

A comparison of the provisions of the economic partnership agreements



United Nations
Economic Commission for Africa

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WORKING PAPER



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Key messages and recommendations

The economic partnership agreements between the European Union and the five African regional blocs have been under negotiation since 2000. While framed as development-friendly asymmetric agreements that go beyond traditional free trade agreements, the economic partnership agreement process has been marred by controversy and divisions both within and outside the African continent. Among the key concerns that have been raised are the implications regarding Africa's industrialization and regional integration agendas.

This view is supported by research. Work done by the Economic Commission for Africa (ECA) has pointed to the gains from the economic partnership agreements to both African countries and the European Union, but also to the possible negative impacts on the development of the more diversified intra-African trade. The benefits for African countries are expected to focus on a few non-industrial sectors and on the non-least developed countries of the continent. The trade-related impacts of the agreements are likely to contribute little towards creating opportunities for structural transformation and value addition, and hence the developmental impacts of the agreements are expected to be limited.

The textual analysis of the African and Caribbean economic partnership agreements suggest that the agreements include provisions that could be used to support the developmental objectives of African countries. The asymmetric liberalization commitments provide a transitional period for African countries to build up their strategic industries or sectors and increase competitiveness. Strategic

industries can be supported by using exclusions, the infant industry clauses or temporary export subsidies. The provisions included for such protective measures, however, are for temporary use only. This requires that they be used in a focused way to maximize the returns achieved in terms of competitiveness and productivity. The use of supporting policies will therefore be crucial.

There are also provisions that may hinder the development of regional value chains. These include cumulation-related provisions under the rules of origin, which may be difficult to implement owing to compatibility issues between the various cumulative origin regimes.

It will also be important to ensure that the provisions will be implementable for the African parties. For example, the use of the infant industry provisions or the dispute settlement mechanism requires a high level of technical capacity, which will be more available in the European Union than on the continent. That may pose a barrier regarding the benefits to be derived from the more flexible provisions.

The economic partnership agreements are intended to go beyond a free trade agreement and support development through the development assistance to be provided by the European Union. Each economic partnership agreement includes a detailed framework for areas of cooperation, which also include competitiveness and capacity to add value. The development cooperation frameworks can therefore be used to promote industrialization initiatives. Enforcement of these commitments will be key to supporting African countries.

In the light of the above, it will be important for countries to be strategic in their implementation of the economic partnership agreements. Regions will need to develop an agreement implementation road map and capacity-building programmes to ensure that African countries can take advantage of the opportunities provided by these agreements. Priority areas and necessary measures must be identified to ensure that the transitional period is used effectively to build productive capacities. There should also be efforts to develop an agreement monitoring and evaluation framework and a technical unit at the continental level to support the effective implementation of the agreements in a way that supports Africa's industrialization and structural transformation.

Africa's regional integration agenda and the manner in which the economic partnership

agreements are placed in that context are also of critical importance. ECA modelling work has shown that the implementation of the African Continental Free Trade Area ahead of the full implementation of the economic partnership agreements would more than compensate for the negative impacts of the agreements through large gains in intra-African trade. Having the African Continental Free Trade Area in place would also offer a good basis for a more coherent and simplified relationship with the European Union and other external partners. That will be particularly important when moving ahead towards the establishment of a continental customs union, as envisioned in the Treaty establishing the African Economic Community.¹

1 Also known as the Abuja Treaty.

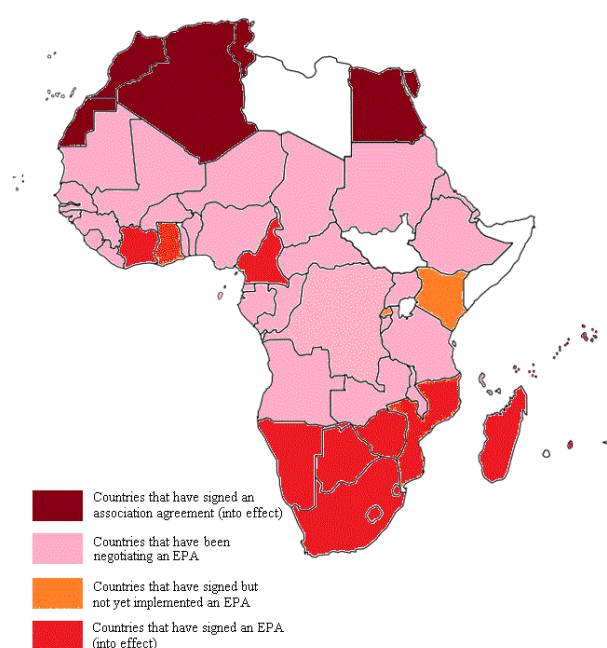
I. Background

The European Union is Africa's largest trading partner, representing some 35 per cent of total exports in 2014, 30 per cent of total goods imports and 34 per cent of manufactured imports.² Since the signature of 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 (also referred to as the Cotonou Agreement or the Cotonou Partnership Agreement) in 2000, the European Union has been in the process of negotiating economic partnership agreements with the African, Caribbean and Pacific countries. Economic partnership agreements are a continuation of the non-reciprocal trade preferences already granted by the European Union to African, Caribbean and Pacific

countries, while pursuing new trade agreements compliant with the rules of the World Trade Organization (WTO). The agreements are based on a gradual removal of barriers to trade between the parties and enhanced co-operation in all areas relating to trade. In that regard, the economic partnership agreements mean the end of the special treatment that was historically granted to African countries by the European Union and the introduction of either a common regime – most-favoured-nation or unilateral preferences based on level of development (under the generalized scheme of preferences) – or free trade agreement-based preferences, as is the basis for trade relationships between the European Union and the rest of the world.

Figure

Status of economic partnership agreements (EPAs) in Africa



² See unctadstat.unctad.org.

The African countries have been negotiating economic partnership agreements in five regional blocs. With the exception of the East African Community, these groupings do not directly follow the membership of the officially recognized regional economic communities. Three African negotiating groups, namely, West Africa,³ the East African Community⁴ and the Southern African Development Community (SADC),⁵ have concluded their negotiations on regional comprehensive agreements, while negotiations are pursued for the remaining two blocs, Central Africa⁶ and Eastern and Southern Africa,⁷ which have both concluded interim agreements. Negotiations have also been concluded for the Caribbean bloc, while negotiations between the Pacific countries and the European Union are ongoing for a move from the interim agreement to a comprehensive regional one.

Currently, the members of the Southern African Customs Union, in addition to Mozambique, are implementing the SADC economic partnership agreement.

Given that the signature of the West Africa economic partnership agreement was stalling, Ghana ratified its stepping stone (also referred to as “interim”) agreement on 3 August 2016, and the provisional application began in December 2016. Similarly, Côte d’Ivoire ratified its stepping stone agreement with the European Union on 12 August 2016, and the provisional application of the agreement began in September 2016. The interim Central Africa agreement is being implemented and entered into force in Cameroon as at 8 May 2017. The status of the agreement implementation is summarized in the figure above.

The regimes applied in trade from African countries to the European Union are summarized in the table below. The majority of African countries currently benefit from preferences under the European Union generalized scheme of preference sub-regime “Everything But Arms”, which offers duty-free and quota-free access to all least developed countries in all product categories, excluding arms and ammunition.

-
- 3 Comprising Mauritania and the Economic Community of West African States (ECOWAS) (i.e., Benin, Burkina Faso, Cabo Verde, Côte d’Ivoire, the Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, the Niger, Nigeria, Senegal, Sierra Leone and Togo).
 - 4 Burundi, Kenya, Rwanda, Uganda, the United Republic of Tanzania and South Sudan joined the East African Community in 2016, with commitments to gradually adopt all the Community policy instruments.
 - 5 Angola and Mozambique and the South African Development grouping (Botswana, Lesotho, Namibia, South Africa and Swaziland) signed on 10 June 2016. See European Commission, “EU signs economic partnership agreement with southern African countries”, 10 June 2016. Available at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1509>.
 - 6 Cameroon, Central African Republic, Chad, Congo, the Democratic Republic of the Congo, Equatorial Guinea, Gabon and Sao Tome and Principe; also referred to as the Central African Economic and Monetary Community (CEMAC) interim economic partnership agreement.
 - 7 Comoros, Djibouti, Eritrea, Ethiopia, Madagascar, Malawi, Mauritius, Seychelles, the Sudan, Zambia and Zimbabwe.

Table

Trade regimes applied to African exports by the European Union

Most favoured nation	Standard generalized scheme of preference	Generalized scheme of preference +	Everything but Arms		Free trade agreement/Economic partnership agreement ^a
Gabon Libya	Congo Nigeria	Cabo Verde	Angola Benin Burundi Burkina Faso Central African Republic Chad Comoros Democratic Republic of the Congo Djibouti Equatorial Guinea Eritrea Ethiopia Gambia Guinea Guinea-Bissau Liberia	Malawi Mali Mauritania Niger Rwanda Sao Tome and Principe Senegal Sierra Leone Somalia South Sudan Sudan Togo Uganda United Republic of Tanzania Zambia	Algeria Egypt Morocco Tunisia Botswana Cameroon Ghana Côte d'Ivoire Kenya Lesotho Madagascar Mauritius Mozambique Namibia Seychelles South Africa Swaziland Zimbabwe

^a Algeria, Egypt, Morocco and Tunisia are covered by the Euro-Mediterranean partnership agreements.

Source: Compiled by authors.

The economic partnership agreement process has not been without controversy. The signature of the East African Community agreement was postponed from the initial schedule of 18 July 2016, owing to the decision of the United Republic of Tanzania to reconsider the agreement. It raised concerns over the impact of the agreement on local industry (Namkwahe and Ubwani, 2016). On the other hand, countries such as Kenya and Rwanda have already signed the agreement. It should be noted that Kenya previously experienced temporary loss of duty-free and quota-free access in 2014, which was detrimental to the flower industry in particular. In Nigeria, similar concerns over the impacts on local industry have been expressed by the Manufacturers Association of Nigeria and the Associated Trade Unions (Francis, 2016). The decision of Côte d'Ivoire and Ghana to move at a faster pace (by implementing interim agreements) indicates a regional division on the agreements also in the West Africa bloc.⁸

The positions on economic partnership agreements as barriers to industrialization are, to an extent, supported by research. A study by ECA on the West Africa and Eastern and Southern Africa regions found that, while the agreements would generate benefits to both the European Union and the African countries, the number of European Union exports would increase by nearly double that of African country exports.⁹ The gains by African countries would be focused on a few agricultural sectors (e.g., rice, milk, sugar and meat) and would be experienced by non-least developed countries only. Intra-African trade would also decrease, which would represent a lost opportunity for industrialization and

structural transformation, given the more diversified nature of intra-African trade (Mevel and others, 2015).

The decision of the United Kingdom of Great Britain and Northern Ireland to leave the European Union following the June 2016 referendum has added to the concerns raised by some African countries. Given the uncertainty surrounding the exit deal and the importance of the United Kingdom as a trading partner within the European Union to many African countries, Brexit has affected the perceived benefits of the economic partnership agreements. The Tanzanian authorities, for example, cited Brexit as one of the reasons to halt the signatory process for the East African Community agreement to allow more time for consultations (Namkwahe and Ubwani, 2016).

At the same time, negotiations for an Africa-wide mega-regional trade agreement are ongoing. Negotiations for a continental free trade area were launched by the Assembly of the African Union in June 2015, with the aim of establishing a free trade area of 54 African countries by 2017. The signing of the COMESA-EAC-SADC Tripartite Free Trade Area agreement, also in June 2015, which brought together the member States of three regional economic communities, was an encouraging sign of the commitment to and momentum for a continental free trade area agreement and enhancement of regional integration in Africa. On 21 March 2018, 44 African Union member States signed the agreement on the Establishment of the African Continental Free Trade Area (AfCFTA). The agreement will enter into force after ratification by 22 countries.

8 Under the European Union generalized scheme of preferences, least developed countries benefit from duty-free and quota-free access to the European Union market, while lower-middle income countries may benefit from the general arrangement of the scheme, which grants tariff reduction for sensitive products (3.5 percentage points, or 20 per cent reduction for some textile products) or tariff elimination for non-sensitive products more than approximately two thirds of the European Union product nomenclature. The generalized scheme of preferences + offers tariff elimination on the same products covered by the general arrangement.

9 This is not surprising, given that African least developed countries already enjoy good access to the European Union markets through "Everything but Arms".

Once implemented, the African Continental Free Trade Area will cover more than 1 billion people and more than \$3 trillion in total gross domestic product.¹⁰ The second phase of the negotiations, covering investment, intellectual property and competition, are expected to begin in 2018.

The negotiation and implementation of the African Continental Free Trade Area is a complex task, which will need to take into account the external commitments made by African countries, in particular with their largest trading partners. Economic partnership agreements present many questions, given that negotiations have not finished for many countries and the implementation of existing agreements has been limited. Given the more diversified nature of intraregional trade, the focus is on enhancing trade among African countries, supported by initiatives such as the Action Plan for Boosting Intra-African Trade. A key question is what impact the agreements will have on the African Continental Free Trade Area process and intra-African trade. In the case of similarities, agreements can act as a common ground in negotiations between African countries, allowing for faster progress in the harmonization of commitments.¹¹ With regard to differences, however, the agreements may introduce complications in the negotiation and implementation of continental commitments, including the continental customs union.

It is in that context, and responding to a request of the African Ministers of Trade, that ECA and the African Union Commission have undertaken a study to compare the provisions of the five African economic partnership agreements and the Caribbean Forum of African Caribbean and Pacific States (CARIFORUM) economic partnership agreement.¹² Ultimately, it is aimed at providing insights into the possible challenges and opportunities the agreement provisions and implementation process may pose in the context of Africa's developmental agenda, in particular industrialization and regional integration.

This paper is intended to be a reference document on the provisions contained in the six agreements and highlight some key areas for consideration when moving forward with the continental integration agenda. The paper is structured as follows: the introduction outlines the status of the economic partnership agreement process and the justification and objective of the work. Section II provides notes on the methodology used. Some key findings from the comparison exercise are highlighted in section III. Section IV provides legal analysis on selected themes. Section V highlights recommendations and additional strategic considerations. The similarities and differences between the agreements are provided in table form, subject-by-subject, as covered in the text of the agreements in the annex.

10 See African Union, "Continental Free Trade Area". Available at: www.au.int/en/ti/cfta/about.

11 African countries will also need to consider whether the shared commitments are in the interest of the continent as a whole.

12 The CARIFORUM economic partnership agreement was signed in October 2008. The Pacific economic partnership agreement has not been included, owing to the limited progress in regional negotiations.

II. Methodology

The key component of the analysis is a comparison of the text included in the five African economic partnership agreements and the CARIFORUM economic partnership agreement. The stages of the analysis can be summarized as follows:

- (a) Comparison of the structures of the agreements, in order to identify key provisions shared by the agreements;
- (b) Analysis of agreements, article by article and by theme, in order to match the provisions across the agreements;
- (c) Identification of articles and provisions that existed in some or only one agreement;
- (d) Creation of a summary of similarities and differences according to theme in table form, on the basis of the matching exercise (see annex).

The analysis shows the areas in which the agreements are consistent with each other and where some negotiating groups have been offered provisions that are different. The similarities and differences were then considered in the context of Africa's regional integration and structural transformation objectives. The tentative recommendations were presented to a group of experts during a networking session of the Africa Trade Week 2016. Representatives from academia, civil society, African member States and the European Union, among others, discussed the report and provided recommendations. The comments of the participants were considered in the finalization of this report.

It should be noted that, at the date of the analysis of this study, the authors made the assumption that the West Africa economic partnership agreement would prevail over the interim agreements for Côte d'Ivoire and Ghana. Therefore, the study does not take into consideration the provisions laid down under the two aforementioned interim agreements.

III. Key findings of comparison analysis

The scope of the economic partnership agreements is intended to go beyond fostering African, Caribbean and Pacific Group of States and the European Union through preferential market access conditions. The comparison analysis found that the agreements do recognize the varying levels of development of African, Caribbean and Pacific countries in the text. A range of measures to support the promotion of exports from African, Caribbean and Pacific countries have been included, such as in the areas of compliance with European Union standards and the enhancement of intra-regional trade. The development cooperation provisions of the agreements have been designed as a key channel for achieving these broader aims.

In terms of Africa's industrialization objectives, the economic partnership agreement provisions appear to provide space for protection of strategic industries and development of value added. The policy space provided includes exclusion lists (provided by asymmetric liberalization commitments), infant industry clauses and temporary export subsidies (in the cases of the East African Community, SADC and West Africa). Similarly, the agreement texts recognize the reliance of African countries on agriculture. Several types of provisions are provided for the protection of the agricultural sector.

The provisions included, however, make it clear that such measures must be temporary only. That means that they will need to be used in a focused way to maximize the progress in terms of competitiveness and productivity that can be achieved. For example, in the case of the East African Community, Eastern

and Southern Africa and Central Africa economic partnership agreements, the infant industry clause can be used only in the first 10 to 15 years of the agreement. For other agreements, an infant industry measure can be used at any time, but for only eight years. Supporting policies will be crucial to use this transitional time effectively.

Regional integration is respected in spirit in the economic partnership agreement texts. Crucially, the most-favoured-nation clauses included in the African agreements allow sufficient policy space for African countries to pursue the negotiations of more favourable reciprocal trade arrangements among each other, without triggering the need to extend the same preferences to the European Union. This provides space for the establishment of the Continental Free Trade Area.

The economic partnership agreements in some cases can also contribute to the continental integration process. All the agreements, with the exception of the East African Community and Eastern and Southern Africa agreements, include provisions relating to regional preference within the agreement groupings. This clause provides that parties can offer more favourable treatment to the other members of their regional bloc in the context of the regional integration process. Any more favourable treatment given to the European Union, however, has to be extended to the other parties in the regional bloc. This provision can therefore encourage regional integration when countries that do not belong to a regional grouping have nevertheless negotiated with a regional economic community (e.g., ECOWAS and Mauritania).

Where customs unions are concerned, the economic partnership agreements have been aimed at respecting the integrity of common external tariffs. This feature is particularly relevant for the Southern African Customs Union, given that the pre-existence of the trade, development and cooperation agreement between the European Union and South Africa had distorted the Southern African Customs Union common external tariff. According to the European Commission, the SADC economic partnership agreement is aimed at restoring a coherent common external tariff in the Southern African Customs Union region (European Union, 2015b).

