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

CHAPTER XV

DISPUTES

ARTICLE 76

SETTLEMENT OF DISPUTES

1. Any dispute regarding the interpretation or-the application of the provisions of this Treaty shall be amicably settled through direct agreement without prejudice to the provisions of this Treaty and relevant Protocols.

2. Failing this, either party or any other Member States or the Authority may refer the matter to the Court of the Community whose decision shall be final and shall not be subject to appeal.

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

PART IV

DISPUTE AVOIDANCE AND SETTLEMENT

CHAPTER 1

OBJECTIVE, SCOPE AND PARTIES

ARTICLE 62

Objective

The objective of Part IV of this Agreement is to establish methods for avoiding and settling any disputes that may arise between the Parties in order to arrive at a mutually satisfactory solution.

ARTICLE 63

Scope

1. Part IV applies to any dispute regarding the interpretation or application of this Agreement, subject to the provisions of Articles 20 and 21 hereof.

2. Notwithstanding paragraph 1 of this Article, the procedure set out in Article 98 of the Cotonou Agreement shall apply in the event of disputes concerning the financing of development cooperation.

ARTICLE 64

The Parties to the dispute

1. The European Union and its Member States are considered to be a single Party for the purposes of preventing and settling disputes arising from the application of this Agreement.

2. ECOWAS, the UEMOA and all the West African States, including Mauritania, are also considered to be a single Party for the purpose of preventing and settling disputes arising from the application of this Agreement.

CHAPTER 2

DISPUTE AVOIDANCE: CONSULTATION AND MEDIATION

ARTICLE 65

Consultation

1. The Parties shall endeavour to settle disputes covered by Article 63 of this Agreement by entering into consultations in good faith in order to reach a mutually satisfactory solution.

2. Any Party wishing to enter into consultations shall do so by presenting a request in writing to the other Party with a copy to the Joint Implementation Committee of the EPA, specifying the measure in question and the provisions of this Agreement with which, in its opinion, the measure fails to comply.

3. The consultations shall be initiated within forty (40) days of the date on which the request was submitted. They shall be considered closed within sixty (60) days of the date on which the request was submitted unless the two Parties agree to pursue them. The information exchanged during the consultations shall remain confidential.

4. In urgent situations, in particular those involving perishable or seasonal foodstuffs, the consultations shall be initiated within fifteen (15) days of the date on which the request was submitted, and shall be considered closed within thirty (30) days of the date on which the request was submitted.

5. At all stages in the avoidance and settlement of disputes, the European Union Party shall devote special attention to the situation and to the particular concerns and interests of the States and the West African region.

6. If the consultations are not initiated within the time limits specified in paragraph 3 or paragraph 4 of this Article or if the consultations are closed without the Parties’ reaching agreement on a mutually satisfactory solution, the applicant shall have the option of invoking the arbitration procedure provided for in this Agreement.

ARTICLE 66

Mediation

1. If the consultations do not lead to a mutually satisfactory solution, the Parties may, by amicable agreement, resort to a mediator. Unless the Parties decide otherwise, the terms of reference of the mediation shall be as set out in the consultation request.

2. Unless the Parties to the dispute agree on a choice of mediator within ten (10) days of the mediation request being submitted, the Chairperson of the Joint Implementation Committee of the EPA or his/her delegate, on being requested to do so by either of the Parties, shall choose by lot a mediator from among the persons on the list referred to in Article 83 of this Agreement and who are not citizens of the Parties. The selection shall be made within twenty (20) days of the mediation request being submitted, in the presence of a representative from each of the Parties.

3. The mediator shall convene a meeting of the Parties at the latest thirty (30) days after being appointed. The mediator shall receive the submissions of each Party no later than fifteen (15) days before the meeting, and shall give an opinion no later than forty-five (45) days after having been selected.

4. The mediator’s opinion may include one or more recommendations on how to resolve the dispute consistent with the provisions referred to in Article 63 of this Agreement. The mediator’s opinion shall not be binding.

5. The Parties may agree to modify the time limits referred to in paragraph 3 of this Article. The mediator may also decide to modify these time limits at the request of either Party or on his/her own initiative, depending on the particular difficulties affecting the Party concerned or the complexity of the case.

6. The mediation procedures and in particular the information exchanged and the positions adopted by the Parties during these procedures shall remain confidential.

CHAPTER 3

DISPUTE SETTLEMENT PROCEDURES

Section I

Arbitration procedure

ARTICLE 67

Initiation of the arbitration procedure

1. Where the Parties do not succeed in settling their dispute after having recourse to the consultations provided for in Article 65 of this Agreement or after engaging in the mediation referred to in Article 66 hereof, the applicant may request the establishment of an arbitration panel.

2. A request for an arbitration panel to be formed shall be sent in writing to the respondent and the Joint Implementation Committee of the EPA. In its request, the applicant shall describe the specific situation and/or the measure in question and set out the reasons why the situation and/or measure violates the provisions of this Agreement.

