuation and successful conclusion of the currently ongoing negotiations of a comprehensive Economic Partnership Agreement (EPA) in line with the Cotonou Agreement and previous Ministerial Declarations and Conclusions, including all components and involving all interested countries in the Pacific region. They confirm their commitment to the objective of concluding these negotiations by 31 December of 2008.
2. The Parties recognise that development cooperation will be a crucial element of the comprehensive EPA and an essential factor for the realisation of its objectives. They reaffirm their commitment to supporting the objective that development cooperation for regional economic cooperation and integration as provided for in the Cotonou Agreement shall be carried out so as to maximise the expected benefits of the comprehensive EPA.
3. The Parties note that this Interim Partnership Agreement does not predetermine the positions that the region will be taking in the negotiations of a comprehensive EPA on development co-operation. They agree that provisions on development cooperation will be finalised in the wider context of the Pacific ACP States as soon as possible. In the meantime, they further agree to cooperate closely at the national level within the framework of the existing structures as set out in the Cotonou Agreement to facilitate implementation and the realisation of benefits and maximise the synergies between development cooperation and the objectives of this Agreement.
4. The relationship between this Agreement and the comprehensive EPA shall be established in the comprehensive EPA.

#### *Article 70*

##### **Definitions and fulfilment of obligations**

1. For the purposes of this Agreement the "Contracting Parties" shall be Papua New Guinea and the Republic of the Fiji Islands referred to as the "Pacific States", on the one part, and the European Community, referred to as the "EC Party", on the other part.
2. For the purposes of this Agreement:

- (a) the term "Parties" shall refer to the Pacific States listed in paragraph 1 acting collectively and the EC Party. The term "Party" shall refer to the Pacific States listed in paragraph 1 acting collectively or the EC Party, as the case may be.
  - (b) the term "Pacific States" shall refer to the Pacific States listed in paragraph 1 acting individually.
- 3. For the purposes of this Agreement, where applicable "Small Island States" means the Cook Islands, Kiribati, Nauru, Niue, Palau, Republic of Marshall Islands and Tuvalu.
  - 4. For the purposes of this Agreement, "least developed country" means any Pacific State designed by the United Nations as a least developed country on the entry into force of this Agreement.
  - 5. The Pacific 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 71*

##### **Coordinators and exchange of information**

- 1. In order to facilitate communication and to ensure the effective implementation of the Agreement the Parties shall designate a coordinator within a reasonable period of time after the provisional application of this Agreement. The designation of coordinators is without prejudice to the specific designation of competent authorities under specific Titles or Chapters of this Agreement.
- 2. On the request of the Parties, the coordinators 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, the Party through their coordinators shall provide information and reply promptly to any question relating to an actual or proposed measure that might affect trade between the Parties.
- 4. The EC Party and the Pacific States shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any trade matter covered by this Agreement are promptly published or made publicly available, which may include making the information available on the official, publicly and fee-free accessible websites of the EC Party or Pacific States concerned. Such measures shall also be brought to the attention of the other Party.
- 5. Without prejudice to specific transparency provisions in this Agreement, the information referred to in paragraph 4 shall be considered to have been brought to the attention of the other Party when the information has been made available by appropriate notification to the WTO and to the coordinator of the Pacific States.

## *Article 72*

### **Regional preference**

1. Nothing in this Agreement shall oblige the EC Party or a Pacific State to extend to another Party to this Agreement any more favourable treatment applied by the EC Party or a Pacific State as part of its respective regional integration process.
2. Any more favourable treatment and advantage that may be granted under this Agreement by any Pacific State to the EC Party shall also be provided to all other Pacific States which are a Party to this Agreement.

## *Article 73*

### **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.
2. Nothing in this Agreement shall be construed so as to prevent the application of all provisions of the Cotonou Agreement outside Title II of Part 3 and according to the procedures set by the said Agreement.

## *Article 74*

### **Relations with the WTO Agreement**

The EC Party and the Pacific States agree that nothing in this Agreement requires the EC Party or the Pacific States, where applicable, to act in a manner inconsistent with their existing WTO obligations.