At the same time, however, there exist some divergent provisions from one economic partnership agreement to another, which may create some difficulties in deriving the benefits of regional integration-oriented provisions. These include differences in exclusion lists, cumulation provisions and development assistance where countries from the same regional economic communities belong to different agreements. Differences may also hinder integration across agreement groupings. A key channel for regional integration to contribute to productive capacities and structural transformation of African countries is through the development of regional value chains on the continent. In that regard, the differences in cumulation regimes are of specific importance.

Cumulation provisions are made available for sourcing materials in a wide range of countries, including African countries in other economic partnership agreement blocs. Varying conditions, however, pertain to the application of the cumulation requirements from one agreement to another, with potentially limiting implications. For example, the cumulation provisions under the SADC agreement, the East African Community agreement and the West Africa agreement allow for straightforward cumulation with other agreement

groups (through cross-cumulation provisions). The Eastern and Southern Africa agreement provides for cumulation with all African countries, provided that they apply the same rules of origin, which may cause applicability issues, given that the sets of rules of origin have been negotiated in various configurations. The Central Africa, the Côte d'Ivoire and the Ghana economic partnership agreements, which are temporarily subjected to the generalized scheme of preference rules of origin, are, for the time being, granted full cumulation throughout Africa.

Effective implementation of the development cooperation provisions will be crucial for the economic partnership agreements to truly act as a means to achieve structural transformation through trade. Each agreement includes a detailed framework for areas of cooperation, which also include competitiveness and capacity to add value. The development cooperation frameworks can therefore be used to promote industrialization initiatives. To date, however, only the West Africa agreement fund has received financial commitments from the European Union. There is also lack of clarity on the additionality of the funds. In the implementation of the development cooperation, African countries should give priority to the regional integration and cooperation projects included in the development cooperation frameworks. For example, regional infrastructure development was notably emphasized under the East African Community and Eastern and Southern Africa agreements. Cooperation should also highlight the need to develop the capacity of African countries in utilizing the agreements. The ability of African countries to use the dispute settlement provisions and trade remedies, in particular, should be assessed and strengthened, given that, in practice, African countries may face challenges in exercising their rights to use agreement provisions for industrialization.

Going forward in the negotiation and implementation of the economic partnership agreements, it will be important to consider how the agreements will interact with the African Continental Free Trade Area negotiations and implementation, the wider integration agenda and Africa's relationships with other trading partners. For example:

- (a) How will the negotiations of the African Continental Free Trade Area and economic partnership agreement services components interact? In particular, should the agreement services negotiations be halted, or will the services negotiations provide traction for services under the African Continental Free Trade Area?
- (b) Although the economic partnership agreements appear to allow enough space for African Continental Free Trade Area implementation, going forward the prospect of an African continental customs union as envisioned in the Treaty establishing the African Economic

Community will require harmonization of the agreements, in particular on rules of origin, exclusion lists and trade remedies. What will be the African strategy in that regard? As it currently stands, once the agreements are in force, revision clauses could be used for that purpose. Currently, however, only one African agreement is in force. While some African States have expressed wishes to renegotiate, the European Union position has been that the opening of negotiations is not possible (European Union, 2017).

- (c) In terms of Africa's external relationships, the most-favoured-nation provisions in effect set the economic partnership agreement as a boundary for the policy space available for African countries for industrialization measures. The challenge for the African countries will be to find ways to extend this boundary and to ensure that, in the future agreements to which this provision is applied, the boundary is similarly maximized.

IV. Further legal analysis on selected themes

A. Trade in services¹³

The basis for negotiations on trade in services is derived from article 41 of the Cotonou Agreement, which provides for the extension of economic partnership agreements to trade in services, but this commitment is subject to African, Caribbean and Pacific countries having acquired experience in applying the most-favoured-nation treatment under the General Agreement on Trade in Services.

The CARIFORUM economic partnership agreement is the only concluded comprehensive agreement covering both goods and services. In the Eastern and Southern Africa Interim agreement signed by Madagascar, Mauritius, Seychelles and Zimbabwe in 2009, the parties agreed to the development of co-operation in services such as tourism, transport and information and communications technology (ICT). The parties also committed themselves to negotiation of a comprehensive agreement with services, among others.¹⁴ The comprehensive agreement under negotiation will take precedence over the interim one.¹⁵

The Central Africa interim economic partnership agreement provides for capacity-building and the modernization of transport, energy and telecommunication, among other items. The comprehensive agreement being negotiated in Central Africa is aimed at “gradual,

asymmetrical and reciprocal liberalization of establishment and trade in services”.¹⁶

In the SADC economic partnership agreement configuration, Botswana, Lesotho, Mozambique and Swaziland are negotiating trade in services,¹⁷ with the European Union covering substantially all services sectors, on a reciprocal and asymmetric basis, and including regulatory provisions.¹⁸ Other SADC countries that wish to join the trade in services agreement may negotiate terms of entry.

Under the rendez-vous clause¹⁹ of the West Africa economic partnership agreement (European Union 2015c), there is a mutual undertaking to “enter into discussions” on trade in services, among other areas, and a road map setting out the schedule and arrangements of negotiations to be agreed upon in six months from the conclusion of the agreement. On the other hand, the East African Community agreement provides for the conclusion of negotiations on trade in services “within five years upon entry into force” of the agreement.²⁰ While West Africa agreement countries have committed themselves to negotiating trade in services immediately, East African Community member States have agreed only to development cooperation in the areas of infrastructure, transport, energy and ICT, which will allow them to develop infrastructure, policies and regulatory

13 Further analysis on the trade-in-services provisions, where available, is included in annex II.

14 See Eastern and Southern Africa interim economic partnership agreement, arts. 38, 44, 46, 48 and 53.

15 Ibid., art. 59.

16 See Central Africa interim economic partnership agreement, art. 54.

17 Variable geometry is adopted for the SADC-European Union Trade in Services Agreement.

18 See SADC economic partnership agreement, art. 73.

19 See West Africa economic partnership agreement, art. 106.

20 See East African Community economic partnership agreement, art. 3.

frameworks before liberalizing trade in services.

In the light of the fact that only the CARIFORUM has concluded a comprehensive economic partnership agreement, lessons will be derived from reviewing the possible gains and losses in the agreement. Overall, there have been opposing views on whether the agreement was General Agreement on Trade in Services-plus or General Agreement on Trade in Services-minus. The CARIFORUM agreement has been criticized for having narrowed the scope of the temporary presence of services personnel (General Agreement on Trade in Services mode 4) in a General Agreement on Trade in Services-minus way, to cover only the managerial elite, professional and technical experts and a limited category of contract service suppliers (Girvan, 2008). On the other hand, the agreement has been deemed General Agreement on Trade in Services-plus (Chaitoo, 2008) on mode 4 because there are no quotas on the amount of service suppliers that can enter the European Union market, given that the European Union has not made a market access commitment on temporary entry, either in WTO or other bilateral free trade agreements (Organization of American States, 2008). CARIFORUM member States secured ample market access in areas in which they have a comparative advantage and are competitive like entertainment services, which was the first liberal approach of the European Union to the sector in all its trade agreements. Entertainment is a sector in which African countries can compete and have a comparative advantage.

Notwithstanding the above, economic needs tests and nationality and residency requirements remain key obstacles to market access, hence granting the European Union the power to control market access

conditions. African countries have to ensure that the European Union commitments are not only broader, but also deeper than the General Agreement on Trade in Services, in order for the economic partnership agreement trade in services to deliver market access.

According to the first Ernst and Young Global Map of Cultural and Creative Industries (Ernst and Young, 2015), Africa's informal cultural and creative industries employ more than half a million people generating more than \$4.2 billion annually. Trade in services negotiations under economic partnership agreements must therefore be broad to cover culture. The CARIFORUM-European Union agreement protocol on cultural cooperation came at the cost of audiovisual services in which Caribbean countries are competitive, and the protocol has been referred to as a "set of best endeavours not binding obligation" (European Centre for Development Policy Management, 2011). The fact that the export of cultural services for developing countries (Africa) is mainly through the movement of natural persons by live performances, the strict European Union visa regime imposed on many African countries may render mode 4 commitments empty. To benefit from mode 4 commitments, CARIFORUM States have secured a short-term visa waiver (for the Schengen area, which covers the majority of European countries) (Barford, 2015) that will support agreement implementation of mode 4 commitments. Similar waivers have to be part of the discussions on mode 4 in the European Union trade in services on the continent.

B. Parties to the economic partnership agreements and dispute settlement

In the definition of parties,²¹ although economic partnership agreements are signed by individual African, Caribbean and Pacific member States, they are region-to-region agreements and, accordingly, for the specific purposes of the agreements, there are only two parties to it, for example, the CARIFORUM and East African Community partner States (collectively) on the one hand and the European Union and its member States on the other. Each agreement signatory State, other than the European Union and its member States, is recognized as a contracting party²² to the agreement. That means that each State is actually recognized as a “party” to the agreement under international law, with the result that each State is obliged to comply with the obligations imposed by it and is entitled to the due performance of the obligations undertaken by other States. East African Community partner States collectively form the East African Community party²³ and have committed themselves to collective responsibility in all aspects of the agreement, except regarding the adoption of anti-dumping or countervailing measures in line with the WTO agreements,²⁴ taking appropriate measures to protect its territorial waters and ensuring the sustainability of the artisanal and coastal fisheries.²⁵ For matters pertaining to the interpretation of agreement provisions, the East African Community partner States act collectively

and any dispute settlement proceedings are initiated collectively.²⁶

Under the CARIFORUM economic partnership agreement, there is a distinction between CARIFORUM States for the purposes of collective responsibility and Caribbean Forum signatory States for the purposes of “where individual action is provided for or required to exercise the rights or comply with the obligations under this Agreement”.²⁷ The European Union reserves the right to impose sanctions on a non-compliance member, hence the use of collective responsibility without its negative consequence. Notwithstanding the East African Community being a customs union, in which the European Union has obtained the right to do so under arbitration, it is entitled to “select measures that are aimed at bringing into compliance the EAC Partner State whose measures were found to be in breach of this Agreement”.²⁸ The West Africa party is defined to include “ECOWAS, UEMOA and their member States within their respective areas of competence as derived from the ECOWAS and UEMOA Treaties, and Mauritania”,²⁹ which is the collective responsibility imposed on West Africa agreement States. Considering that Mauritania is not a member of ECOWAS and that ECOWAS cannot monitor its compliance, ECOWAS member States will face sanctions on behalf of Mauritania. Collective responsibility is not provided for under the SADC agreement, unless where expressly provided; Botswana, Lesotho, Namibia, South Africa and Swaziland, as Southern African Customs Union member States, shall

21 See CARIFORUM economic partnership agreement, art. 233; East African Community agreement, art. 132; and West Africa agreement, art. 99.

22 CARIFORUM economic partnership agreement, art. 233.

23 See East African Community economic partnership agreement, art. 132 (2).

24 Ibid., art. 48 (1). (Individual responsibility applicable only to the East African Community party, not the European Union).

25 Ibid., art. 54 (2).

26 All matters covered under Part VII, regarding Dispute Avoidance and Settlements (East African Community economic partnership agreement, arts. 109-127), are undertaken by parties to the agreement as defined in the East African Community agreement, art. 132, the East African Community and the partner States acting collectively represent one party of the agreement.

27 See CARIFORUM economic partnership agreement, art. 233 (4).

28 See East African Community economic partnership agreement, art. 117 (2).

29 See West African economic partnership agreement, art. 99.

act collectively.³⁰ That suits the agreement, given that each SADC economic partnership agreement State is a contracting party.

The West Africa economic partnership agreement, in its article 64 (2),³¹ provides that “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”. Without a specific derogation for individual responsibility, sanctions imposed by the European Union will apply to all West Africa party States.³² While it may be easy to monitor and trade in ECOWAS as a customs union, that may not be the case for Mauritania. On the other hand, collective responsibility in the SADC agreement will apply where there is a collective action of Southern African Customs Union and “an individual action of a SADC EPA State”, and the European Union shall act only against the specific State.³³ Collective responsibility in the SADC agreement will be invoked only when the action questioned has been deemed to be a collective Southern African Customs Union action. Consequently, other member States will not be held responsible for the actions of other members.

On the other hand, the European Union is an independent entity in its own right, with the ability to conclude and negotiate international agreements in accordance with its external commitments, become a member of international organizations and join international conventions.³⁴ The European Union has the exclusive competence to conclude

international agreements under specific conditions.³⁵ When the European Union has been conferred “exclusive” competences,³⁶ it means that an individual European Union member State that ceases to be an European Union member will no longer be bound under the economic partnership agreement because the European Union treaties will “cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification ... unless the European Council, in agreement with the member State concerned, unanimously decides to extend this period”.³⁷ Given that individual European Union member States are not “parties”,³⁸ their withdrawal from the European Union will not affect the status of the agreement, except with regard to the withdrawing member’s territory.

In negotiating comprehensive economic partnership agreements, Eastern and Southern Africa and Central Africa countries, and for other agreement protocols, member States of the African Union should ensure that there is a clear distinction between collective obligation and individual obligation.

C. Provisions relating to regional preference

Provisions relating to regional preference speak to the relationship in the parties to the economic partnership agreement. African, Caribbean and Pacific agreement negotiating countries have committed themselves to also according the most-favoured-nation

30 See SADC economic partnership agreement, art. 104.

31 See West Africa economic partnership agreement.

32 Ibid, art. 74.

33 See SADC economic partnership agreement, art. 75.

34 See Treaty on European Union, art. 47.

35 See Treaty on the Functioning of the European Union, arts. 3 and 5; see also “Division of competences within the European Union”. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3Aai0020>.

36 Exclusive competences by the Treaty on the Functioning of the European Union and the Treaty on European Union.

37 See the Treaty on European Union, art. 50.

38 The parties to the economic partnership agreement are East African Community partner States and the European Union, as defined in the East African Community agreement, art. 132 (2).

treatment to all relevant signatory States of the agreement.

Provisions on regional integration in economic partnership agreements grant most-favoured-nation treatment to the European Union to all agreement Signatory States.³⁹ This does not present a challenge for the East African Community or SADC because the blocs are existing preferential free trade regimes. Nevertheless, for the CARIFORUM and West Africa economic partnership agreements, this provision requires Caribbean Community (CARICOM) and ECOWAS member States to grant the Dominican Republic and Mauritania the same treatment as granted to the European Union,⁴⁰ in the existence of a trade regime and where none exists, respectively.

Trade relations governing CARICOM and the Dominican Republic are guided by the Agreement Establishing a Free Trade Agreement between CARICOM and the Dominican Republic signed in 1998. It covers the progressive liberalization of trade in goods and services.⁴¹ Annex II to the agreement deals with trade in services, which covers all measures affecting trade in services, including those relating to the production, the marketing, sale and delivery of a service, and the purchase, use or payment of a service.⁴² Nevertheless, the integration under the economic partnership agreement is deeper in many aspects. On the other hand, there is no trade regime between ECOWAS and Mauritania.

The question is whether the provisions of preferential treatment would grant the

Dominican Republic deeper market access than that granted under the free trade agreement between CARICOM and the Dominican Republic. Given that they are two different treaties, every treaty in force is binding upon the parties to it and must be performed by them in good faith.⁴³ The Dominican Republic can therefore enforce its rights under both the economic partnership agreement and the free trade agreement. ECOWAS member States are obliged to grant favourable treatment immediately and unconditionally to Mauritania, as signatory to the economic partnership agreement.⁴⁴

D. Entry into force

A treaty is binding on the parties upon entry into force, which may be achieved by signature,⁴⁵ ratification or approval by all or a specific number of parties. Entry into force of economic partnership agreements will determine whether they compromise regional integration or not. The agreement will enter into force following parties' notification to each other of the completion of the internal legal procedures for the East African Community,⁴⁶ after completion of the procedures necessary for the CARIFORUM⁴⁷ and after the deposit of the last instrument of ratification, acceptance or approval for SADC agreement States.⁴⁸ In all the above three agreement configurations, the relevant agreements will come into force after all the parties have taken the steps necessary to either ratify, accept and/or approve the agreements, in line with the relevant national laws. Conversely, the agreement will

39 See SADC economic partnership agreement, art. 108.

40 See CARIFORUM economic partnership agreement, art. 238, and West Africa agreement, art. 108.

41 See Free Trade Agreement Establishing a Free Trade Agreement between the Caribbean Community and the Government of the Dominican Republic, art. 5.

42 Ibid., annex II.

43 Pacta sunt servanda.

44 See West Africa economic partnership agreement, art. 103 (2).

45 See Vienna Convention of the law of treaties, art. 12.

46 See East African Community economic partnership agreement, art. 139.

47 See CARIFORUM economic partnership agreement, art. 243.

48 See SADC economic partnership agreement, art. 113.

come into force in the West Africa region after the lodging of ratification instruments of all European Union member States and “at least two thirds” of the West Africa States.⁴⁹ The fact that ECOWAS is a customs union presents a challenge: the two-thirds requirement will violate the customs union (common external tariff).

In conclusion, African countries should ensure that any third-party agreements, including economic partnership agreement protocols, come into force after ratification of all regional configuration members to prevent the distortion of regional integration.

E. Accession to the agreements

Under the West Africa agreement, any new member of the European Union shall become a party to the agreement, following notice to the Joint Council of the West Africa-European Union agreement and the West Africa party States.⁵⁰ With regard to the East African Community agreement, new members of the East African Community and the European Union become members to the agreement from the date of accession to the relevant treaties.⁵¹ South Sudan, which became a new member of the East African Community in April 2016 (East African Community, 2016), is therefore

bound by commitments under the East African Community agreement.

