REVISED TREATY OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

ARTICLE 42

DUMPING

1. Member States undertake to prohibit the practice of dumping goods within the Community.

2. For the purposes of this Article, "dumping" means the transfer of goods originating in a Member State to another Member State for sale:

(a) at a price lower than the comparable price charged for similar goods in the Member States where such goods originate (due allowance being made for the differences in the conditions of sale or in taxation or for any other factors affecting the comparability of prices); and

(b) under circumstances likely to prejudice the production of similar goods in that Member State.

3. In the event of alleged dumping the importing Member States hall appeal to Council to resolve the matter.

4. Council shall consider the issue and take appropriate measures to determine the causes of the dumping.

ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE WEST AFRICAN STATES, THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS) AND THE WEST AFRICAN ECONOMIC AND MONETARY UNION (UEMOA), OF THE ONE PART, AND THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE OTHER PART

CHAPTER 2

TRADE DEFENCE INSTRUMENTS

ARTICLE 19

Objectives

1. The objectives of this Chapter are to lay down the conditions in which the two Parties may take trade defence measures while at the same time working on the development of trade in goods between them, by way of derogation from the provisions of Articles 9, 10 and 34 of this Agreement.

2. The Parties shall ensure that the measures taken under the provisions of this Chapter are no more than is necessary to prevent or rectify the situations described there.

ARTICLE 20

Anti-dumping and Countervailing Duties

1. None of the provisions of this Agreement shall prevent the European Union or the States of the West Africa Party from individually or collectively taking anti-dumping or countervailing measures under the relevant WTO Agreements, in particular the Agreement on Implementation of Article VI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures which figure in Annex 1A to the Agreement establishing the WTO.

2. For the purposes of applying this Article, origin shall be determined according to the non-preferential rules of origin of the Parties on the basis of the Agreement on Rules of Origin which figure in Annex 1A to the Agreement establishing the WTO (hereinafter, the “WTO Agreement on Rules of Origin”).

3. The special situation of the States of the West African region as developing countries shall be taken into account when the application of anti-dumping or countervailing measures is considered. Before imposing definitive anti-dumping or countervailing measures, the Parties shall consider the possibility of constructive solutions, such as those provided for in the relevant WTO Agreements. The investigating authorities, may, in particular, carry out appropriate consultations for this purpose.

4. The anti-dumping duties or countervailing measures shall remain in force only for the time and extent necessary to offset dumping or harmful subsidies.

5. No product originating from one Party, when imported into the territory of the other Party, shall be subject both to anti-dumping and countervailing duties in order to rectify the same situation resulting from dumping or export subsidies. The Parties guarantee that anti-dumping or countervailing measures cannot be applied simultaneously to the same product at both national level, on the one hand, and regional or sub-regional level, on the other.

6. The Parties agree to each set up a single legal review body, including an appeal level. The judgments of this single body must enter into effect on the territory of all the States in which the disputed measure is applicable.

7. The provisions of this Article shall be applicable to all investigations initiated after this Agreement enters into force.

8. The provisions of this Article shall not be subject to the dispute settlement provisions of this Agreement.

 9. Except in exceptional circumstances subject to the approval of the Joint Implementation Committee of the EPA, no safeguard measures referred to in this Article shall be applied to a product that has previously been subject to such a measure for a period of at least one (1) year from the date of expiry of this measure.

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

(a) when a Party considers that one of the circumstances referred to in paragraphs 2, 4 and 5 of this Article exists, it shall immediately refer the matter to the Joint Implementation Committee of the EPA.

(b) the Joint Implementation Committee of the EPA can make any recommendation necessary to remedy the circumstances that have arisen. Where the Joint Implementation Committee of the EPA has not made recommendations to remedy the circumstances, or where a satisfactory solution has not been found in the thirty (30) days following notification to this Committee, the importing Party may adopt appropriate measures to remedy the circumstances, in accordance with this Article.

(c) before taking one of the measures provided for in this Article or, in the cases referred to in paragraph 11 hereof, as soon as possible, the Party concerned shall communicate to the Joint Implementation Committee of the EPA all information that can be used for a full examination of the situation with a view to finding an acceptable solution for both Parties.

(d) when selecting safeguard measures, priority must be given to those that help to efficiently and rapidly solve the problem, while causing the least possible disruption to the smooth application of this Agreement.

(e) All safeguard measures taken in accordance with this Article shall be reported immediately to the Joint Implementation Committee of the EPA 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.

11. Where exceptional circumstances require immediate action, the importing Party concerned, whether the European Union Party or the West Africa Party, as the case may be, may take the measures provided for in paragraphs 3, 4 and 5 of this Article on a provisional basis, without meeting the requirements of paragraph 10 hereof. Such action may be taken for a maximum period of one hundred and eighty (180) days where the measures are taken by the European Union Party and of two hundred and forty (240) days when the measures are taken by the West Africa Party, or when the measures of the European Union Party are limited to one or more of its outermost regions. The duration of such provisional measures shall be counted as a part of the initial period or of any extension defined in paragraphs 7 and 8 of this Article. In taking these provisional measures, the interests of all stakeholders must be taken into account. The importing Party concerned shall inform the other Party and immediately refer the matter to the Joint Implementation Committee of the EPA for examination.

12. If an importing Party subjects imports of a product to an administrative procedure having as its purpose the rapid provision of information on the trend of trade flows liable to give rise to the problems referred to in this Article, it shall inform the Joint Implementation Committee of the EPA of this without delay.

13. The WTO Agreements shall not be invoked to prevent a Party from adopting safeguard measures under the provisions of this Article.