## *Article 75*

### **Relationship with Other International Agreements**

Nothing in this Agreement shall be regarded as exempting any Party from its existing obligations, or abrogating the rights of any Party, under any existing international agreement, unless a contrary intention is expressly stated.

## *Article 76*

### **Entry into force and duration**

1. This Agreement shall enter into force the first day of the month following the deposit of the last instrument of ratification, acceptance or approval.
2. In the case of the EC Party notifications shall be sent to the Pacific Islands Forum Secretariat and in the case of Pacific States notifications shall be sent to the General

Secretariat of the Council of the European Union and each shall be the depository of this Agreement.

3. Pending entry into force of the Agreement, the EC Party and Pacific States agree to provisionally apply the Agreement. Such application may be undertaken by provisional application pursuant to the laws of the EC Party and of the Pacific States or by ratification of the Agreement. Provisional application shall be notified to both depositaries. The Agreement shall be applied provisionally 10 days after the latter of the receipt by both depositaries of notification of provisional application from the EC Party or from all the Pacific States.
4. Where a Pacific State accedes to this Agreement, the Agreement shall be applied provisionally in the same manner in paragraph 3. Once the EC Party and that Pacific State have given notice in accordance with Paragraph 3.
5. Notwithstanding paragraph 3, the EC Party and the Pacific States may take steps to apply the Agreement, before provisional application, to the extent feasible.
6. Any Party may give written notice to the other of its intention to denounce this Agreement.
7. Denunciation shall take effect twelve months after notification to the other Party.

#### *Article 77*

#### **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 Pacific States. References in this Agreement to “territory” shall be understood in this sense.

#### *Article 78*

#### **Revision clause**

The Trade Committee may review this Agreement, its implementation, operation and performance where necessary and make appropriate suggestions to the Parties for its amendment.

#### *Article 79*

#### **Outermost regions and the European Community**

Nothing in this Agreement shall prevent the EC Party from applying existing measures aimed at addressing the structural, social and economic situation of the outermost region pursuant to Article 299(2) of the Treaty establishing the European Community.

#### *Article 80*

#### **Accession of the Pacific Islands**

1. This Agreement shall remain open for accession of all Pacific Island States Party to the Cotonou Agreement and Pacific Islands whose structural characteristics and economic and social situation are comparable to those countries which are Parties to the Cotonou Agreement on the basis of the submission of a GATT 1994 Art. XXIV compliant market access offer. Any request for accession shall be presented to the Parties of this Agreement which will take a decision.
2. If the request is approved, the Pacific Island concerned shall accede to this Agreement by depositing an act of accession with the depositaries which shall notify the Parties.

*Article 81*

**Authentic texts**

This Agreement is drawn up in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