ARTICLE 68

Setting up an arbitration panel

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

2. Within ten (10) days of the request for the establishment of an arbitration panel being submitted to the Joint Implementation Committee of the EPA, the Parties shall consult one another in order to reach an agreement on the composition of the arbitration panel.

3. In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame laid down in paragraph 2 of this Article, either Party may request the Chairperson of the Joint Implementation Committee of the EPA, or his/her delegate, to select all three members of the panel by lot from the list established under Article 83 of this Agreement, one from among the persons proposed by the applicant, one from among the persons proposed by the respondent and the third from among those selected by both Parties to chair the meetings. If the Parties have agreed on the selection of one or more of the members of the arbitration panel, the remaining member(s) shall be selected according to the same procedure.

4. The Chairperson of the Joint Implementation Committee of the EPA or his/her delegate shall select the arbitrators by lot within five (5) days of receiving the request referred to in paragraph 3 of this Article in the presence of a representative of each Party. The time and date of the selection shall be communicated to the Parties. No failure by either of the Parties to send their representative following an invitation shall in any way affect the validity of the selection.

5. The date on which the arbitration panel is established shall be the date on which the three arbitrators are deemed to have been selected.

6. The arrangements for responsibility for the arbitration fees are defined in the procedural rules.

ARTICLE 69

Interim report by the arbitration panel

The arbitration panel shall submit to the Parties an interim report containing both the descriptive sections and its observations and conclusions, generally within one hundred and twenty (120) days at the latest from the date on which the panel was established. In the fifteen (15) days following the presentation of the interim report by the arbitration panel, each Party shall have the option of submitting remarks in writing to the panel concerning specific aspects of the interim report.

ARTICLE 70

Arbitration panel ruling

1. The arbitration panel shall transmit its ruling to the Parties and the Joint Implementation Committee of the EPA at the latest one hundred and fifty (150) days following the establishment of the arbitration panel. If it considers that this time limit cannot be complied with respect, the Chairperson of the panel shall inform the Parties and the Joint Implementation Committee of the EPA thereof in writing, giving reasons for the delay and stating the date on which the panel plans to conclude its work. The arbitration ruling should under no circumstances be delivered any later than one hundred and eighty (180) days from the date on which the arbitration panel was established.

2. In urgent situations, including those involving perishable and seasonal foodstuffs, the panel shall endeavour to deliver its ruling within seventy-five (75) days of being established. Under no circumstance shall it take longer than ninety (90) days from the date of its establishment. The panel may deliver a preliminary ruling on whether the case is urgent within ten (10) days of being formed.

3. Each Party may ask an arbitration panel to recommend ways in which the respondent could achieve compliance.

Section II

Achieving compliance

ARTICLE 71

Compliance with the arbitration panel ruling

Each Party shall take all the measures necessary to comply with the arbitration panel ruling. The Parties shall endeavour to agree on a time limit for compliance with the ruling.

ARTICLE 72

Reasonable time limit for compliance

1. At the latest thirty (30) days after the Parties have been informed of the panel ruling, the respondent shall inform the applicant and the Joint Implementation Committee of the EPA in writing of the time it will need to achieve compliance (“reasonable time limit”).

2. In the event of a disagreement between the Parties regarding what constitutes a reasonable time limit within which to comply with the panel ruling, the applicant shall, within twenty (20) days of the notification provided for in paragraph 1 of this Article, send a written request to the panel asking it to determine that reasonable time limit. Such a request shall be reported simultaneously to the other Party and the Joint Implementation Committee of the EPA. The panel shall announce its decision to the Parties and to the Joint Implementation Committee of the EPA within thirty (30) days of the request being submitted.

3. The arbitration panel shall, in determining the reasonable time limit, take into consideration the length of time that it would normally take the respondent to adopt comparable legislative or administrative measures to those identified by the respondent as being necessary to ensure compliance. Either Party may submit its estimates concerning the time normally needed to adopt such measures. The panel may also take account of demonstrable capacity constraints that might affect the adoption of the necessary measures by the respondent.

4. Where the arbitration panel or some of its members are unable to attend further meetings, the procedures set out in Article 68 of this Agreement shall be applied. The time limit for delivering a ruling shall be forty-five (45) days from the date on which the request referred to in paragraph 2 of this Article was submitted.

5. The reasonable time limit may be extended by mutual agreement between the Parties.

ARTICLE 73

Review of measures taken to comply with the arbitration panel ruling

1. The respondent shall notify the other Party and the Joint Implementation Committee of the EPA before expiry of the reasonable time limit of any measures it has taken to comply with the arbitration ruling.

 2. In the event of a disagreement between the Parties concerning the compatibility of the measures notified under paragraph 1 of this Article with the provisions of this Agreement, the applicant may make a written request for a ruling by the panel on the matter. The request shall indicate the specific measures in question and state why they are incompatible with the provisions of this Agreement. The panel shall communicate its ruling within ninety (90) days of the date on which the request was submitted. In urgent situations, including cases in which perishable and seasonal foodstuffs are in question, the panel shall deliver its ruling within forty-five (45) days of the request being submitted.