Any new member of the European Union shall become a party to the economic partnership agreement following notice to the Joint Council of the SADC-European Union agreement and SADC States, but the reverse is not true for SADC.⁵² A third State or organization can apply to become a member of SADC, subject to negotiations of a protocol of accession between the applicant and the Council. Special consideration is granted to the application of Angola to accede, on the basis of the agreement.⁵³ The third State or organization in question is not defined; it leaves a broader interpretation of such third State or organization. Accession to the CARIFORUM agreement⁵⁴ is possible only for another Caribbean State under the terms and conditions agreed to by the European Community and the signatory CARIFORUM States.⁵⁵

New negotiations on trade in services should ensure automatic accession for new African members in the relevant Africa economic partnership agreement configuration, as the European Union has secured for its member States in all agreements. The merits of the approach adopted by the SADC agreement for a third party or organization to accede the agreement ought to be explored.

49 See West Africa economic partnership agreement, art. 107.

50 Ibid., art. 112.

51 See East African Community economic partnership agreement, arts. 144 and 145.

52 See SADC economic partnership agreement, art. 118.

53 Ibid., art. 119.

54 See CARIFORUM economic partnership agreement, art. 248.

55 Note that accession to the CARIFORUM economic partnership agreement is an individual responsibility for CARIFORUM member States; not all CARIFORUM States, by use of the term “Signatory CARIFORUM States” under article 233, apply to individual member State action.

V. Recommendations and strategic considerations in the future Africa-European Union relationship

The Cotonou Agreement, signed in 2000, has a 20-year lifespan and provides for a 5-year review. The post-Cotonou negotiations are expected to begin by August 2018. The economic partnership agreement process should be seen in this context, in addition to the continent's regional integration ambitions. Going forward, African countries will need to address both the immediate issues of agreement implementation (where appropriate) and the strategic issue of how the European Union-Africa relationship will look in the future and how that vision will interact with the agreements.

Immediate implementation considerations

Regions should develop an economic partnership agreement implementation road map and capacity-building programmes to ensure that African countries can take advantage of opportunities under the agreements. The private sector of the European Union is competitive and able to access the African market. Africa must identify priority areas in which they have a comparative advantage to gain access to the European Union market. A strategy and necessary policies should also be identified to ensure that the transitional period is used effectively to build productive capacities. Sector analysis can be used to identify areas in which joint public or private investment with the European Union could be used to build capacities.

There is need for an economic partnership agreement monitoring and evaluation framework at the continental level that includes data on agreement implementation through regional free trade agreement and African Continental Free Trade Area implementation, which would report regularly to the specialized technical committee. A dedicated technical unit should be tasked with producing data and provide analysis on the impact of the agreements. The technical unit could also provide support for the implementation of the economic partnership agreements and measures to enhance benefits accrued from trade with the European Union.

Most important, ECA modelling work has estimated that the implementation of the African Continental Free Trade Area ahead of the full implementation of the economic partnership agreements would more than compensate the negative impacts of the agreements through large gains in intra-African trade. At the same time, the African Continental Free Trade Area will offer a basis for continental trade policy coherence and will help to strengthen Africa's position as a unified grouping with a shared trade policy vision. Given that and the above, it would be beneficial for the agreement process to be halted to allow for the finalization of the African Continental Free Trade Area.

Long-term considerations

Going forward, having the African Continental Free Trade Area will place African countries in a better position to move towards a harmonized relationship with the European Union and, possibly, a consolidated, coherent single Africa-wide economic partnership agreement. The exact strategy for that has to be agreed upon by the member States. In cases in which an agreement has entered into force, the revision clauses would offer an avenue to adjust agreements towards a common ground. In cases in which agreements have not entered into force, harmonization would require the reopening of negotiations on some provisions. African countries can also consider acceding to one agreement to deal with the issue of fragmentation. In the shorter term, in regions where negotiations for a comprehensive agreement have not yet been finalized, “stepping stone” or “interim” agreements could be envisaged as a basis for the regional agreements.⁵⁶

In areas in which negotiations have not been concluded, such as trade in services, intellectual property and competition policy, African countries need to agree on a common position on the scope and modality of economic partnership agreement negotiations. This position should be based on the African Continental Free Trade Area negotiations. In cases

in which negotiations have commenced or may commence before similar negotiations under the African Continental Free Trade Area, member States of the African Union should negotiate for reservation on potential “renegotiation” in which African Continental Free Trade Area provisions conflict with agreements.⁵⁷

It should be noted that the arrangements made under the economic partnership agreements may be interpreted as a precedent for African external trade policies in the future, notably in the case of post-African Growth Opportunity Act or Africa-United Kingdom trade arrangements. This places even more importance on reaching a clear strategy on the Africa-European Union relationship. The current political climate suggests that attitudes may be shifting towards reciprocal trade agreements for Africa. While challenging, reciprocal agreements may also offer improved predictability – relative to unilateral preference regimes, which are outside the control of recipient countries – for long-term investment and sustainable industrialization. To ensure that the continent is well placed to respond to those possible developments, priority should be given to deeper regional integration and boosting regional trade to create a strong and competitive continental production base.

56 “With regard to the outstanding negotiations, the European Union representatives stated that none were currently open. Nevertheless, work is being carried out to update the rules of origin in existing economic partnership agreements or negotiate those rules in cases in which this had not already been done. See draft minutes of the 14th meeting of the Joint ACP-EU Ministerial Trade Committee, 10 April 2017. Available at: <http://data.consilium.europa.eu/doc/document/ST-2108-2017-INIT/en/pdf>.

57 To note that the Eastern and Southern Africa region and the European Union have agreed to initiate negotiations, with a view to modernizing the Eastern and Southern Africa economic partnership agreement Protocol on rules of origin, highlighting that the cumulation rules will not be changed (cf., joint communiqué of the fifth ESA-EU iEPA Committee, 13 December 2016).

Annex I

Comparison of economic partnership agreement provisions

A. Trade in goods

1. Liberalization commitments

Contents

Main aspect of the liberalization commitments.

Selected highlights

- » The liberalization schedules largely reflect a division into essential goods, intermediate goods and consumption goods. Where exclusions are concerned, the key areas of focus are agricultural goods, textiles and clothing and specific industrial products. The CARIFORUM economic partnership agreement includes the widest range of industrial products in exclusions.
- » The CARIFORUM agreement schedule is made up to make the national market access offers match the regional ones. Although all the national tariff dismantlement schedules do not always begin from the same basic duty rates, the tariff cut formulas provide for liberalization to respect the regional schedule. Furthermore, a phase-down period for tariff lines to be liberalized has also been negotiated to allow for production or revenue collection adjustments.
- » The East African Community agreement schedule is made up of one regional offer.
- » The West Africa agreement schedule is made up of one regional offer that is based on the Economic Community of West African States (ECOWAS) common external tariff. It is made of three groups of products, which comprise several subgroups of products based on the common external tariff basic duty.
- » The Central Africa agreement schedule is made up of one offer: Cameroon.
- » The Eastern and Southern Africa agreement entails four different market access offers for Madagascar, Mauritius, Seychelles and Zimbabwe.
- » The Southern African Development Community (SADC) agreement liberalization offers are considerably more complex and do not follow the format of the other agreements. They comprise the Southern African Customs Union and the Mozambique market access offers. While the Mozambique offer is similar to the other African, Caribbean and Pacific country agreement offers in the sense that it is aimed at eliminating tariffs, except on an exclusion list of sensitive products, the Customs Union offers not only to eliminate tariffs, they also provide for preferential margins on a specific number of products and tariff rate quotas for some others.

Economic partnership agreement	Percentage of liberalized trade volume at the date of full liberalization	Percentage of liberalized tariff lines at the date of full liberalization	Type of concessions	Date of entry into effect	Date of phase-down start	Liberalization time frame	Exclusion
CARIFORUM	86.9	90.2	Tariff elimination	29 December 2008	2009	25 years	Meat and fishery products; beverages and tobacco; some chemicals, paints, soaps and apparel; iron and steel products; and furniture, mattresses and other industrial products.
East African Community	82.6	73.7	Tariff elimination	-	-	25 years	Agricultural products, wines and spirits, chemicals, plastics, wood-based paper, textiles and clothing, footwear, ceramic products, glassware, articles of base metal, and vehicles.
West Africa	75	74.9	Tariff elimination	-	-	20 years	Meat (including poultry), yogurt, eggs, processed meat, cocoa powder and chocolate, tomato paste and concentrate, soap and printed fabrics.
Central Africa	80	76.7	Tariff elimination	4 August 2014	2015	15 years	Meat, wines and spirits, malt, milk products, flour, specific vegetables, wood and wood products, used clothes and textiles, paints and used tyres.
Eastern and Southern Africa							

Economic partnership agreement	Percentage of liberalized trade volume at the date of full liberalization	Percentage of liberalized tariff lines at the date of full liberalization	Type of concessions	Date of entry into effect	Date of phase-down start	Liberalization time frame	Exclusion
Madagascar	80.9	89.4	Tariff elimination	12 May 2012	2013	10 years	Meat, milk and cheese, fisheries, vegetables, cereals, oils and fats, edible preparations, sugar, cocoa, beverages, tobacco, chemicals, plastic and paper articles, textiles, metal articles and furniture.
Mauritius	94.6	94.6					Live animals and meat, edible products of animal origin, fats, edible preparations and beverages, chemicals, plastics and rubber articles of leather and fur skins, iron and steel, and consumer electronic goods
Seychelles	97.4	97.5					Meat, fisheries, beverages, tobacco, leather articles, glass and ceramics products and vehicles.
Zimbabwe	80	86.3					Products of animal origin, cereals, beverages, paper, plastics and rubber, textiles and clothing, footwear, glass and ceramics, consumer electronic and vehicles.
Southern African Development Community							

Economic partnership agreement	Percentage of liberalized trade volume at the date of full liberalization	Percentage of liberalized tariff lines at the date of full liberalization	Type of concessions	Date of entry into effect	Date of phase-down start	Liberalization time frame	Exclusion
Southern African Customs Union	86.2	97.8	Tariff elimination, except: 5 percentage point preferential margin for machinery, motor vehicles and parts; 40 percentage point preferential margin for textile products (fabrics, yarns, household and clothing); and tariff rate quotas for wheat and meslin, barley, cheese, pig fat, cereal-based food preparations, pork, ice cream and mortadella bologna (see below for rate and quota).	10 October 2016	2016	12 years	Meat and meat products, dairy, cereals, coal and oil, vegetable textile fibres and machinery, vehicles and parts.
Mozambique	81	40.8	Tariff elimination	-	-	10 years	Fish, agricultural products, clothing, chemicals, iron and steel.

Tariff rate quotas under the Southern African Development Community economic partnership agreement

(i) Applicable rate

Tariff rate quota	Reduction from most-favoured-nation rate at entry into force	Reduction from most-favoured-nation rate T1	Reduction from most-favoured-nation rate T2	Reduction from most-favoured-nation rate T3	Reduction from most-favoured-nation rate T4	Reduction from most-favoured-nation rate T5
Barley	100	100	100	100	100	100
Cheese	100	100	100	100	100	100
Pig fat	100	100	100	100	100	100
Cereal-based food preparation	75	75	75	75	75	75
Pork	12.5	25	37.5	50	62.5	75
Ice cream	50	50	50	50	50	50
Mortadella bologna	100	100	100	100	100	100

(iii) Applicable quota

Tariff rate quota	Entry into force	Quantity (in tons) in year 2015	Quantity (in tons) in year 2016	Quantity (in tons) in year 2017	Quantity (in tons) in year 2018 and so on
Barley	10 000	10 000	10 000	10 000	10 000
Cheese	7 250	7 400	7 550	7 700	T=(T-1)+150 ^a
Pig fat	200	200	200	200	200
Cereal-based food preparation	2 300	2 300	2 300	2 300	2 300
Pork	1 500	1 500	1 500	1 500	1 500
Ice cream	150	150	150	150	150
Mortadella bologna	100	100	100	100	100

^a As from 2018, the quantity for the current year is the total quantity of the previous year, plus an extra 150 tons.

2. Rules of origin

Contents

1. Definitions
2. Tolerance
3. Cumulation
4. Territorial principles
5. Proof of origin
6. Administrative arrangements

Selected highlights

- » There are two main cumulation regimes that are being applied in economic partnership agreements.^b
- » All agreements include tolerance clauses, with varying ceilings being applied.

- » There are some differences in the definitions provided, namely, in the definitions of “other ACP States” (regarding treatment of non-implementing African, Caribbean and Pacific States) and “chartered or leased vessels” (in terms of crew criterion).
- » The identification of some rules under the lists of rules differs from one agreement to another.^c These differences appear to relate to products that have elements of strategic or sensitive (or both) commodities. The suggestion is to carry out additional analysis primarily on lines that are crucial for African exports to the European Union (e.g., many agricultural commodities, fish, textile and clothing).

^b Analysis on the complementarity and differences in terms of application of the cumulation provisions could offer further insights.

^c For example, heading No. 2202, “Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading No. 2009”, provided different rules under the CARIFORUM, East African Community and Central Africa economic partnership agreements. All the other agreements are aligned with the Central Africa agreement.

No.	Provision	Common features	Differences
1.	Definitions	In terms of definitions, all economic partnership agreements apply similar definitions, except for the definition of "other ACP States", which has two different meanings. "Wholly obtained" products are similar across all agreements except for the definition of "chartered or leased vessels", which is a subset of the definition of "their vessels" and for which the crew criterion differs. Products are considered as "sufficiently transformed" to confer the originating status, provided that compliance is made with a list of rules under each agreement.	The definition contained in the CARIFORUM, East African Community and Eastern and Southern Africa agreements entails all African, Caribbean and Pacific States, whereas the one contained in the SADC agreement provides only for African, Caribbean and Pacific States that apply an agreement. The West Africa and Central Africa agreements do not provide any definition for other African, Caribbean and Pacific States. The definition of chartered or leased vessels for which the crew criterion differs, is as follows: » Under the CARIFORUM and Eastern and Southern Africa agreements, there are no specific criteria concerning the composition of the crew; » The East African Community agreement provides that a minimum of 50 per cent of crew, master and officers are to be East African Community nationals, while the threshold is set at 10 per cent of crew under the WA agreement; » There is no crew specific criterion under the SADC agreement, although some special provisions apply to Namibia.
2.	Tolerance	Notwithstanding the list of rules to confer the originating status, a tolerance clause exists under each agreement.	Tolerance ceilings are as follows: » Under the CARIFORUM, SADC, Central Africa and Eastern and Southern Africa agreements, non-originating material are tolerated up to 15 per cent of the ex-work price; » Under the West Africa agreement, the clause is asymmetrical and provides for a maximum non-originating material content of 10 per cent ex-work price for the European Union, and 15 per cent ex-work price for West Africa; » Under the East African Community agreement, the clause provides for two criteria: 15 per cent of the weight for products under chapters 2 to 24, other than fishery products of chapter 16, and 15 per cent ex-work price for other products.

No.	Provision	Common features	Differences
3.	Cumulation	There exist two main cumulation regimes under agreements: the one inherited from annex V to the Cotonou Agreement, which applies to the CARIFORUM, Central and Eastern and Southern Africa agreements, and the enhanced cumulation system provided for under the East African Community, West Africa and SADC agreements.	Cumulation inherited from annex V is possible with: » The European Union and Overseas Countries and Territories. » All other African, Caribbean and Pacific countries.^d » Neighbouring developing countries, which are: • Under the CARIFORUM agreement: Colombia, Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela (Bolivarian Republic of);^e • Under the Central Africa agreement: Algeria, Egypt, Libya, Morocco and Tunisia; and Colombia, Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Panama and Venezuela (Bolivarian Republic of);^f • Under the Eastern and Southern Africa agreement: Algeria, Egypt, Libya, Morocco and Tunisia and Maldives.^g Conditions are application of the same rules of origin and conclusion and notification to the European Commission of an Administrative Cooperation Agreement. It also entails some exclusion for material originating in South Africa and tuna products using global sourcing. The enhanced cumulation regime provides for cumulation with: » The European Community and Overseas Countries and Territories; » All other African, Caribbean and Pacific countries that are at least provisionally applying an agreement; » Countries with other arrangements that grant duty-free and quota-free access to the European Union market; » Generalized scheme of preference duty-free and quota-free material; » 0 per cent most-favoured-nation materials. Conditions are application of the rules of origin contained under the relevant duty-free and quota-free frameworks between the eligible territory and the European Union, and conclusion and notification to the European Commission of an Administrative Cooperation Agreement. It also entails a specific number of exclusions, including: • Under generalized scheme of preference duty-free and quota-free materials cumulation: • HS^h chapter 3, tuna products, under the East African Community, SADC and West Africa agreements; • HS chapter 16, tuna products, under the SADC agreement; • HS 3,302.10 and 3,501.10 under the West Africa economic partnership agreement. » Under cumulation with countries with other arrangements that grant duty-free and quota-free access to the European Union market: • Products under HS chapters 1–24. The SADC and West Africa agreements make additional provisions for a method called “accounting segregation” to be used for managing stocks, whereby considerable cost or material difficulties arise in keeping separate stocks of originating and non-originating fungible materials. The SADC agreement makes additional and specific provisions for shipment of sugar by sea. The only differences lie in the fact that the Central Africa and Eastern and Southern Africa agreements provide for an additional article on transit. The CARIFORUM agreement does not make provision for amounts expressed in euros.

No.	Provision	Common features	Differences
4.	Territorial principles	All agreements apply the same territorial principles.	
5.	Proof of origin	All agreements apply identical procedures of issue and verification of proof of origin.	
6.	Administrative arrangements	All agreements apply the same administrative arrangements.	

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- d Not part of the Signatory regional grouping.
e Compare with CARIFORUM economic partnership agreement, annex VIII to Protocol I.
f Compare with appendix 9, annex II, Regulation (EC) No. 1528/2007.
g Compare with Eastern and Southern Africa economic partnership agreement, annex VIII to Protocol I.
h The harmonized system chapters refer to those of the harmonized system classification.

3. Customs duty-related provisions

Contents

1. Basic and customs duties
2. Standstill
3. Classification of goods
4. Fees and charges
5. General prohibition of export duties
6. Schedules
7. Movement of goods
8. Most favoured nation
9. Administrative cooperation
10. Unique provisions

Selected highlights

- » Fees and charges: economic partnership agreements vary in the level of flexibility in terms of the setting of fees and charges.
- » Export duties: African agreements are committed to not introducing new export duties or to raising existing duties. This is in contrast to the CARIFORUM agreement, in which all export duties are specifically eliminated. Temporary export duties can also be introduced with given justifications, which include (using various wordings) boosting domestic industry and revenue collection.
- » Schedules: All agreements (except the SADC agreement) explicitly provide for the

revision of schedules in the case of State parties experiencing difficulties to implement, which could apply in the near future in the context of the Continental Free Trade Area negotiations. In the case of the SADC agreement, there is room for interpretation. Clarity and alignment across agreements would be important.