*Article 82*

**Annexes**

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

**ANNEX I**  
**CUSTOMS DUTIES ON PRODUCTS ORIGINATING IN PACIFIC STATES**

1. Without prejudice to paragraphs 2, 4, 5, 6 and 7 customs duties of the EC Party (hereinafter "EC customs duties") shall be entirely eliminated on all products of Chapters 1 to 97 of the Harmonized System, except those of Chapter 93 thereof, originating in a Pacific State. For products of Chapter 93 the EC Party shall continue to impose the applied MFN duties. For indicative purposes the schedule of EC customs duties applicable to products originating in a Pacific State is appended to this Annex.
2. EC customs duties on the products of tariff heading 1006 [rice] originating in the Pacific States shall be eliminated as from 1 January 2010, with the exception of EC customs duties on the products of subheading 1006 10 10 which shall be eliminated as from the entry into force of this Agreement.
3. The EC Party and the Pacific States agree that the provisions of Protocol 3 of the Cotonou Agreement (hereinafter the "Sugar Protocol") shall remain applicable until 30 September 2009, and that thereafter the Sugar Protocol shall no longer be in force between them. For the purposes of Article 4(1) of the Sugar Protocol, the delivery period 2008/9 will last from 1 July 2008 to 30 September 2009. The guaranteed price for 1 July-30 September 2009 shall be decided following the negotiation provided for in Article 5(4).
4. EC Customs duties on products of tariff heading 1701 (sugar) originating in a Pacific State shall be eliminated as from 1 October 2009. Until EC customs duties are entirely eliminated, and in addition to the allocations of tariff rate quotas at zero duty set out in the Sugar Protocol, a tariff rate quota at zero duty of 30 000 tonnes shall be opened for marketing year<sup>5</sup> 2008/2009 for products of heading 1701, white sugar equivalent, originating in the PACP States. No import license shall be granted with regard to products to be imported under this additional tariff rate quota, unless the importer undertakes to purchase such products at a price at least equal to the guaranteed prices fixed for sugar imported into the EC Party under Sugar Protocol.
5.
  - (a) The EC Party may, during the period between 1 October 2009 and 30 September 2015 impose the applied Most Favoured Nation duty on the products originating in Pacific States of tariff heading 1701 (sugar) imported in excess of the following levels expressed in white sugar equivalent, which are deemed to cause a disturbance in the EC Party sugar market:
    - (i) 3.5 million tonnes in a marketing year of such products originating in States members of the African, Caribbean and Pacific Group of States (ACP States) signatory to the Cotonou Agreement, and

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

- (ii) 1.38 million tonnes in marketing year 2009/2010 of such products originating in ACP States that are not recognised by the United Nations as least developed countries. The figure of 1.38 million tonnes shall increase to 1.45 million tonnes in marketing year 2010/2011, and 1.6 million tonnes in the following four marketing years.
  - (b) The importation of products of tariff heading 1701 originating in any PACP State that is recognised by the United Nations as a least developed country shall not be subject to the provisions of sub-paragraph 5(a). However, such imports shall remain subject to the provisions of Article 21<sup>6</sup>.
  - (c) The imposition of the applied Most Favoured Nation duty shall cease at the end of the marketing year during which it was introduced.
  - (d) Any measure taken pursuant to this paragraph shall be notified immediately to the Trade Committee and shall be the subject of periodic consultations within that body.
6. As of 1 October 2015, for the purpose of the application of the provisions of Article 21, disturbances in the markets of products of tariff heading 1701 may be deemed to arise in situations where the European Community market price of white sugar falls during two consecutive months below 80 percent of the European Community market price for white sugar prevailing during the previous marketing year.
7. From 1 January 2008 until 30 September 2015 products of tariff heading 1704 90 99, 1806 10 30, 1806 10 90, 2106 90 59 and 2106 90 98 shall be subject to a special surveillance mechanism in order to ensure the arrangements provided for in paragraph 4 and 5 are not circumvented. In the event of a cumulative increase of imports of such products originating in Pacific States by more than 20 percent in volume during a period of 12 consecutive months compared to the average of the yearly imports over the three previous 12 month periods, the EC Party shall analyse the pattern of trade, the economic justification and the sugar content of such imports and, if it considers that such imports are used to circumvent the arrangements provided for in paragraphs 4 and 5, it may suspend the preferential treatment and introduce the specific MFN duty applied to imports pursuant to the European Community Common Customs Tariff for products of tariff heading 1704 90 99, 1806 10 30, 1806 10 90, 2106 90 59 and 2106 90 98 originating in Pacific States. Sub-paragraphs 5(b), (c) and (d) shall apply mutatis mutandis to action under this paragraph.
8. Between 1 October 2009 and 30 September 2012 with regard to the products of CN code 1701, no preferential import license shall be granted unless the importer undertakes to purchase such products at a price not lower than 90 percent of the reference price set by the EC Party for the relevant marketing year.
9. Paragraph 1 shall not apply to products of tariff heading 0803 0019 originating in PACP States and released for free circulation in the outermost regions of the EC Party.