3. Where the arbitration panel or some of its members are unable to attend further meetings, the procedures set out in Article 68 of this Agreement shall be applied. The time limit for delivering a ruling shall be one hundred and five (105) days from the date on which the request referred to in paragraph 2 of this Article was submitted.

ARTICLE 74

Temporary remedies in the event of non-compliance

1. If the respondent fails to report measures it has taken to comply with the arbitration panel ruling before expiry of the reasonable time limit, or if the arbitration panel rules that the measures notified under Article 73(1) of this Agreement are not compatible with its obligations under the provisions of Article 71 hereof, the respondent shall, if so requested by the applicant, submit to the applicant an offer for temporary compensation.

2. If the Parties do not agree on compensation within thirty (30) days of the reasonable time limit or of the ruling by the arbitration panel referred to in Article 73 of this Agreement that the compliance measures that have been taken are not compatible with the provisions referred to in Article 71 hereof, the applicant shall be authorised, after having informed the other Party, to take appropriate measures. In taking such measures, the applicant shall endeavour to select measures that as little as possible affect the achievement of the objectives of this Agreement. If applicable, the temporary measures shall take account of their impact on the economies of the West African States and should not affect the provision of development aid for the West African region.

3. The European Union Party shall show moderation in its requests for compensation or when adopting the appropriate measures in accordance with paragraphs 1 and 2 of this Article and shall take account of the status of the West African States as developing countries.

4. The appropriate measures or compensation shall be temporary and shall cease to be applied when the measure recognised as being incompatible has been withdrawn or amended in such a way as to make it comply with the provisions of Article 71 of this Agreement or when the Parties agree to terminate the dispute settlement procedure.

ARTICLE 75

Examination of the compliance measures following the adoption of appropriate measures

1. The respondent shall inform the other Party and the Joint Implementation Committee of the EPA of the measures it has taken to comply with the ruling of the arbitration panel and request that the appropriate measures taken by the applicant shall cease to be applied.

2. If the Parties do not reach an agreement on the compatibility of the notified measures with the provisions of this Agreement within thirty (30) days of the notification being submitted, the applicant shall make a request in writing for the arbitration panel to rule on the matter. Such a request shall be reported simultaneously to the other Party and the Joint Implementation Committee of the EPA. The ruling of the arbitration panel shall be delivered within forty-five (45) days of submission of the request and shall be reported to the Parties and the Joint Implementation Committee of the EPA. If the arbitration panel rules that the measures taken by the party against which the ruling was delivered are not in conformity with the relevant provisions of this Agreement, it shall consider whether it is appropriate for the applicant to continue to apply the measures taken. If it considers that the measures taken are not in conformity, it shall terminate the application of the measures taken by the applicant.

3. Where the arbitration panel or some of its members are unable to attend further meetings, the procedures set out in Article 68 of this Agreement shall be applied. The time limit for delivering a ruling shall be sixty (60) days from the date on which the request referred to in paragraph 2 of this Article was submitted.

Section III

Common and transitional provisions

ARTICLE 76

Mutually satisfactory solution

The Parties may agree on a solution to a dispute any time. They shall inform the Joint Implementation Committee of the EPA of their agreement. The adoption of a mutually satisfactory solution shall terminate the procedure.

ARTICLE 77

Procedural rules

Procedural rules shall be adopted by the Joint Implementation Committee of the EPA within three (3) months of it being set up.

ARTICLE 78

General and technical information

At the request of a Party or on its own initiative, the arbitration panel may obtain general and technical information from any source, including the Parties concerned by the dispute, if it deems this to be appropriate for the arbitration proceedings. The panel shall also be authorised to obtain the opinion of experts if it considers this appropriate. Information obtained in this manner must be disclosed to each of the Parties and submitted to them for their comments.

ARTICLE 79

Languages of submission

1. The common working languages of the Parties for procedures for the prevention and settlement of disputes shall be English, French and Portuguese.

2. The Parties shall make their written or oral submissions in one of those three official languages.

ARTICLE 80

Rules of interpretation

The arbitration panel shall interpret the provisions of this Agreement in accordance with the customary rules of interpretation of public international law, including those set out in the Vienna Convention of 1969 on the Law of Treaties. The rulings of the arbitration panel shall neither add to nor diminish the rights and obligations set out in this Agreement.

ARTICLE 81

Arbitration panel rulings

1. The arbitration panel shall make its rulings by consensus. Where a ruling cannot be made by consensus, it shall be made by majority vote.

2. The ruling shall set out the substantive findings, the applicability of the relevant provisions of this Agreement and the reasoning underpinning the findings and conclusions reached by the arbitration panel. The Joint Implementation Committee of the EPA shall make the arbitration ruling known to the public, unless it decides otherwise.

3. The ruling of the arbitration panel shall expressly state the way in which account has been taken of the flexibility, including the special and differential treatment, provided for in this Agreement if it has been invoked by either of the Parties.