- » Most-favoured-nation treatment: In all economic partnership agreements, the European Union shall extend unconditionally to the African, Caribbean and Pacific economic partnership agreement States, any more favourable treatment on trade in goods resulting from the conclusion of a signed free trade agreement between the European Union and a third party. On the other hand, the African, Caribbean and Pacific States may be required, further to consultation with the European Union, and under varying conditions, to extend to the latter any more favourable treatment on trade in goods resulting from the conclusion of the free trade agreement with a major economy (with the definition of major economy varying). With regard to the Continental Free Trade Area agenda, the most-favoured-nation clause does not apply to the free trade agreement concluded between CARIFORUM States, and between African economic partnership agreement States.

No.	Provision	Common features	Differences
1.	Basic and customs duties	All definitions of a customs duty are consistent throughout economic partnership agreements and are described as a tax or charge of any kind, with the exception of: - Internal taxes in accordance with the clause on national treatment on internal taxation and regulation laid down under the section on non-tariff measures; - Duties relating to the activation of antidumping, countervailing and safeguard measures under the section on trade defence; - Fees and other charges in accordance with the clause on fees and other charges that are laid down under the present section.	The CARIFORUM agreement does not entail such definition of basic duties.
2.	Standstill	All agreements have standstill provisions that provide for the prohibition of increase of applied customs duties with a similar wording. This provision is applicable, as long as the schedules are not renegotiated.	
3.	Classification of goods	All provisions related to classification provide for the use of the HS classification.	To be noted that the Eastern and Southern Africa agreement adopts the Common Market for Eastern and Southern Africa nomenclature, and the SADC agreement does not have any such provision.
4.	Fees and charges	Fees and charges have to be limited to the approximate cost of the service rendered. In this regard, some indications are given to the form that the fees or charges can take; those indications, however, are not uniform across the different texts. All agreements also have an emphasis on the need for the fee or charge to not be unnecessarily trade distortive as to represent an indirect protection to domestic products, or to be made up for fiscal purposes. In addition, all provisions exclude consular services from the scope of the provision.	Form of fees and charges can vary as follows: - The fee or charge should not exceed the real value of the service rendered, under the CARIFORUM agreement; - The fee or charge should be based on a specific tariff, under the West Africa, Central Africa and SADC agreements. - East African Community agreement does not provide any guidance on the method of calculation of the fee or charge. It is noted, however, that the SADC agreement goes beyond those provisions and has a non-exhaustive list of governmental activities covered by the provision.ⁱ

No.	Provision	Common features	Differences
5.	General prohibition of export duties	There exist two types of provisions: - General prohibition of export duties and elimination of existing ones are applicable to the CARIFORUM agreement; - General prohibition to introduce new export duties or to raise the existing ones for the Afri- can agreement configurations.¹ All agreements (except the CARIFORUM and Eastern and Southern Africa ones) have provisions for exceptional and time-limited use of export duties.	Noting the variety of possible uses and methods of triggering export duties, each provision is explained as follows: - The East African Community agreement provides for possible temporary imposition of new export duties for the following purposes: - Development of domestic industry; - Currency stability; - Revenue protection; - Food security; - Environment. The provision is applicable to a limited, although not specified, number of products and time period. The provision is also subject to the most-favoured-nation treatment if the third trading partner is a major economy in the sense of the most-favoured-nation clause. - West Africa agreement States can introduce new export duties, if they can justify the need, for: - Income; - Development of fledging industry; - Environmental protection. The existing export duties cannot be higher than those imposed on other non-parties to the West Africa agreement. - The SADC agreement provides for the most elaborate and complex exceptions to the general prohibition to introduce. These are of two main types: - Specific to Botswana, Lesotho, Mozambique, Namibia and Swaziland; additional duties can be introduced on a limited number of additional products, where justified, by: - Specific revenue needs; - Protection of infant industries; - Protection of environment; - Prevention of or relief from critical general or local shortages of foodstuffs or other products essential to ensure food security. Applicable to all SADC agreement States – additional duties can be introduced on a limited number of additional products, where justified, for industrial development needs. In this case, the temporary duties (not in excess of 10 per cent of the ad valorem value of the products) are to be applied to a maximum number of eight products^k for a maximum renewable period of 12 years. This is possible under the condition that, during the first six years of the export duty measure, a quota equal to the amount of the volume of one year of export to the European Union^l is exempted of the additional tax. This quota is to be reduced to 50 per cent of the average volume of the reference year for the past six years. The provision is subject to the most-favoured-nation treatment, if the third trading partner is a major economy in the sense of the most-favoured-nation clause. Furthermore, the provision includes procedural steps to examine and verify the reason for applying the temporary duties. West Africa agreement States can introduce on a limited number of goods new export duties: - To address serious finance problems; - For greater environmental protection.

No.	Provision	Common features	Differences
6.	Schedules	In all agreements (except the Central Africa agreement, and the CARIFORUM one, where some additional information is directly inserted in the text), the African, Caribbean and Pacific schedules and the European Union schedule of commitments are annexed to the agreements. In addition, the CARIFORUM and Central Africa agreements provide for flexibilities in case of serious difficulties to respect the schedules. The details of the schedules will be addressed under the section on liberalization commitments.^m Modification of schedules All agreements have inserted provisions for African, Caribbean and Pacific States to modify their schedules in case of difficulties to respect their schedules or to ensure alignment with their development or regional integration goals.	No explicit provision on modification of schedule is made under the SADC agreement. There is, however, room for interpretation under the revision clause.
7.	Move-ment of goods	The need for the levy of customs duties only once is recognized in all agreements. When levied outside the country consumption, provision is, in general, made for refund. Although worded differently in all agreements, the content of the provision is similar in all six agreements.	The Eastern and Southern Africa agreement does not make any provision on movement of goods.

i Compare with SADC agreement, art. 27 (3). Available at http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153915.pdf.

j Although the Eastern and Southern Africa agreement provides only for no new duties without mentioning the prohibition of increasing the existing ones. Another specificity of the Eastern and Southern Africa agreement is the list of allowed export duties referred to in annex III. Compare with Eastern and Southern Africa agreement, art. 15 (1).

k For the purposes of export duties, a product is defined, in terms of classification, at subheading level or at heading level in the case of "ores and concentrates" products. Compare with SADC agreement, art. 26 (3). Available at http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153915.pdf.

l Calculated as the average volume of export of the same products during the three years preceding the measure. Compare with SADC agreement, art 26 (4) (a).

m Cf. supra, sect. 8.

No.	Provision	Common features	Differences
8.	Most favoured nation	The most-favoured-nation clause encloses several common provisions across all agreements as follows: • The European Union shall extend unconditionally to the African, Caribbean and Pacific agreement States any more favourable treatment on trade in goods resulting from the conclusion of a signed free trade agreement between the European Union and a third party; • The African, Caribbean and Pacific States may be required, further to consultation with the European Union, to extend to the latter any more favourable treatment on trade in goods resulting from the conclusion of a free trade agreement with a major economy party to an economic partnership agreement. To this end: • Major economy means a customs territory accounting for a share of world merchandise exports above 1 per cent in the year before entry into force of the referred European Union – third party free trade agreement; or a group of customs territories forming a free trade agreement accounting collectively for a share of world merchandise exports above 1.5 per cent in the reference year (except for the West Africa economic partnership agreement), which sets different thresholds and an additional criterion, and the East African Community economic partnership agreement, which does not provide precise indication.ⁿ • In the context of the East African Community economic partnership agreement, before triggering the most-favoured-nation clause, the European Union has to demonstrate that a third major economy has been offered a more favourable treatment.^o • The treatment extended under the most-favoured-nation clause does not always have to be reciprocated. The most-favoured-nation clause does not apply to the free trade agreement concluded between the CARIFORUM States,^p and between the African economic partnership agreement States.^{q,r,s,t,u}	The SADC agreement makes provisions for specific but similar provisions to suit the situation of South Africa, for which disciplines governing trade in goods are partly covered under the trade, development and cooperation agreement between the European Union and South Africa.

No.	Provision	Common features	Differences
9.	Administrative cooperation	In all agreements, definitions and procedures relating to the administrative cooperation and failure to provide administrative cooperation are similarly addressed. In addition, similar provisions are being made to correct any possible administrative errors.	
10.	Unique provisions		Economic communities The West Africa agreement contains specific provisions to reaffirm the financial autonomy of ECOWAS and the West African Economic and Monetary Union organizations.

- n The East African Community agreement, which does not define what a major economy is, and the West Africa economic partnership agreement, which defines a major economy as a customs territory: accounting for a share of world merchandise exports above 1.5 per cent in the reference year; and an industrialization rate of more than 10 per cent; or a group of customs territories in the free trade agreement, accounting collectively for a share of world merchandise exports above 2 per cent in the reference year.
- o Compare with East African Community agreement, art. 15 (2).
- p The CARIFORUM agreement provides for deepening the parties' respective regional processes as an exception to the most-favoured-nation clauses (compare with CARIFORUM agreement, art. 238).
- q The East Africa agreement goes beyond free trade agreements with African States, given that the provision covers all African, Caribbean and Pacific States (compare with East Africa Community agreement, art. 15 (4)).
- r The wording is more lenient in the West Africa agreement; given that only reference to the Enabling Clause is made (compare with West Africa agreement, art. 16 (1)).
- s The SADC agreement echoes the East African Community one (compare with SADC agreement, art. 28 (3)).
- t No reference to preferences to African, Caribbean and Pacific States has been found in the Central Africa agreement. That may be explained by the fact that the Central Africa agreement had been negotiated before the 2010 revision of the ACP.
- u The Eastern and Southern Africa agreement provides for the exemption, if a free trade agreement is concluded with other African States (see Eastern and Southern Africa agreement, art. 16.4).

4. Trade defence

Contents

1. Antidumping and countervailing measures
2. Multilateral safeguards
3. Bilateral safeguards
4. Infant industry
5. Unique provisions

Selected highlights

- » In terms of antidumping and countervailing measures, multilateral safeguards and bilateral safeguards, the economic partnership agreement texts are aligned in large part with each other and relevant World Trade Organization (WTO) provisions.
- » All agreements provide that, when the European Union is using safeguards at the multilateral level, the imports from African, Caribbean and Pacific parties to the

agreements are to be excluded from the scope of application of safeguard, within a limit of five years. African, Caribbean and Pacific countries are not subject to this requirement.

- » At the bilateral level, when the European Union is acting on behalf of its outermost regions, it is subject to the same (more lenient) terms as African, Caribbean and Pacific countries.

- » All agreements provide for safeguards for the protection of infant industries. Two regimes can be found: (a) the provision is valid for 10 to 15 years from entry into force (CARIFORUM, Eastern and Southern Africa, East African Community and Central Africa agreements); and (b) the provision is valid for the lifetime of the agreement, but can only be applied for 8 years (with the possibility of extension).

No.	Provision	Common features	Differences
1.	Antidumping and countervailing measures	The general disciplines provide for the recognition of the parallel existence of the WTO disciplines governing trade remedies, and the right for parties to make use of them. Moreover, the WTO disciplines appear to prevail over the economic partnership agreement ones, given that all agreements (except the SADC one^v) provide for “the possibility of constructive remedies as provided for in the relevant WTO Agreements” before imposing antidumping or countervailing measures on the other party. The disputes arising from remedies under these provisions are to be settled according to the WTO rules. In addition, although party States can impose remedies individually or collectively, the remedies for the same products are not to be applied simultaneously at national and regional levels. The provisions also set up disciplines concerning investigations initiated on the basis of the imposition of such remedies.	
2.	Multilateral safeguards	Recognizing the parallel existence and right to use the safeguard mechanisms existing at the WTO level, all agreements make provisions for adjustments when a party to the agreements uses the WTO safeguards. Notably, when the European Union is using safeguards at the multilateral level, the imports from African, Caribbean and Pacific parties to the agreements are to be excluded from the scope of application of safeguard within a limit of five years, after which the operation of the mechanism is to be jointly reviewed by the parties.	

^v The SADC agreement cuts short on the matter, given that it provides that any matter relating to antidumping and countervailing measures are to be governed by the relevant WTO Agreements (compare with SADC agreement, art. 32).

No.	Provision	Common features	Differences
3.	Bilateral safeguards	Equal provisions for triggering of the clause exist in all agreements in the cases of: » Serious injury to the domestic industry producing like products or directly competitive products; » Disturbance in an economic sector in such a way that the disturbance produces major social problems or could bring a serious deterioration of the economic situation; » Disturbance in the market of agricultural-like products or directly competitive products. Use of the mechanism can take the form of one of several cases: » Suspension of tariff reduction; » Increase of the tariff up to most-favoured-nation level; » Introduction of tariff quotas. Should a surge of imports cause or threaten to cause a disturbance in the markets of the European Union's outermost regions,^w the application of the safeguards can be limited to the region(s) concerned. The safeguard mechanism is subject in all agreements (except in the West Africa one) to asymmetry in favour of the African, Caribbean and Pacific States and the European Union outermost regions, given that the mechanism is applicable by the European Union for two years, is renewable another two years^x and is renewable for four years, when triggered by an African, Caribbean and Pacific State or the European Union on behalf of its outermost regions.	

^w The outermost regions are Azores, Canarias, Guadeloupe, French Guyana, Madeira, Martinique, Mayotte, Saint Martin and Réunion (compare with the Treaty on the Functioning of the European Union, art. 349).

^x Except in the West Africa agreement, in which the European Union can apply it for four years, and it is renewable for four years (see West Africa agreement, art. 22 (7)).

No.	Provision	Common features	Differences
4.	Infant industry	The safeguard for industry protection purposes is encapsulated in the general bilateral provisions; the procedures provided for apply with various specificities, depending on the relevant economic agreements.	The specificities of bilateral safeguards for infant industry protection contained in the various agreements are as follows: » Under the CARIFORUM agreement, the infant industry safeguard provision clause is applicable for 10 years after entry into force; » Under the East African Community agreement, the infant industry safeguard provision clause is applicable for 10 years after entry into force, but with a possible extension of 5 years upon the decision of the agreement Council; » Under the Central Africa agreement, the infant industry safeguard provision clause is applicable for 15 years after entry into force; » Under the Eastern and Southern Africa agreement, the infant industry safeguard provision clause is applicable for 10 years after the entry into force for the Eastern and Southern Africa non-least developed countries and 15 years for Eastern and Southern Africa least developed countries. Under the West Africa agreement, the safeguards for protection of infant industry are the following: » The clause is applicable during the entire life of the agreement; » The safeguard measure is applicable for an initial period of eight years, with the possibility of extension; » Subject to specifically referred procedures. Similarly, under the SADC agreement, the safeguards for protection of infant industry are as follows: » The clause is applicable during the entire life of the agreement; » The safeguard measure is applicable for an initial period of eight years, with the possibility of extension; » Subject to specifically referred procedures; » Subject to recourse for the Southern African Customs Union member States, under the Southern African Customs Union Agreement. Additional safeguard measures under the SADC agreement The SADC agreement makes additional safeguard provisions specifically for Botswana, Lesotho, Namibia and Swaziland. Those "transitional safeguard measures" take the form of a tariff quota for which the tariff may be raised up to the most-favoured-nation rate when the quota is reached. This safeguard is applicable for an initial period of four years, with a possible extension of another four years. These transitional provisions are applicable for 12 years after the entry into force of the SADC agreement. The SADC agreement also makes additional safeguard provisions for agricultural products and for food security purposes.
5.	Unique provisions		

5. *Non-tariff measures*

Contents

1. Prohibition of quantitative restrictions
2. National treatment on internal taxation and regulation

Selected highlights

- » Only the East African Community and SADC economic partnership agreements make explicit reference to the exceptions laid down under the General Agreement on Tariffs and Trade, article XI.2 (a) and (b), relating to the prohibition of quantitative restrictions.
- » All agreements impose equal treatment of local and originating imported products with regard to internal taxes or other

internal charges and all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

- » The provisions also prohibit use of any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions (excluding public procurement).
- » Under the SADC agreement, provision is made calling for measures to be taken to mitigate the prejudicial effects of the internal maximum price control measures.
- » Under the Eastern and Southern Africa agreement, provision is specifically made for limited and temporary derogation of the national treatment principle.

No.	Provision	Common features	Differences
1.	Prohibition of quantitative restrictions	Except otherwise provided, all economic partnership agreements provide for the general prohibition of quantitative restrictions. The wording is similar to the one used under the General Agreement on Tariffs and Trade, article XI.1. Only the East African Community and SADC agreements make explicit reference to the exceptions laid down under the General Agreement on Tariffs and Trade, article XI.2 (a) and (b).	
2.	National treatment on internal taxation and regulation	The provisions related to national treatment are somehow similar. They govern the following: - Equal treatment of products locally produced and originating imported products with regard to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like products; and, all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. Nevertheless, the provision does not prevent from imposing differential internal transportation charges, as long as it is based in the economic operation and not origin-discriminatory; - Prohibit the use of internal taxes or other internal charges so as to afford protection to such domestic products; - Prohibition of any internal quantitative regulation^y relating to the mixture, processing or use of products in specified amounts or proportions; - Exclusion of laws, regulations and practices applying to public procurement from the scope of the article on national treatment.	Under the SADC agreement, provisions recognize the potential for prejudicial effects from internal maximum price control measures and allow for measures to be taken to mitigate such prejudicial effects. In addition, provision is made to maintain internal quantitative regulations on exposed cinematograph films. Under the Eastern and Southern Africa agreement, provision is made for limited and temporary derogation of the national treatment principle.

^y All agreements refer to the above-mentioned, except the West Africa one, which is less restrictive, given that it provides for "internal regulation", for example, quantitative or of any other kind (compare with West Africa agreement, art. 35 (3)).