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<sup>6</sup> For this purpose and by derogation to Article 21, individual Pacific State recognised by the United Nations as a least developed country may be subject to safeguard measures

Paragraph 1, 3, 4 and 5 shall not apply to products of tariff heading 1701 originating in Pacific States and released for free circulation in the French overseas departments. These provisions shall be applicable for a period of 10 years. These periods shall be extended for a further period of 10 years unless the Parties agree otherwise.

**ANNEX II**  
**CUSTOMS DUTIES ON PRODUCTS ORIGINATING IN THE EC PARTY**  
**CUSTOMS DUTIES APPLICABLE ON IMPORTS INTO THE REPUBLIC**  
**OF THE FIJI ISLANDS**

**Summary of the Market Access Trade in Goods Offer**

| PRODUCT DESCRIPTION                                      | A - Duties eliminated on 01 Jan 2008 | B - Duties eliminated at the end of year 5 | C - Duties eliminated at the end of year 10 | D- Duties eliminated at the end of year 15 | G - Products not subject to liberalization commitments |
|--|--------------------------------------|--|---|--|--|
| # of items   | 498                                  | 765  | 2240  | 1106                                       | 1173   |
| Share of average total imports from EU (value)           | 14.5%                                | 2.5%                                       | 59.5%                                       | 10.7%                                      | 12.8%  |
| Proportion of national tariff lines (NTLs)               | 8.6%                                 | 13.2%                                      | 38.7%                                       | 19.1%                                      | 20.3%  |
|  |                                      |  |   |  |  |
| Total percentage liberalized by value of trade           | 87.2%                                |  |   |  |  |
| Total percentage liberalized by number of lines          | 79.7%                                |  |   |  |  |
| Total products not subject to liberalization commitments | 1173                                 |  |   |  |  |
| Total # of national tariff lines                         | 5782                                 |  |   |  |  |

Source of data: The Fiji Islands Revenue and Customs Authority, and the Fiji Islands Bureau of Statistics

The data used to create the averages and to calculate SAT are based on figures of trade for 2003, 2004 and 2005. For calculations by value of trade, the calculations are based on 2007 data only to reflect the change to HS2007 nomenclature.

**CUSTOMS DUTIES APPLICABLE ON IMPORTS  
INTO PAPUA NEW GUINEA**

**ANNEX III A. TECHNICAL BARRIERS TO TRADE AND SANITARY AND  
PHYTOSANITARY MEASURES – PRIORITY PRODUCTS FOR EXPORT FROM  
THE PACIFIC STATES TO THE EUROPEAN COMMUNITY**

1. Palm oil
2. Coffee
3. Tea
4. Cocoa
5. Copra
6. Fish (pouch, commercial) and processed products
7. Other marine processed (e.g. shell products, crabs, prawns, lobsters)
8. Sugar
9. Seaweed
10. Noni products
11. Spices (e.g. cardamom, chili)
12. Kava
13. Soaps (specifically coconut based soaps)
14. Nuts (cashew nuts, etc.)
15. Pearls
16. Textiles
17. Jewelry
18. Handicrafts and artifacts
19. Alcohol
20. Jams
21. Biscuits (e.g. hard biscuits – cabin biscuits)
22. Timber products
23. Pottery
24. Movies, postcards, calendars (documentary movies)
25. Crocodile meat

26. Crocodile skins
27. Rubber Saps and intermediary products
28. Ornamental fish
29. Flower
30. Petroleum related products and its by products
31. Gas and hydro carbon products

**ANNEX III B. TECHNICAL BARRIERS TO TRADE AND SANITARY  
AND PHYTOSANITARY MEASURES  
PRIORITY PRODUCTS FOR TRADE AMONG THE PACIFIC STATES**

1. Textiles – clothing
2. Food items (e.g. biscuits, drinks, snack products, canned fish, canned meat, canned chicken, fresh and frozen beef, sugar, coffee, milk based products, boiled sweets, cordial, noodles)
3. Precious metals such as gold and silver
4. Jewelry – pearls
5. Artifacts and handicrafts
6. Music – CDs, tapes and related products
7. Chemicals – bleaches and other cleaning products
8. Toiletries – toilet paper and soaps
9. Palm oil
10. Cement
11. Fabricated steel products
12. Timber