6. Trade facilitation

Contents

1. Customs and administrative cooperation
2. Customs procedures
3. Transit
4. Relations with the business community
5. Customs valuation
6. Regional integration

Selected highlights

- » Except for the Eastern and Southern Africa economic partnership agreement, all agreements make provisions for areas of interventions to strengthen their cooperation.
- » Freedom of transit is to be applied in all African agreements, excluding the CARIFORUM one. Controls are to be proportionate and non-discriminatory with regard to imported products. The transit regimes are to be duty-free, regionally harmonized and based on international standards.
- » All agreements, apart from the Eastern and Southern Africa one, support the facilitation of business through committing to availing all applicable legislation, procedures and administrative operations, and organizing consultations with the business community.
- » Additional measures incorporated into some agreements include fostering cooperation between the central authorities and business operators; following best practice; providing prior notice with sufficient time to prepare adaptation to new legislation and procedures; combating illicit practices; and ensuring collection of public revenue.
- » The provisions on regional integration are aimed mainly at promoting, under all agreements, the harmonization of customs legislation, procedures, standards and requirements. Excluding the CARIFORUM and West Africa agreements, all agreements contain a commitment to cooperate, with a view to reaching a common position on valuation-related issues.

No.	Provision	Common features	Differences
1.	Customs and administrative cooperation	Except for the Eastern and Southern Africa agreement, all agreements make provisions for areas of interventions to strengthen their cooperation. Although, some agreements refer to some broader scope of cooperation, the detailed provisions for such cooperation are in all agreements, including the Eastern and Southern Africa one, laid down under a specific protocol.	
2.	Customs procedures	The provisions provide for drawing on international customs standards, including World Customs Organization conventions. In this regard, procedures are to be based on a specific number of common features: » The need to ensure that requirements are protective against fraud and are not excessively penalizing for minor breaches of regulations or requirements; » The use of simplified procedures, including a single administrative document for customs declarations; the development of modern customs techniques; and transparent law, regulations and requirements; » Commitments, to the best extent, to simplify procedures and enhance efficiency and transparency.	
3.	Transit	Freedom of transit is to be applied. Controls are to be proportionate and non-discriminatory with regard to imported products and imported products, compared with domestic products. The transit regimes are to be duty-free, regionally harmonized and based on international standards.	The provision does not exist in the CARIFORUM agreement.
4.	Relations with the business community	In view of facilitating business, all agreements (except the Eastern and Southern Africa one) are aimed at: » Availing, if possible electronically, all applicable legislation and procedures; » Organizing consultations with the business community; » Availing information concerning administrative operations; » Except for the West Africa agreement, fostering cooperation between the central authorities and business operators; » Except for the West Africa and SADC agreements, following best practices; » Only for the East African Community and Central Africa agreements, providing prior notice with sufficient time to prepare adaptation to new legislation and procedures.	The CARIFORUM agreement includes combating illicit practices and ensuring the collection of public revenue as a specific supplementary aim.
5.	Customs valuation	All agreements contain a commitment to be governed by the relevant provisions laid down under the WTO law.	

No.	Provision	Common features	Differences
6.	Regional integration	The provisions on regional integration are aimed mainly at promoting, under all agreements, the harmonization of customs legislation, procedures, standards and requirements.	The CARIFORUM agreement also includes a provision for monitoring the harmonization process by the Special Committee on Customs Cooperation and Trade Facilitation. The parties of the East African Community, SADC, Central Africa and Eastern and Southern Africa agreements also commit themselves to cooperating, with a view to reaching a common position on valuation related issues.

7. *Technical barriers to trade*

Contents

1. Scope and definitions
2. Multilateral obligations
3. Regional collaboration and integration
4. Transparency
5. Regulatory and competent authorities
6. Mutual recognition agreements

Selected highlights

- » Matters concerning technical barriers to trade are not covered under the Eastern and Southern Africa economic partnership agreement.^z
- » East African Community and West Africa agreements contain several additional elements on such barriers:
 - The East African Community agreement also places emphasis on the fact that technical regulations should not be designed as a disguised restriction to trade.
- The West Africa agreement provides for refraining from exporting or re-exporting products that do not observe the requirements in force in the legislation of the exporting party.
- The West Africa and Central Africa agreements also make provisions for existing standards at the time of entry into force, when legally placed on the market, to be equally entitled to placement of the trading partner's market (European Union in the case of West Africa, and other Central Africa markets in the case of Central Africa).
- The East African Community and West Africa agreements make reference to the identification and notification of technical regulatory bodies.
- » The East African Community and SADC agreements provide for the negotiation of mutual recognition agreements in the economic sectors of mutual interest.

z Those matters are to be negotiated at a later stage, accordingly, the rendez-vous clause.

No.	Provision	Common features	Differences
1.	Scope and definitions	Under all agreements, the applicable definitions, technical regulations, standards and conformity assessment procedures are those laid down under the WTO Technical Barriers to Trade Agreement.	
2.	Multilateral obligations	Under all agreements, the commitments under the rights and obligations provided for in the WTO Technical Barriers to Trade Agreement are reaffirmed.	The East African Community agreement also places emphasis on the fact that technical regulations should not be designed as a disguised restriction to trade. The West Africa agreement provides for refraining from exporting or re-exporting products that do not observe the requirements in force in the legislation of the exporting party.
3.	Regional collaboration and integration	All agreements provide that the parties will endeavour to harmonize standards at the regional level. The Central Africa agreement, however, provides for a timeline to undertake the harmonization: four years after the entry into force of the agreement.	The West Africa and the Central Africa agreements also make provisions for existing standards at the time of entry into force, when legally placed on the market, to be equally entitled to placement of the trading partner's market. The West Africa agreement refers to the European Union market when referring to the trading partner's market, whereas the Central Africa one refers to another Central Africa agreement State's market.
4.	Transparency	All agreements agree to use the transparency mechanisms laid down under the WTO Technical Barriers to Trade Agreement.	Supplementary mechanisms are provided to ensure direct and efficient exchanges. In this regard: » Exchange of information mechanisms on any relevant matters are to be set up under the East African Community, West Africa, and Central Africa agreements; » Direct notification of new or amendment of technical regulations under the West Africa and SADC agreements; » Market access information exchange mechanism under the West Africa agreement; » Enquiry points and common databases under East African Community agreement.
5.	Regulatory and competent authorities		The East African Community and West Africa agreements make reference to the identification and notification of technical regulatory bodies.
6.	Mutual recognition agreements		The East African Community agreement provides for negotiation of mutual recognition agreements in the economic sectors of mutual interest. In addition, while reaffirming the WTO Technical Barriers to Trade Agreement disciplines that govern conformity assessment, the agreement also provides for considering the opportunity of negotiation of mutual recognition agreements for conformity assessment. Similarly, the SADC agreement provides for negotiation, in due time, of mutual recognition agreements in the economic sectors of mutual interest.

8. Sanitary and phytosanitary measures

Contents

1. Scope and definitions
2. Multilateral obligations
3. Competent authorities
4. Regional collaboration and integration
5. Equivalence
6. Zoning
7. Transparency
8. Unique provisions

Selected highlights

- » Sanitary and phytosanitary matters are not covered under the Eastern and Southern Africa economic partnership agreement.^{aa83}
- » As with technical barriers to trade, the West Africa and Central Africa agreements make additional provisions for regional integration and collaboration. Both agreements make provisions for existing standards at the time of entry into force, when legally placed on the market, to be equally entitled to placement of the trading partner's market. Under the West Africa agreement, pending harmonized standards, those conditions shall apply to European Union products entering the West Africa markets and vice versa. In addition, the conditions that

West African countries impose on other West Africa originating products shall not be less favourable than the conditions imposed on European Union originating products. Under the Central Africa agreement, pending harmonized standards, the conditions that Central African countries impose on other Central Africa originating products shall not be less favourable than the conditions imposed on European Union-originating products.

- » The West Africa agreement also provides for no less favourable treatment of West Africa originating goods entering the European Union market.
- » Agreements differ in their approach to the equivalence principle. The East African Community agreement only makes a reference to the applicable WTO provisions, while the West Africa and Central Africa ones provide for the acceptance of sanitary and phytosanitary measures as equivalent when existing prior to the harmonization commitment. The West Africa and CARIFORUM agreements highlight the opportunity of negotiating agreements on mutual recognition of equivalence. The SADC agreement does not make provisions for equivalence.

aa Those matters are to be negotiated at a later stage, accordingly, the rendez-vous clause.

No.	Provision	Common features	Differences
1.	Scope and definitions	Under all agreements, the applicable definitions, technical regulations, standards and conformity assessment procedures are those laid down under the WTO sanitary and phytosanitary agreement.	
2.	Multilateral obligations	The commitments under the rights and obligations provided for in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures are reaffirmed.	The East African Community agreement also places emphasis on the fact that sanitary and phytosanitary measures are designed to pursue legitimate objectives. In this regard, consultations between the parties and support to gather information are provided for, along with the promotion of joint initiatives with regard to research and development. The West Africa agreement provides for refraining from exporting or re-exporting products that do not observe the requirements in force in the legislation of the exporting party.
3.	Competent authorities	Importance is attached to the need for exchange of information regarding the authorities' competence in sanitary and phytosanitary matters. Where not referred to in the text (e.g., in the Caribbean CARIFORUM, East African Community and SADC agreements), provisions are made for notifications. In the West Africa and Central Africa agreements, these are already referred to in the annexes.	The East African Community agreement complements the article by mentioning the fact that the competent authorities have the role conferred in the WTO sanitary and phytosanitary agreement.
4.	Regional collaboration and integration	All agreements provide for harmonization of standards at the regional level. Nevertheless, the Central Africa agreement provides for a timeline to undertake the harmonization: four years after entry into force of the agreement.	The West Africa and Central Africa agreements also make provisions for existing standards at the time of entry into force, when legally placed on the market, to be equally entitled to placement of the trading partner's market. It is to be noted that, while the West Africa agreement refers to the European Union market when referring to the trading partner's market, the Central Africa one refers to another Central Africa agreement State's market. Furthermore, the West Africa agreement also provides for no less favourable treatment of West Africa originating goods entering the European Union market.

No.	Provision	Common features	Differences
5.	Equivalence		Agreements take different approaches to the equivalence principle. The East African Community agreement only makes a reference to the applicable WTO provisions, while the West Africa and Central Africa ones provide for the acceptance of sanitary and phytosanitary measures as equivalent when existing prior to the harmonization commitment.^{bb} The CARIFORUM and West Africa agreements also highlight the opportunity for negotiating agreements on mutual recognition of equivalence. The SADC agreement does not make provisions for equivalence.
6.	Zoning	The East African Community, West Africa, SADC and Central Africa agreements all refer explicitly or implicitly to the disciplines laid down under the Sanitary and Phytosanitary Measures Agreement, article 6, for the designation of the areas.	The SADC agreement also contains a re-emphasis of the need for the avoidance of trade disruption.
7.	Transparency	All agreements are agreed in using the transparency mechanisms laid down under the Sanitary and Phytosanitary Measures Agreement.	In addition to the WTO mechanisms, some agreements provide for supplementary mechanisms to ensure direct and efficient exchanges. In this regard: » Exchange of information mechanisms on any relevant matters are to be set up under the East African Community, West Africa, SADC and Central Africa agreements; » Direct notification of new or amendment of technical regulations under the West Africa and SADC agreements; » Pest information exchange mechanism under the West Africa and Central Africa agreements.
8.	Unique provisions		Scientific evidence The East African Community agreement contains a reaffirmation of the fact that, according to the Sanitary and Phytosanitary Measures Agreement, sanitary and phytosanitary measures should be backed with scientific evidence. Conformity assessment The East African Community agreement provides for agreed procedures for conformity assessment.

^{bb} To be noted – the difference in scope between the West Africa and Central Africa provisions.

B. Other

9. Trade-related matters

Contents

1. Competition
2. Intellectual property rights
3. Public procurement
4. Environment
5. Social aspects
6. Protection of personal data

Selected highlights

- » Only the CARIFORUM economic partnership agreement has completed negotiations on the above-mentioned topics. The SADC agreement has negotiated a specific

aspect of the intellectual property rights: geographical indications.

- » While the CARIFORUM agreement makes provisions for the protection of intellectual property rights, all the other agreements have referred the matter to future negotiations. Nevertheless, the SADC agreement protects a specific number of geographical indications; the list is explicitly referred to under a protocol dedicated to the matter, along with trade in wines and spirits.
- » Trade-related aspects of environmental protection are addressed in a specific section under the CARIFORUM agreement, aimed at securing the right to regulate and ensure cooperation, mainly with regard to the promotion of market-based environmental measures.

No.	Provision	Similarity	Differences
1.	Competition		The CARIFORUM economic partnership agreement provides for the obligation of the adoption of competition laws no later than five years after the entry into force of the agreement so as to ensure an environment supportive to fair competition. In this context, the party is encouraged in the agreement to cooperate in view of exchanging information and providing technical assistance to pursue the objective of the chapter to the best possible extent.
2.	Intellectual property rights		The CARIFORUM agreement protects all intellectual property rights, while the SADC one refers to geographical indications only, which the list covers on the SADC side: teas and infusions, meat and wines. The SADC agreement lists of geographical indications can be modified. The CARIFORUM agreement provides for the setting up of a mechanism to monitor and administer geographical indications.
3.	Public procurement		The CARIFORUM agreement provides for the establishment of a regional procurement market. The section notably refers to the transparency rules and procedural aspects of the public procurement disciplines.
4.	Environment		The CARIFORUM agreement is aimed at ensuring the protection of the environment using and promoting market-based measures. The SADC agreement, recognizing the important impact of environmental considerations to sustainable development, contains a reaffirmation of the parties' commitments under multilateral environmental agreements.
5.	Social aspects		Similar to the environment-related section of the CARIFORUM and SADC agreements, the CARIFORUM one entails a section that is aimed at ensuring the right to regulate social aspects, taking into consideration commitments under international conventions, including those under the International Labour Organization (ILO). The SADC agreement, recognizing the important impact of labour-related considerations to sustainable development, contains a reaffirmation of the parties' commitments under the ILO conventions.
6.	Protection of personal data	Although only two, both the CARIFORUM and Central Africa agreements make identical provisions and definitions pertaining to the need to ensure the protection of personal data.	The CARIFORUM agreement nevertheless makes additional provisions, compared with the Central Africa economic partnership agreement, to ensure cooperation, notably by means of the exchange of information.

10. Agriculture

Contents

1. Scope and definitions
2. Objective
3. Regional integration
4. Enabling policies
5. Food security
6. Exchange of information and consultation
7. Traditional agricultural products
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9. Food aid
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13. Geographical indications
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Selected highlights

- » Provisions for exchange of agricultural information are made in the West Africa, East African Community and CARIFORUM economic partnership agreements. The West Africa agreement also identifies exchange of views for a “better understanding and monitoring of private standards in force in the European Union”.^{cc}
- » The CARIFORUM agreement includes an article with a commitment to undertake

consultations on trade policies that may affect the competitive positions of CARIFORUM States in traditional agricultural products (e.g., bananas, rum, rice and sugar) and a commitment by the European Union to maintain “significant preferential access” for these products for “as long as is feasible”.

^{dd}

- » All agreements include provisions for multilateral safeguards for agricultural goods, with an obligation to the European Union to exclude African, Caribbean and Pacific parties from any such measures. All African agreements also provide for the option of setting bilateral safeguards against surges in agricultural imports originating from the other party.
- » All agreements (apart from the Eastern and Southern Africa one) include a commitment to reduce agricultural export subsidies to various degrees of strength: no introduction of new subsidies or increase in existing subsidies, the European Union shall not grant export subsidies and the European Union will “refrain” from use of export subsidies and use of export subsidies on agricultural goods prohibited to both parties from the date of entry into force.

cc See West Africa agreement, art. 51 (2) (3).

dd See CARIFORUM agreement, art. 42 (2).

No.	Provision	Similarity	Differences
1.	Scope and definitions		A separate definitions section is only provided in the East African Community agreement.
2.	Objective	The shared stated objectives of the agricultural provisions include the promotion of sustainable development, food security, poverty reduction and employment creation. In addition, the provisions are aimed at enhancing the competitiveness of agricultural products in African, Caribbean and Pacific States. References are also made to increased value addition and general industrialization, and increased trade in agricultural production. The objectives contain a recognition of the environmental complexity and diversity in African, Caribbean and Pacific countries and a commitment to the promotion of sustainable use of natural resources. The objectives contain a recognition of the diversity among African, Caribbean and Pacific parties in terms of economic, social and environmental characteristics, developmental needs and strategies.	Objectives are not separately stated for the Central Africa and Eastern and Southern Africa agreements. The East African Community agreement also identifies capacity-building of small-scale farmers through farmers' organizations, and improvement of productivity enhancing infrastructure as separate objectives. It makes a reference to agriculture as a basis for sustainable development. A reference is made to the Millennium Development Goals in the West Africa agreement. It also contains a recognition of the need to support the implementation of its national and regional development strategies in connection with the cooperation outlined in the agreement. The East African Community agreement also contains a recognition of the need for supportive policies and regulation to build the capacity to respond to changing market conditions. The CARIFORUM and West Africa agreements: the key role of agriculture for food security and livelihoods is recognized, and the consequent need to avoid disruptions to the food and agricultural markets in the African, Caribbean and Pacific countries. The East African Community agreement contains calls for a regional framework on food and nutrition security and poverty reduction to ensure policy alignment with regional developmental priorities. In relation to areas of cooperation, the East African Community agreement also highlights the importance of the provision of adequate access to food, clean and safe drinking water, health facilities, educational opportunities, housing, community participation and social integration for the livelihood security of rural populations; the importance of agricultural infrastructure development, including production, processing, marketing and distribution, socioeconomic rural development and regional integration in East African Community States; that technical support services, such as agricultural research, extension and advisory services training, are important in increasing agricultural productivity; the importance of facilitating agricultural financing for transforming the agricultural sector in the East African Community partner States; and the importance of sustainable rural development to improve standards of living of the rural population of East African Community States.