**PROTOCOL I.  
ON MUTUAL ADMINISTRATIVE ASSISTANCE  
IN CUSTOMS MATTERS**

*Article 1*

**Definitions**

For the purposes of this Protocol:

- (a) ‘customs legislation’ means any legal or regulatory provisions applicable in the territories of the EC Party and Pacific States, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;
- (b) ‘applicant authority’ means a competent administrative authority which has been designated by a Pacific State or the EC Party for this purpose and which makes a request for assistance on the basis of this Protocol;
- (c) ‘requested authority’ means a competent administrative authority which has been designated by a Party or a Pacific State for this purpose and which receives a request for assistance on the basis of this Protocol;
- (d) ‘personal data’ means all information relating to an identified or identifiable individual;
- (e) ‘operation in breach of customs legislation’ means any violation or attempted violation of customs legislation.

*Article 2*

**Scope**

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

### *Article 3*

#### **Assistance on request**

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

### *Article 4*

#### **Spontaneous assistance**

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

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

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

#### *Article 5*

#### **Delivery and notification**

At the request of the applicant authority, the requested authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order:

- to deliver any documents, or
- to notify any decisions,

emanating from the applicant authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.

Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority.

#### *Article 6*

#### **Form and substance of requests for assistance**

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

3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.
4. If a request does not meet the formal requirements set out above, its correction or completion may be requested; in the meantime precautionary measures may be ordered.

#### *Article 7*

##### **Execution of requests**

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

#### *Article 8*

##### **Form in which information is to be communicated**

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents, certified copies or other items.
2. This information may be in computerised form.
3. Original documents shall be transmitted only upon request in cases where certified copies would be insufficient. These originals shall be returned at the earliest opportunity.

#### *Article 9*

##### **Exceptions to the obligation to provide assistance**

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

#### *Article 10*

##### **Information exchange and confidentiality**

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Parties or the Pacific States. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party or the Pacific State that received it and the corresponding provisions applying to the European Community authorities.
2. Personal data may be exchanged only where the Party or the Pacific State which may receive them undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party or the Pacific State that may supply them. To that end, parties shall communicate to each other information on their applicable rules, including, where appropriate, legal provisions in force in the Member States of the European Community.
3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Protocol, is considered to be for the purposes of this Protocol. Therefore, the Parties or the Pacific States may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol.

The competent authority which supplied that information or gave access to those documents shall be notified of such use.

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

#### *Article 11*

##### **Experts and witnesses**

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

#### *Article 12*

##### **Assistance expenses**

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

#### *Article 13*

##### **Implementation**

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

#### *Article 14*

##### **Other Agreements**

1. Taking into account the respective competences of the European Community and the Member States, the provisions of this Protocol shall:
  - not affect the obligations of the Parties and the Pacific States under any other international Agreement or Convention,
  - be deemed complementary to Agreements on mutual assistance which have been or may be concluded between individual Member States of the European Community and Pacific States, and shall
  - not affect the European Community provisions governing the communication between the competent services of the Commission of the European Communities and the customs authorities of the Member States of the European Community of any information obtained under this Protocol which could be of interest to the European Community.
2. Notwithstanding the provisions of paragraph 1, the provisions of this Protocol shall take precedence over the provisions of any bilateral Agreement on mutual assistance which has been or may be concluded between individual Member States of the European Community and any Pacific State in so far as the provisions of the latter are incompatible with those of this Protocol.
3. In respect of questions relating to the applicability of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the Trade Committee set up under Article 68 of this Agreement.

**PROTOCOL II.  
CONCERNING THE DEFINITION OF THE CONCEPT OF THE  
"ORIGINATING PRODUCTS" AND  
METHODS OF ADMINISTRATIVE COOPERATION**