No.	Provision	Similarity	Differences
3.	Regional integration	Regional integration of agricultural and food markets through the removal of barriers and the provision of an appropriate institutional framework are recognized to contribute to deepening regional integration and the expansion of regional markets.	The East African Community agreement also contains a recognition of the role of regional markets in attracting investment and private sector development. The West Africa agreement also contains the commitment of the parties to working together for the preparation and implementation of regional policies on agriculture and fisheries. Regional integration is not addressed in the context of agriculture in the Central Africa, Eastern and Southern Africa and SADC agreements.
4.	Enabling policies		The CARIFORUM and East African Community agreements make a reference to the need to adopt and carry out policies and institutional reforms to facilitate the achievement of the objectives of the agricultural provisions (in case of commitment by CARIFORUM States, recognition by parties in the East African Community agreement).
5.	Food security	Where addressed, the food security clauses allow for the African, Caribbean and Pacific States to take measures to ensure the availability of and access to basic food stuffs, if threatened by the implementation of the agreement.	The Eastern and Southern Africa agreement has no food security clause. The SADC and CARIFORUM agreements contain a recognition that agricultural, fisheries and food sectors may be affected by liberalization. Parties commit themselves to consulting one another on the matter. The SADC provision requires the revision of the safeguard measures at least annually, and removal once circumstances for adoption cease to exist. The East African Community agrees that the agreement should enable the partner States to “implement effective measures to achieve food and nutrition security and sustainable agricultural development, and to develop commercial agricultural markets in the region”^{ee} for food security. The parties also commit themselves to ensuring that the actions taken under the agricultural provisions will enhance food security and avoid the adoption of measures that endanger food security.

^{ee} See East African Community agreement, art. 64 (1).

No.	Provision	Similarity	Differences
6.	Exchange of information and consultation	The sharing of (agricultural) information and experiences is concentrated on: » Agricultural consumption, production and trade, and market developments; » Investment, including small scale (CARIFORUM and East African Community agreements); » Policies, laws and regulations; » Policies and institutional changes required for the transformation of the agricultural sector, and development of regional policies in agriculture and rural development; » New technologies.	Exchange of information is not addressed in the SADC, Central Africa and Eastern and Southern Africa agreements. The West Africa agreement also identifies exchange of views for a “better understanding and monitoring of private standards in force in the European Union”.^{ff}
7.	Traditional agricultural products		The CARIFORUM agreement includes an article with a commitment to undertake consultations on trade policies that may affect the competitive positions of CARIFORUM States in traditional agricultural products (including bananas, rum, rice and sugar). The European Community commits itself to making an effort to maintain “significant preferential access” for these products from CARIFORUM States for “as long as feasible”.^{gg}

^{ff} See West Africa agreement, art. 51 (2) (e).

^{gg} See CARIFORUM agreement, art. 42 (2).

No.	Provision	Similarity	Differences
8.	Cooperation (in agriculture)	The need to facilitate adjustment to the provisions of the agreement is addressed through the identification of areas of cooperation between the parties. Shared areas of cooperation include: » Promotion of competitiveness and diversification; » Export marketing capabilities (including market research). Technologies highlighted by the East African Community and West Africa agreements include: » Irrigation and fertigation; » Improved seed; » Post-harvest handling and storage and preservation; CARIFORUM and East African Community agreements: » Public-private investment and partnership in agricultural products. » Facilitation of complying with quality standards. East African Community and West Africa agreements: » Improvement in food security information systems, including early warning systems.	Not covered by the Eastern and Southern Africa and Central Africa economic partnership agreements. For SADC, the coverage and operational rules of cooperation are left undefined, but include food security, development, regional value chains and integration.^{hh} A provision is also included for cooperation not limited to agricultureⁱⁱ in supply-side competitiveness and the removal of supply-side constraints at national, institutional and company levels. This cooperation includes: » Production, technology development and innovation, marketing, financing, distribution, transport and diversification of economic base; » Development of the private sector, improvement in the trade and business environment and support for small and medium-sized enterprises in the fields of agriculture, fisheries, industry and services; Specifically, included in the CARIFORUM agreement are the following: » Process of dialogue for cooperation; » Promotion of private investment; East African Community agreement: » Tissue culture and micro-propagation; » Artificial insemination; » Integrated pest management; » Product packaging; » Accredited laboratories; » Biotechnologies; » Risk assessment and management. Reference is also made to cooperation in livelihood security, agricultural infrastructure, technical support services, agricultural financing services and rural development. West Africa agreement: » Environmentally friendly inputs; » Technological progress, innovation and diversification; » Integrating agricultural and farming systems; » Reinforcing role of the State as supporter of and adviser to the private sector; » Strengthening the agricultural sectors; » Managing tracks and roads for the collection and movement of agricultural goods; » Centralization of information on the regional availability of food; » Promoting contract farming with European Union partners, including for organic products; » Promoting land reforms for efficient agriculture and access to credit. The East African Community agreement includes provisions on the establishment of an East African Community-European Union comprehensive dialogue on agriculture and rural development policy to monitor the progress made in the implementation of the agricultural provisions and provide a forum for exchange. The East African Community and the European Union agree to have a regional strategy for enhancing supply capacities in agriculture.

No.	Provision	Similarity	Differences
9.	Food aid		West Africa agreement: the need for food aid in special situations of food scarcity is recognized. Food aid should not pose a threat to food security policies in the receiving States. Preference should be on triangular food aid arrangements. East African Community agreement: in addition to addressing constraints to food production, storage and distribution, the provisions contain a commitment to sourcing food aid from East African Community countries and other African regional economic communities, improve coordination and maintain an adequate level of food aid. The need to ensure that food aid does not result in commercial displacement is highlighted (food aid to be need-driven and in grant form, and not tied to commercial exports of goods).

hh See SADC agreement, art. 58.
ii Ibid., art. 13.

No.	Provision	Similarity	Differences
10.	Safeguards	All agreements state that, subject to the provisions of the multilateral safeguards article, nothing in the agreement shall prevent the parties from adopting measures in accordance with General Agreement on Tariffs and Trade 1994, article XIX, the Agreement on Safeguards, and article 5 of the Agreement on Agriculture annexed to the Agreement establishing WTO. Origin shall be determined in accordance with the non-preferential rules of origin of the parties. The European Community party shall exclude imports from any of the African, Caribbean and Pacific signatories from any measures taken pursuant to General Agreement on Tariffs and Trade 1994, article XIX, the WTO Agreement on Safeguards and the Agreement on Agriculture, article 4. All agreements, with the exception of the CARIFORUM one, state under "bilateral safeguards" that the use of safeguard measures of limited duration are allowed when a product originating in one party is being imported into the territory of the other party in such increased quantities and under such conditions as to cause or threaten to cause disturbances in the markets of like or directly competitive agricultural products or in the mechanisms regulating those markets.	Specific provisions on agricultural safeguards are included in the SADC agreement. Import duty can be applied if, during any 12-month period, the volume of imports into Southern African Customs Union of an agricultural product exceed pre-defined reference quantities; the duty cannot exceed 25 per cent of the WTO-bound tariff or 25 percentage points (whichever is higher); such duty cannot exceed most favoured nation; safeguard measures can be maintained for the remainder of the calendar year or five months (whichever is longer); and measures should not be applied at the same time as other safeguard measures. Southern African Customs Union shall notify the European Union of the implementation of such measures within 10 days after applying such measure. The measures and reference quantities may be reviewed by the Trade and Development Committee. Provisions can be applied only for 12 years from the date of entry into force of the agreement.

No.	Provision	Similarity	Differences
11.	European Union agricultural subsidies		The East African Community and West Africa agreements include provisions to ensure transparency in agricultural support relating to trade. The European Community party, in particular, is obliged to regularly report to the African, Caribbean and Pacific signatories on the legal basis, form and amount of such support.
12.	Agricultural export subsidies	All agreements, with the exception of the Eastern and Southern Africa one, include a commitment to address agricultural export subsidies to different levels of strengths.	Not included in the Eastern and Southern Africa agreement. No introduction of new subsidies or increase in existing subsidies on agricultural products destined for the territory of the other party and eventual phasing out (CARIFORUM and Central Africa agreements). The European Union shall not grant export subsidies from the date of entry into force. Prohibition is to be reviewed after 48 months and access issues examined by the Committee of Senior Officials regularly (East African Community agreement). The European Union will "refrain" from use of export subsidies (West Africa agreement). Use of export subsidies on agricultural goods prohibited to both parties from the date of entry into force (SADC agreement).
13.	Geographical indications		Covered by the SADC agreement. The parties recognize the importance of geographical indications and origin-linked products for sustainable agriculture and rural development. The parties agree that they may cooperate in geographical indication-related matters, in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights provisions. Also covered in the East African Community agreement, but without reference to the Trade-Related Aspects of Intellectual Property Rights agreement.
14.	Entry into force		The SADC agreement states that some agricultural market concessions and fisheries market access concessions will be applicable only once all members of the Southern African Customs Union have ratified or provisionally applied the agreement, and additional conditions have been met for agricultural products (regarding Protocol 3 on Geographical Indications and Trade in Wines and Spirits).
15.	Monitoring		The East African Community agreement states that the agreement Council shall review and monitor the implementation of the agreement.

11. Fisheries

Contents

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8. Training and support for participation in the fishing industry
9. Illegal, unreported and unregulated fishing

10. Inland fisheries

Selected highlights

- » The provisions on fisheries are relatively similar in the economic partnership agreements in which fisheries are addressed. No provisions of fisheries are included in the SADC and Central Africa agreements.
- » All agreements that include fisheries also address areas of cooperation between the European Union and the African, Caribbean and Pacific parties, where some minor differences exist.

No.	Provision	Similarity	Differences
1.	Scope	Cooperation in fisheries includes marine, inland fisheries and aquaculture. The parties recognize that fisheries are a key economic resource and can contribute to regional economic development, poverty reduction, food and foreign exchange. The parties agree to cooperate for the sustainable management of fisheries, recognizing the economic, environmental and social impacts. Value addition is identified as a strategy for economic growth.	Not included in the CARIFORUM, West Africa, SADC and Central Africa agreements.
2.	Principles of cooperation	Eastern and Southern Africa and East African Community agreements: supporting regional integration; preservation of the acquis of the Cotonou Agreement; provision of special and differential treatment; the need to take into account the best available scientific knowledge; a monitoring system of the impacts on the parties; conformity with existing national laws and relevant international instruments; and preservation of the specific needs of subsistence and artisanal fishing. The guiding principles should contribute to the sustainable and responsible development of marine and inland resources and optimize benefits through increased investment, capacity-building and improved market access. The Agreement also includes: commitment to cooperate to ensure that financial and other support will be provided to improve competitiveness and production capacity of the processing factories, the diversification of the fishing industry and development and improvement of port facilities in the East African Community partner States.	The CARIFORUM agreement outlines cooperation in the context of agriculture and fisheries. A specific fisheries provision highlights the improvement in the ability of CARIFORUM operators to comply with national, regional and international technical, health and quality standards.
3.	Objectives of cooperation	In the Eastern and Southern Africa agreement, the objectives are to promote sustainable development; promote regional and international trade based on best practices; create an enabling environment (including infrastructure and capacity-building) to cope with market requirements for industrial and small-scale fisheries; support national and regional policies aimed at increasing productivity and competitiveness; and build links with other sectors. Also covered in the East African Community agreement in the context of marine fisheries.	In the West Africa agreement, objectives are covered for agriculture and fisheries. Specifically for fishing, the agreement contains a recognition that conservation and sustainable management of fisheries are required, in addition to the need to maximize the contribution of fisheries to food security, employment, poverty reduction, income enhancement and social stability. The European Union also undertakes to help West Africa countries to develop an effective monitoring, control, surveillance system for fisheries.

No.	Provision	Similarity	Differences
4.	Fisheries cooperation		In the West Africa agreement, collaboration is suggested for the following areas: » Sustainable development of the fish resources of the West Africa region, including the precautionary principle, when determining the sustainable level of catches and defining the conditions for access to fish resources; » Improvement in the supply capacity and competitiveness of fishery products, including the European Union support for the region to meet the needs arising from the application of sanitary and phytosanitary measures and to develop the regional market for fishery products; » Promotion of investment and access to funding to increase productivity; » Sustainment of the management of small-scale fisheries and the preparation and implementation of aquaculture policy; » Improvement in the monitoring, control and surveillance of vessels; » Coordination of efforts to enhance the means for preventing, discouraging and eliminating illegal, unreported and unregulated fishing; » Establishment of a compatible vessel monitoring system for all of West Africa, together with other arrangements to ensure effective monitoring, control and surveillance policies; » Lightening of traceability and certification procedures and conditions for fishery products exported from the region to the market of the European Union; » Improvement in and reinforcement of fishery control, surveillance and monitoring; » Establishment of or improvement in protection measures for the sustainable management of resources (based on scientific recommendations and after having consulted the various interested parties, including the European Union); » Strengthening of scientific research into the state of fish resources in the West Africa region; » Improvement in and reinforcement of the information system and the system for processing fishery statistics, in particular migratory species; » Strengthening of cooperation in all areas of common interest with regard to fisheries.

No.	Provision	Similarity	Differences
5.	Marine fisheries: scope and objectives	The objectives for the Eastern and Southern Africa and East African Community agreements apply to the utilization, conservation and management of marine fisheries resources to optimize benefits through increased investment, capacity-building and improved market access. The objectives of the marine cooperation include strengthened cooperation for the sustainable exploitation of resources (given the straddling and migratory species shared by the East African Community and Eastern and Southern Africa countries and the limited resources for all East African Community and Eastern and Southern Africa countries to individually ensure sustainability); ensure a more equitable share of benefits derived from fisheries; ensure effective monitoring, control and surveillance necessary to combat illegal, unreported and unregulated fishing and promote effective exploitation; and conservation and management of the living marine resource in the exclusive economic zone and waters in which the State has jurisdiction.	In the development matrix of the Eastern and Southern Africa agreement, cooperation is listed to include fisheries management and conservation issues; vessel management; post-harvest arrangements and financial and trade measures; and the development of fisheries, fishery products and marine aquaculture. The European Community will support the mobilization of resources, financial and trade measures and infrastructure development specific to fisheries and marine aquaculture.
6.	Marine fisheries: management and conservation issues	The East African Community agreement provides for a precautionary approach to be applied in determining levels of sustainable catch, fishing capacity and other management strategies. Seasonal and gear restrictions can be applied to protect territorial waters and ensure the sustainability of artisanal and coastal fisheries. The agreement promotes membership to the Indian Ocean Tuna Commission and other relevant fisheries organizations. Coordinated action will be taken to manage and conserve all fish species, including tuna. In case limits for sustainable catch cannot be determined owing to a lack of scientific evidence, such scientific analysis should be supported by parties. Appropriate measures are to be taken when sustainable catch levels are reached. Parties are responsible for the compliance by vessels flying their flags with relevant national, regional and subregional fisheries management measures and related national laws and regulations. The Eastern and Southern Africa agreement contains the same provisions under fisheries cooperation.	

No.	Provision	Similarity	Differences
7.	Marine fisheries: vessel management and post-harvest arrangements	The provisions set out the minimum terms and conditions on monitoring, control and surveillance of European Union fishing vessels in the African, Caribbean and Pacific territory: » A compatible vessel monitoring system. The European Union will assist in setting this up in countries where such a compatible system is not in place. » Other mechanisms for effective monitoring, control and surveillance will be set up and implemented with the support of the European Union. » The European Union and African, Caribbean and Pacific partner States shall have the right to place observers paid by national Governments. The European Union shall support the costs of training observers. » Common systems of reporting of fishing with minimum terms will be developed and implemented. » Landing or transshipping catch should happen in ports or outer-port areas. Transshipment at sea is allowed only in specific conditions foreseen by the relevant regional fisheries management organization. The parties shall cooperate to develop and modernize landing or transshipment infrastructure in ports. » Discards reporting shall be compulsory. Selective fishing methods should be used to avoid discards. The Eastern and Southern Africa agreement contains the same provisions under fisheries cooperation.	An additional provision is made in the Eastern and Southern Africa agreement encouraging vessels to use the facilities of the Eastern and Southern Africa States and make use of local suppliers where possible.
8.	Training and support to participation in fishing industry	The parties agree to cooperate in developing and implementing national and regional training programmes for African, Caribbean and Pacific nationals. Where the European Union has negotiated a bilateral fisheries agreement, employment of African, Caribbean and Pacific nationals shall be encouraged. The ILO Declaration on Fundamental Principles and Rights at Work shall apply as to the rights of seamen signed on European vessels. The Eastern and Southern Africa agreement contains the same provisions under fisheries cooperation.	

No.	Provision	Similarity	Differences
9.	Illegal, unreported and unregulated fishing	The parties shall undertake coordinated efforts to improve the means for preventing, deterring and eliminating illegal, unreported and unregulated fishing, and to this end, take appropriate measures. Fishing vessels involved in such types of fishing should be confiscated and the owners prosecuted by the competent authorities. They should not be allowed to fish again, except with exceptional prior authorization obtained from both the flag State and the East African Community partner State concerned and, where relevant, the regional fisheries management organization concerned. The Eastern and Southern Africa agreement contains the same provisions under fisheries cooperation.	
10.	Inland fisheries	Inland fisheries are addressed in the East African Community and Eastern and Southern Africa agreements. The scope of the provisions is inland fisheries, coastal and aquaculture, covering capacity-building, technology transfer, sanitary and phytosanitary standards, investment and investment finance, environmental protection, and legal and regulatory frameworks. The objectives of cooperation in inland fisheries and aquaculture development will be to promote the sustainable exploitation of inland fisheries resources, enhance aquaculture production, remove supply-side constraints, improve fish and fish products quality to meet international sanitary and phytosanitary measures, improve access to the market of the European Union, address intra-regional trade barriers, attract capital inflows and investment into the sector, build capacity and enhance access to financial support for the private investors for inland fisheries and aquaculture development.	For the Eastern and Southern Africa agreement, the European Union will contribute to capacity-building and export market development (processing and diversification, research and development, managing export market chains, competent authorities and traders' unions); infrastructure (including funding for infrastructure); technology (legal and regulatory, including intellectual property rights, investment and finance, and socioeconomic and poverty alleviation measures). Both parties will contribute to measures to ensure environmental conservation and safeguards against stocks depletion.

12. Disputes settlement

Contents

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Selected highlights

- » The provisions on dispute settlement are largely similar.
- » The East African Community economic partnership agreement provides, in most cases, shorter deadlines for the various steps of the dispute settlement process, including the implementation of temporary remedies in the case of non-compliance with the panel ruling.
- » In the case of the West Africa agreement, several provisions are included to take into account the specific challenges of the subregion. For example, the West Africa

agreement includes provision for the parties to cooperate (including financially) with regard to legal aid and building the capacity of West Africa States to use the dispute settlement mechanism provided. The agreement also includes a transitional period of 10 years following entry into force, during which time the European Union will give full preference to consultation and mediation as ways to settle disputes and will “show moderation in its demands”.

- » In the case of the SADC agreement, if the European Union is the party subject to complaint, and if it fails to comply with the arbitration panel ruling, the European Union can consider providing financial compensation in case SADC asserts that the adoption of appropriate temporary remedy measures would cause significant damage to its economy.
- » Provisions on working language may have cost implications, which hinder the use of the dispute settlement functions by the parties. Regarding the Central Africa, SADC, CARIFORUM and East African Community agreements, the European Union can submit in any of its 24 official languages. Regarding the Central Africa agreement, African, Caribbean and Pacific countries are limited to submission in English or French. Regarding the SADC agreement, provisions are included for the European Union to “take into account” the cost of translation for SADC States when agreeing on a working language. Regarding the West Africa agreement, the working languages are English, French and Portuguese. All written or oral submissions by both parties must be in one of the three languages.

No.	Provision	Similarity	Differences
1.	Objectives and scope	The objective of the dispute settlement provisions is to avoid and settle any dispute between parties, with a view to arriving at a mutually agreed solution. The provision can be applied to any dispute concerning the interpretation and application of the economic partnership agreement. The provisions of the Cotonou Agreement will be applied in cases of disputes concerning development finance.	Objectives and scope not provided in the Eastern and Southern Africa agreement. The East African Community agreement does not make a reference to development finance disputes. The West Africa agreement also includes a provision stating that the European Union and its member States are considered to be a single party in the dispute settlements, and ECOWAS, the West African Economic and Monetary Union and all the West Africa States (including Mauritania) are considered to be one party.
2.	Consultations	The parties seek to solve all disputes by entering into consultations. Consultations are initiated by informing the other party and the relevant agreement committee in writing, identifying the measure in question and the provisions of the agreement with which it is not in conformity. Consultations will be held within 40 days and will be considered concluded within 60 days of the request, unless the parties agree to continue consultations. All information remains confidential. In case of urgency (e.g., perishable goods), the consultations will be held within 15 days and will be concluded within 30 days of the start of the process. If the consultations are not held within the specified time frames or if consultations do not reach a mutually agreed solution, the complaining party can initiate the settlement of the dispute by an arbitration panel.	The time frames specified by the East African Community agreement are shorter. Consultations are to be held within 20 days. It is also specified that arbitration can be initiated if the party to which request is made for consultations does not respond within 10 days. Time frames can be adjusted if required by the complexity of the case. The West Africa agreement states that the European Union shall, at all stages of the dispute settlement, devote special attention to the situation and specific concerns of the West Africa States and region. Either party can seek to enter arbitration. The CARIFORUM agreement states that disputes will not be brought on the interpretation and application of the chapters on environment and social matters, unless the consultation processes specified in those chapters have been exhausted.
3.	Mediation	If consultations fail to produce a mutually agreeable solution, parties may (by agreement) refer to a mediator. If parties cannot agree on a mediator within 15 days, the agreement committee may choose a mediator, who is not a national of either country, from a pre-approved list of arbitrators. The selection is made within 25 days of the request for mediation and in the presence of representatives of both parties. A meeting will be convened by the mediator no later than 30 days after being selected. The mediator shall receive submissions from both parties no later than 15 days before meeting, and notify of opinion no later than 45 days after having been selected. The mediator's opinion may include a non-binding recommendation on how to resolve the dispute. Time limits can be amended in consultation with both parties or by mediator's initiative in complex cases. Proceedings and all information shared during mediation remains confidential.	Mediation is not covered by the Eastern and Southern Africa agreement. The East African Community agreement specifies that parties can proceed directly to arbitration without the need to go through the mediation process. In the West Africa agreement, the selection of a mediator is to be carried out within 20 days.

No.	Provision	Similarity	Differences
4.	Initiation of the arbitration	The complaining party can request the establishment of an arbitration panel if the parties have failed to resolve the conflict through mediation or consultation. The request will be made in writing to the other party and relevant agreement committee, identifying the measure in question and the provisions of the agreement that it is not in conformity with. The arbitration panel shall consist of three arbitrators. Parties shall consult each other to reach an agreement on the composition of the panel within 10 days (CARIFORUM, East African Community, West Africa and Central Africa agreements). Should the parties be unable to reach an agreement, either party can request the Chair of the agreement committee to appoint the arbitrators by lot from a pre-defined list (one from the list provided by each party and one from the list of chairs). Where parties agree on one or more arbitrators, this process is used for the remaining members of the panel. Each party will appoint an arbitrator within 10 days. The two arbitrators will appoint the third panel member within 20 days, who will act as Chair (SADC and Eastern and Southern Africa agreements). For the East African Community agreement, the same process is adopted if parties cannot agree within 10 days. Selection is made from the pre-defined list within five days by the parties and the Chair chosen by the selected arbitrators within five days. For the East African Community agreement, if the process fails, the chair is appointed by the agreement committee by lot within 5 days from the pre-defined list. For the SADC agreement, if the panel is not appointed within 20 days, or if, within 10 days of appointment of the third arbitrator, either party submits a written objection, the agreement committee can be requested to make the selection by lot from the pre-defined lists. Selection by the representative of the agreement committee will be done in the presence of representatives from both parties. The date of establishment of the panel is the date on which the three arbitrators are selected.	Under the Eastern and Southern Africa agreement, each party has to suggest an arbitrator within 30 days. The two selected panel members choose the third within 30 days, the Secretary-General of the Permanent Court of Arbitration can make the selection in case the process fails. For the East African Community agreement, the date of establishment is when all three arbitrators have been selected and have accepted the appointment. For the West Africa agreement, failure to send a representative does not affect the validity of the selection. For the CARIFORUM agreement, in the event the provision is used for disputes on interpretation and application of the chapters on environment and social matters, the panel shall comprise of at least two members with specific expertise on the matters covered by these chapters drawn from a pre-defined list of 15 persons.

No.	Provision	Similarity	Differences
5.	Interim panel report	The panel will provide an interim report within 120 days from the date of establishment. The interim report will include a descriptive section, findings and conclusions. Written comments can be submitted by either party within 15 days.	Not covered in the Eastern and Southern Africa agreement. For the SADC agreement, in case of urgency, the time limit is reduced to 60 days. For the East African Community agreement, in case of urgency, the time limit is reduced to 30 days, and in any case no later than 45 days. Written comments have to be submitted within seven days. The report will be submitted within 90 days as a general rule. Where the deadline cannot be met, the panel must notify the parties. Under no circumstances should the report be submitted later than 120 days. The final ruling should include discussion of arguments made at the interim review stage and answer to the questions and observations by parties.
6.	Arbitration panel ruling	The arbitration panel must notify the parties of its ruling within 150 days from the date of establishment. Where the deadline cannot be met, a written explanation must be provided, as well as the date on which the panel can conclude its work. Under no circumstances should the final ruling come later than 180 days from the date of establishment of the panel. In case of urgency, the ruling shall be made within 75 days and under no circumstances later than 90 days after the establishment of the panel. The panel may give a preliminary ruling within 10 days on whether it deems the case to be urgent. Either party can request the panel to provide recommendations on how the party complained against could bring itself to compliance.	For the East African Community agreement, there is the time limit of notification of rulings of 120 days. It can, however, be justifiably extended to 150 days, in case the 120-day deadline cannot be met. In case of urgency, a ruling should be provided within 60 days. The panel shall rule whether the case is urgent as soon as possible and no later than seven days from its establishment. The arbitration panel shall provide recommendations on how the party complained against could bring itself to compliance. For the SADC agreement, in case of urgency, the time limit is 90 days (no reference to 75 days). For the Eastern and Southern Africa agreement, unless decided otherwise by the arbitrators, the procedure applied shall be laid down in the optional arbitration regulation of the Permanent Court of Arbitration for International Organizations and States. The arbitrators shall take a decision by majority vote within 90 days; and, in matters of urgency, should endeavour to take a decision within 60 days.

No.	Provision	Similarity	Differences
7.	Compliance	Each party shall take any measures necessary to comply with the panel ruling. The parties seek to agree on a reasonable time for compliance. Within 30 days of the ruling, the party complained against will notify the committee and the complaining party of the time it will require for compliance. If there is disagreement between the parties, the complaining party shall, within 20 days of the notification, request the arbitration panel to determine the length of reasonable amount of time. The arbitration panel shall rule on a reasonable period of time within 30 days of the request, taking into consideration the length of time that it will normally take the party complained against to adopt comparable legislative or administrative measures to those identified by such party as being necessary to ensure compliance. The arbitration panel shall also take into consideration demonstrable capacity constraints, which may affect the adoption of the necessary measures. If the original arbitration panel or some of its members are unable to reconvene, the procedures of establishing an arbitration panel (as outlined earlier) apply. The time limit for notifying the ruling shall be 45 days from the date of the submission of the request. The reasonable period of time may be extended by agreement of the parties.	For the Eastern and Southern Africa agreement, each party shall take any measures necessary to comply with the panel ruling. No reference to timing. For the East African Community agreement, where immediate compliance is not possible, the time limit for notification of the time needed for compliance with the ruling is 21 days. For the SADC agreement, the complaining party has 30 days to make a request to the arbitration panel on the reasonable period of time.

No.	Provision	Similarity	Differences
8.	Review of measures taken for compliance	The party complained against shall notify the other party and the agreement committee before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling. In case of a disagreement on compliance, 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 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, the ruling shall be carried out within 45 days. If the original arbitration panel or some of its members are unable to reconvene, the procedures of establishing an arbitration panel (as outlined earlier) apply. The time limit for notifying the ruling shall be 105 days from the date of the submission of the request.	For the East African Community agreement, either party can request arbitration panel intervention. The panel will provide its ruling in 45 days and, in case of urgency, 30 days. If the original arbitration panel or some of its members are unable to reconvene in 15 days, the procedures of establishing an arbitration panel (as outlined earlier) apply. The time limit for notifying the ruling shall be 80 days from the date of the submission of the request. Not covered by the Eastern and Southern Africa agreement.

No.	Provision	Similarity	Differences
9.	Temporary remedies in case of non-compliance	If the party concerned fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time or the measures are judged not compatible by the arbitration panel, the party complained against shall, if so requested by the complaining party, present an offer for compensation (which does not need to be financial). If no agreement on compensation is reached within 30 days, the complaining party may, upon notification to the other party, adopt appropriate measures. In adopting such measures, the complaining party shall endeavour to select measures that least affect the attainment of the objectives of the agreement and take into consideration the impact on the economy of the party complained against. For the CARIFORUM and East African Community, the European Community party shall select measures that are specifically aimed at bringing into compliance the party complained against. The European Community party shall exercise due restraint in asking for compensation or adopting appropriate measures. Compensation or appropriate measures shall be temporary and applied only until the disputed measure has been withdrawn or amended for compliance, or until the parties have agreed to settle the dispute. The party complained against shall notify of the measure that it has taken to comply with the ruling of the arbitration panel to request ending of the temporary measures. If there is no agreement on the suitability of the measures within 30 days, the complaining party can ask for the arbitration panel to rule on the matter. The arbitration panel must provide a ruling within 45 days. If the party complained against is considered to be complying, the temporary measures against that party must be terminated. If not compliant, the panel shall decide whether the complaining party can continue to apply the appropriate measures. Should the original panel not be available, the process for establishment of panel will be followed. A ruling will be provided within 60 days. Procedures can also be terminated if the parties find a mutually agreed solution.	Not covered by the Eastern and Southern Africa agreement. For the East African Community agreement, the complaining party may, upon notification to the other party, adopt appropriate measures without the need to wait for 30 days. At any time after the expiration of the reasonable period of time, the complaining party can request the party complained against to provide an offer for temporary compensation, and they shall provide an offer. If a mutually agreed solution is found, the procedures can be suspended while appropriate domestic processes are applied (upon notification of the necessary processes). Under the CARIFORUM agreement, the other CARIFORUM States shall facilitate the adoption of measures to comply with the arbitration panel ruling by the CARIFORUM State or States found to be in breach. In cases involving a dispute under the chapters on environment or social matters, appropriate measures shall not include the suspension of trade concessions under the agreement. The complaining party may adopt the appropriate measures 10 days after the date of the notification. For the SADC agreement, if the European Union is the party complained against, and fails to comply with the arbitration panel ruling, the European Union can consider providing financial compensation in case the complaining party asserts that the adoption of appropriate measures would cause significant damage to its economy. Appropriate measures refer to measures similar to those available under Understanding on Rules and Procedures Governing the Settlement of Disputes contained in annex 2 of the WTO Agreement. For the West Africa agreement, the temporary measures adopted should not affect the provision of development aid for the West Africa region.

No.	Provision	Similarity	Differences
10.	Rules of procedure	Dispute settlement procedures will be governed by the rules of procedure adopted by the agreement council or committee. 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. For the SADC and Central Africa agreements, provisions are made for the cases when the arbitration panel deals with confidential information (e.g., behind closed doors).	Not covered by the Eastern and Southern Africa agreement. Rules of procedure must be adopted within: - Three months of the provisional application of the agreement (CARIFORUM agreement). - Six months of entry into force of the agreement (East African Community). - Three months of the setting up of the Joint Implementation Committee of the agreement (West Africa). 12 months of the entry into force of the agreement (SADC). Confidentiality of meetings is not addressed in the East African Community and West Africa agreements.
11.	Information and technical service	The arbitration panel may obtain information from any source, including the parties involved in the dispute and relevant experts, that it deems appropriate for the arbitration panel proceeding. Interested parties are authorized to submit amicus curiae briefs to the arbitration panel in accordance with the rules of procedure. Any information obtained in this manner must be disclosed to each of the parties and submitted for their comments.	Not covered by the Eastern and Southern Africa agreement.
12.	Languages	For the CARIFORUM, East African Community and SADC agreements, the written and oral submissions of the parties shall be made in any official languages of the parties. The parties will agree on a common working language. If the parties are unable to agree on a common working language, each party shall arrange for and bear the costs of the translation of its written submissions and interpretation at the hearings into the language chosen by the party complained against, unless such language is an official language of that party.	Not covered by the Eastern and Southern Africa agreement. For West Africa, working languages are English, French and Portuguese. All written or oral submission has to be in one of the three languages. For the Central Africa agreement, submissions must be in English or French. The European Union can submit in any of its official languages. For SADC, the European Union shall take into account the cost of the arrangements for SADC when agreeing on a working language.
13.	Rules of interpretation	Arbitration panels shall interpret the provisions of the agreement in accordance with customary rules of interpretation of public international law, including those set out in the Vienna Convention on the Law of Treaties. The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided in the provisions of the agreement.	Not covered by the Eastern and Southern Africa agreement.

No.	Provision	Similarity	Differences
14.	Arbitration panel rulings	The arbitration panel will make any effort to rule by consensus. If consensus cannot be achieved, decision is taken through majority voting. The ruling shall set out the findings of fact, the applicability of the relevant provisions of the Agreement and the reasoning behind any findings and conclusions that it makes. The ruling is public, unless otherwise decided by the agreement committee.	Not covered by the Eastern and Southern Africa agreement. For the CARIFORUM and Central Africa agreements, dissenting opinions of the panel are not published. For the East African Community agreement, the panel ruling is final and binding, and made publicly available. For the West Africa agreement, 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 the agreement if it has been invoked by either of the parties. The measures taken to comply with the ruling of the arbitration panel shall apply specifically to the State or States whose measures have been ruled to be contrary to the agreement. Consequently, no State may be made subject to a penalty if no fault can be attached to it for failure to meet an obligation arising from the agreement.
15.	Transitional period		The West Africa agreement includes a transitional period of 10 years following entry into force during which the European Union will give full preference to consultation and mediation as ways to settle disputes, and will show moderation in its demands.

No.	Provision	Similarity	Differences
16.	List of arbitrators	A list is established 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 who are not nationals of either party and who shall act as Chair of the arbitration panel. The agreement committee is responsible for ensuring that the list is always maintained at this level. Arbitrators shall have specialized knowledge of or experience in law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organization 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. The CARIFORUM-European Community Trade and Development Committee may establish an additional list of 15 individuals having a sectoral expertise in specific matters covered by the economic partnership agreement. When recourse is made to the selection procedure of article 207, the Chair of the CARIFORUM-European Community Trade and Development Committee may use such a sectoral list upon agreement of both parties. The Committee shall establish an additional list of 15 individuals with expertise in the specific matters covered by chapters 4 and 5 of title IV. Arbitrators shall have specialized knowledge of and experience in law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organization 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. For the CARIFORUM, SADC and Central Africa agreements, an additional list can be established of 15 individuals with sectoral expertise in specific matters covered by the agreement. When selection of arbitration panel is made, the Chair of the agreement committee may use such a sectoral list upon the agreement of both parties.	Not covered by the Eastern and Southern Africa agreement. The list shall be established within: - Three months of provisional application of the agreement (CARIFORUM). - Six months of entry into force of the agreement (East African Community). - Three months of the setting up of the joint implementation committee of the agreement (West Africa). - Three months of entry into force of the agreement (SADC). - Six months of entry into force of the agreement (Central Africa). For West Africa, the different specialism of international trade and economic and trade partnerships between the two regions are represented. For SADC, the list consists of 21 individuals, of which each party selects 8. The two parties shall also agree on five individuals who are not nationals of either party and who shall act as Chair of the arbitration panel. For the East African Community, in case any of the sublists have not been established at the time of entering into arbitration, the arbitrators shall be drawn by lot from the individuals who have been formally proposed for the relevant sublist by one or both of the parties. If only one party has proposed names, the three arbitrators shall be drawn by lot from among those names. In case there is no list of arbitrators or names of arbitrators proposed, the party initiating the process of arbitration shall request the Secretary-General of the Permanent Court of Arbitration to act as the appointing authority. For the CARIFORUM agreement, an additional list of 15 individuals with expertise in the specific matters covered by the chapters on environment and social matters can also be established.

No.	Provision	Similarity	Differences
17.	Relationship with WTO obligations	The arbitration bodies set up under agreements shall not adjudicate disputes on rights and obligations under the WTO Agreement. Recourse to the dispute settlement provisions of the agreement shall be without prejudice to any action in the WTO framework, including dispute settlement action. Parties can only institute a dispute settlement procedure on the same measure in one of the forums at a time. When procedures are concluded, they can institute a dispute settlement on the other. Dispute settlement proceedings under the WTO Agreement are deemed to be initiated after a request for the establishment of a panel under the Understanding on Rules and Procedures Governing the Settlement of Disputes of WTO, article 6. Nothing in the agreements shall prevent the implementation of the suspension of obligations authorized by the Dispute Settlement Body of WTO. Nothing in the WTO Agreement shall prevent parties from suspending benefits under the agreements.	Not covered by the Eastern and Southern Africa agreement. For the East African Community agreement, in addition, a party shall not seek redress for the breach of an obligation that is identical under the agreement and under the WTO Agreement in the two forums. In such case, once a dispute settlement proceeding has been initiated, the party shall not bring a claim seeking redress for the breach of the identical obligation under the other agreement to the other forum, unless the forum selected fails, for procedural or jurisdictional reasons, to make findings on the claim seeking redress of that obligation. A party may, with regard to a specific measure, institute a dispute settlement proceeding, either under the agreement or under the WTO Agreement: - Dispute settlement proceedings under the agreement are deemed to be initiated by a party's request for the establishment of an arbitration panel and are deemed to be ended when the arbitration panel notifies its ruling to the parties and to the Committee of Senior Officials or where a mutually agreed solution has been reached; - Dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a party's request for the establishment of a panel under the Understanding on Rules and Procedures Governing the Settlement of Disputes of WTO, article 6, and are deemed to be ended when the Dispute Settlement Body adopts the Panel's report, and the Appellate Body's report as the case may be.
18.	Time limits	Time limits are counted in calendar days from the day following the act or fact to which they refer. Time limits can be extended if agreed on by both parties.	Not covered by the Eastern and Southern Africa agreement. For the West Africa agreement, if the last day is a non-working day, the time limit will fall on the next working day.
19.	Cooperation		The West Africa agreement includes provision for the parties to cooperate (including financially) with regard to legal aid and building the capacity of West Africa States to use the dispute settlement mechanism provided.

13. Exceptions

Contents

1. General exceptions
2. Security exceptions
3. Taxation
4. Balance of payment difficulties

Selected highlights

- » Special attention is given to the protection of personal data, which explicitly features

as a matter of exception in a specific number of economic partnership agreements.

- » Security exceptions provide in some agreements for an additional case relating to the supply of military establishments.

No.	Provision	Similarity	Differences
1.	General exceptions	All economic partnership agreements take the General Agreement on Tariffs and Trade, article XX, as a basis regarding general exceptions; the East African Community and SADC agreements notably have provisions identical to General Agreement provisions.	The CARIFORUM, West Africa, Central Africa and Eastern and Southern Africa agreements notably add on the issue of personal data protection to the non-exhaustive list of General Agreement on Tariffs and Trade, article XX (d). On the other hand, the matter of the enforcement of monopolies operated under the General Agreement, article II, paragraph 4, and article XVII has been removed from the non-exhaustive list of exceptions, which are necessary to secure compliance with laws or regulations that are not inconsistent with the provisions of this agreement. The CARIFORUM and Central Africa agreements have also replaced the provisions for the exception for measures that are inconsistent with the articles of this agreement on national treatment, provided that the difference in treatment is intended to ensure the effective or equitable imposition or collection of direct taxes in respect of the economic activities of investors or of service providers, in place of measures essential to the acquisition or distribution of products in general or local short supply.
2.	Security exceptions	Similar to the general exceptions, all agreements provide for similar provisions to the General Agreement on Tariffs and Trade, article XXI.	The CARIFORUM, East African Community, Central Africa and Eastern and Southern Africa agreements also include a supplementary provision for economic activities that relate directly or indirectly to the supplying or provisioning of a military establishment.
3.	Taxation	The provisions provide the policy space to parties to apply their fiscal legislation with regard to the domiciliation of the taxpayer and its capital; prevention of tax avoidance or evasion, pursuant to double taxation avoidance agreements or other tax arrangements; and avoid any impediments affecting the rights and obligations under other tax conventions.	
4.	Balance of payment difficulties		The East African Community, West Africa and SADC agreements provide for the adoption of restrictive measures for a limited duration in case of serious balance of payment difficulties, in accordance with WTO and the International Monetary Fund agreement provisions. The East African Community and West Africa agreements complement the provisions with some procedural guidelines.

14. Institutional provisions

Contents

1. Scope and definitions
2. Joint council
3. Joint council composition and rules of procedure
4. Joint council decision-making powers
5. Implementation committee
6. Parliamentary committee
7. Consultative committee
8. Financing of institutional structures

Selected highlights

- » All economic partnership agreements, excluding the Central Africa and Eastern and Southern Africa economic partnership agreements, set up a ministerial level joint council (with varying names). The joint council is responsible for the operation and implementation of the agreement. They also set up an implementation committee, which acts at the senior official level.
- » For the Central Africa and Eastern and Southern Africa agreements, there is no separate joint council and implementation committee. The level of representation is left open. In the rules of procedure, it is stated that representation can be at either the ministerial or senior official level.
- » For the CARIFORUM, East African Community and West Africa agreements, a consultative committee is included, which allows for participation by a wider range of stakeholders (e.g., private sector and civil society).
- » For the CARIFORUM and West Africa agreements, a parliamentary committee is also included.
- » An additional provision is included in the West Africa agreement that deals with the financing of the institutional framework.

No.	Provision	Common features	Differences
1.	Scope and definitions	Included in the East African Community and West Africa agreements. An institutional framework is set up for the supervision and implementation of the agreement (West Africa), and facilitation of the achievement of the objectives of the agreement (East African Community). The framework includes: a (joint) council; a committee of senior officials or implementation committee; a parliamentary committee (West Africa agreement only); and a consultative committee.	Not included in CARIFORUM, SADC, Central Africa and Eastern and Southern Africa agreements.
2.	Joint council	The joint council is set to be responsible for: » Operation and implementation of the agreement. » Examination of any major issues arising under the framework of the agreement (not in the Central Africa or Eastern and Southern Africa agreement). » Examination of proposals and recommendations from the parties for the review of the agreement (not in the Central Africa or Eastern and Southern Africa agreement). For the CARIFORUM, East African Community, West Africa and SADC agreements, the council meets at a ministerial level regularly, and not exceeding a period of two years.	For the Central Africa agreement, the parties agree on the composition, organization and functioning of the committee. An agreement committee is to be set up within three months of the signature of the agreement (for other agreements, effective immediately).
3.	Joint council composition and rules of procedure	The council will be composed of the members of the Council of the European Union, members of the European Commission and the representatives of the Governments of the signatory African, Caribbean and Pacific States. When African, Caribbean and Pacific members are acting collectively, they will mandate one of their representatives to act on their behalf (CARIFORUM). The SADC agreement also specifies that, when the Southern African Customs Union is acting collectively, it will be treated accordingly, and when member States are acting independently, they will be dealt with accordingly when applying provisions. The council establishes its own rules and procedures. The council will be chaired in turn by a representative of the European Union and a representative of the African, Caribbean and Pacific country (West Africa and CARIFORUM agreements). Periodic reports will be provided to the council of ministers (CARIFORUM, West Africa and SADC agreements). Members of the council may arrange to be represented (CARIFORUM and West Africa agreements).	For the East African Community, the composition of the council is not specified. The rules of procedure are to be established within six months. The agreement council is co-chaired by the representatives of the two parties. For Eastern and Southern Africa, rules of procedure are to be established within three months. Composition of the representation by each party will be determined by them (East African Community agreement). First meeting of the council is co-chaired (SADC agreement). Not covered by the Central Africa agreement. Additional functions listed under the SADC agreement: » Monitor the development of economic and trade relations between the parties; » Monitor and assess the impact of the cooperation provisions of the agreement on sustainable development; » Monitor and review progress on all matters covered by the agreement; » Establish own rules of procedure; » Establish the rules of procedure of the Trade and Development Committee; » Monitor the work of the Trade and Development Committee; » Perform any other duties under the agreement. For the Central Africa agreement, both parties nominate focal points to facilitate communication.

No.	Provision	Common features	Differences
4.	Joint council decision-making powers	The council has the power to take decisions with respect to all matters covered by the agreement. Decisions made are binding and member States shall take all measures necessary to implement them. The joint council will adopt decisions and recommendations by mutual decision. For the CARIFORUM and East African Community agreements, for matters in which the African, Caribbean and Pacific State acts individually, the agreement of that partner State is required. The council can also make recommendations (CARIFORUM and West Africa agreements). Decisions made by consensus (SADC and Central Africa agreements).	The council also has the power to adopt recommendations by the implementation committee (Committee of Senior Officials) (East African Community agreement). For the East African Community agreement, the council will establish and adopt within six months after entry into force the rules of procedure required for the establishment of the arbitration panel. Not included in the Eastern and Southern Africa and Central Africa agreements.

No.	Provision	Common features	Differences
5.	Implementation committee	The implementation committee assists the council and is composed of senior official representatives of the parties. When acting collectively, the member States appoint one of their representatives to act on their behalf. The joint council will establish the rules and procedures for the committee (CARIFORUM and West Africa agreements). The committee will be chaired alternately by a representative of each of the parties for a period of one year (CARIFORUM, West Africa and SADC agreements). It shall report (annually) to the council (CARIFORUM, West Africa and SADC agreements). In the area of trade, the committee will be responsible for: » Facilitating and supervising the implementation of the provisions of the agreement. » Considering and recommending cooperation priorities to the council. » Making recommendations to the council to avoid potential conflicts in areas covered by the agreement. » Carrying out any other function assigned to it by the council. » Monitoring the development of regional integration and of economic and trade relations between the parties. » Discussing and undertaking actions that may facilitate trade, investment and business opportunities between the parties. » Discussing any matters under the agreement and any issue that may affect the attainment of its objectives. In the area of development cooperation, the committee will be responsible for: » Monitoring the implementation of the cooperation provisions laid down in the agreement and coordinate such action with third-party donors. » Making recommendations on trade-related cooperation between the parties. » Keeping under periodic review the cooperation priorities set out in the agreement, and making recommendations on the inclusion of new priorities, as appropriate. » Reviewing and discussing cooperation issues pertaining to regional integration and implementation of the agreement. » Monitoring and assessing the impact of the implementation of the agreement on the sustainable development of the parties.	Not included in the Eastern and Southern Africa and Central Africa agreements. Any member State or party (CARIFORUM agreement) – either party (West Africa agreement) – can bring to the attention of the committee any issue relating to the application of the agreement. For the East African Community agreement, subject to instructions by the joint council, the committee meets at least once annually and whenever circumstances require, including preceding council meetings. The committee is co-chaired by representatives of both parties. The committee will determine its own rules and procedures within three months of entry into force of the agreement. For the SADC agreement, the first meeting is co-chaired. The interval of reports is not specified. For the CARIFORUM agreement, the committee meets at any time agreed by the parties. The implementation of the role of the committee also includes monitoring and evaluating the implementation of the decisions of the joint council (SADC agreement).

No.	Provision	Common features	Differences
5., cont.		The committee shall: » Set up and oversee special committees or bodies when required, and determine their composition and duties and rules of procedure. The committee shall hold specific working sessions for this purpose. » Assist the council in the performance of its functions regarding development cooperation-related matters falling under the agreement (CARIFORUM, East African Community and West Africa agreements). » Oversee further elaboration of provisions and evaluate the results obtained in its application (CARIFORUM and West Africa agreements). » Take decisions where power has been delegated to it by the council (East African Community and SADC agreements). » Consider any issues under the agreement and take appropriate action in the exercise of its functions (CARIFORUM, East African Community and West Africa economic partnership agreements). » Shall meet, in general, once annually for overall review of implementation of the agreement, in each of the regions in turn (CARIFORUM and West Africa agreements).	
6.	Parliamentary committee	The parliamentary committee is established as a forum for members of the European Parliament and the African, Caribbean and Pacific States legislatures to meet and exchange views. It shall meet at intervals, which it shall itself determine, and it shall cooperate with the Joint Parliamentary Assembly provided for in the Cotonou Agreement, article 17. The parliamentary committee shall consist of members of the European Parliament, on the one hand, and members of African, Caribbean and Pacific States legislatures, on the other. Representatives of the parties may attend the meetings of the parliamentary committee. The parliamentary committee shall establish its rules of procedure and inform the council thereof. The parliamentary committee is chaired in turn by a representative of the European Parliament and a representative of an African, Caribbean and Pacific State legislature. The parliamentary committee may request of the council relevant information regarding the implementation of the agreement, and the council shall supply the requested information. The parliamentary committee shall be informed of the decisions and recommendations of the council. The parliamentary committee may make recommendations to the council and the implementation committee.	Not included in the East African Community, SADC, Central Africa and Eastern and Southern Africa agreements.

No.	Provision	Common features	Differences
7.	Consultative committee	A consultative committee is established with the task of assisting the council in promoting dialogue and cooperation between representatives of organizations of civil society, including the academic community, and social and economic partners (economic and social partners for West Africa). The dialogue and cooperation shall encompass all economic, social and environmental aspects of the relations between the European Community party and African, Caribbean and Pacific States, as they arise in the context of the implementation of the agreement. Participation in the consultative committee is decided by the council, with a view to ensuring a broad representation of all interested parties. The consultative committee will carry out its activities on the basis of consultation by the council or on its own initiative and make recommendations to the European Community Council. Representatives of the parties shall attend the meetings of the consultative committee. The consultative committee shall adopt its rules of procedure in accord with the council. The consultative committee may make recommendations to the council and to the implementation committee.	Not included in the SADC, Central Africa and Eastern and Southern Africa agreements. Provision on the consultative committee making recommendations to the implementation committee is not included in the East African Community agreement.
8.	Financing of institutional structures		The West Africa agreement includes a provision whereby the parties agree to cooperate in financing the implementation of the institutional provisions.

15. General and final provisions

Contents

1. Definition of the parties and fulfilment of obligations
2. Coordinators and exchange of information
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11. Territorial application
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16. Authentic text
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19. Collaboration in the fight against illegal financial activities
20. Other provisions
21. Annexes

Selected highlights

- » CARIFORUM, East African Community and West Africa economic partnership agreements do not provide for countries to act independently. All actions in the agreements have to be taken collectively by the relevant signatories.
- » All agreements, with the exception of the East African Community and Eastern and Southern Africa ones, include provisions that deal with regional preference. Parties are not obliged to offer the other party more favourable treatment than what they offer to the other members of their regional bloc in the context of the regional integration process. Any favourable treatment to the European Union needs to be extended to the other parties in the regional bloc.
- » In the case of the SADC agreement, an additional provision has been included, which excludes specific agricultural goods from entering into force until all Southern African Customs Union countries have ratified the agreement, or specific conditions are met.

No.	Provision	Common features	Differences
1.	Definition of the parties and fulfilment of obligations	The provision provides in all cases the names of the relevant parties. The parties shall take any general or specific measures necessary for them to fulfil their obligations and shall ensure that they comply with the objectives laid down in the agreement.	The provisions of the CARIFORUM, East African Community and West Africa agreements specify that the relevant African, Caribbean and Pacific States (and the European Union) act collectively. Under the SADC agreement, the provision allows for signatory States to act individually. Under Central Africa and Eastern and Southern Africa agreements, countries commit themselves to acting collectively, but acting individually (if necessary) if provided for. Under the Eastern and Southern Africa agreement, it is noted that a signatory Eastern and Southern Africa State that is not subject to the rights and obligations set out in chapter II (trade in goods) shall nevertheless be subject to and enjoy the rights and obligations arising from other chapters of this agreement.
2.	Coordinators and exchange of information	Each party is obligated to appoint an agreement coordinator to facilitate the implementation of the agreement. The coordinator, on request of either party, indicates the responsible office or official relating to any matter pertaining to the implementation of the agreement and facilitates communication. The coordinator also provides, to the extent legally possible, information and promptly provides responses to any questions on measures that might affect trade between the parties.	Not included in the Eastern and Southern Africa agreement.
3.	Transparency	Each party will ensure that all laws, regulations, procedures and administrative rulings and international commitments are made publicly available. The information should be provided through notification to WTO or an official, free and publicly available document on the website of the party. No party is required to submit confidential information, unless in the context of a dispute settlement process. In such case, the confidentiality of the information shall remain protected.	Not included in the Eastern and Southern Africa agreement. Information can also be provided to the agreement coordinator (East African Community, SADC). Confidentiality is not covered in the Central Africa agreement.

No.	Provision	Common features	Differences
4.	Regional preference	Nothing in the agreement obliges a party to offer the other party more favourable treatment than it offers within the party as part of its regional integration process. Any favourable treatment offered to the European Union by the African, Caribbean and Pacific parties will be automatically extended to the other African, Caribbean and Pacific signatories.	Not included in the Eastern and Southern Africa or East African Community agreement. In the West Africa agreement, the provision on regional integration cannot be interpreted to mean that the European Union or the West Africa party is obliged to extend to the other preferential treatment that would be applicable owing to either party being party to a regional economic integration agreement. For the CARIFORUM agreement, any favourable treatment on products that attract zero rate of duty shall apply immediately upon signature. For all other products, for “more developed countries” the favourable treatment shall apply one year after, and for “less developed countries”, two years after. Haiti is not required to extend favourable treatment to the Dominican Republic before five years from date of signature.
5.	Outermost regions of the European Union	The parties commit themselves to reinforcing economic and social links between the African, Caribbean and Pacific signatories and the outermost regions of the European Union in the areas covered by the agreement, as well as through fostering joint participation of the European Union outermost regions and African, Caribbean and Pacific in the framework and specific programmes covered by the agreement. Nothing in the agreement shall prevent the European Union from applying existing measures to improve the structural, social and economic situation of its outermost regions.	The Central Africa agreement covers only the last point on European Union measures in outermost regions. The facilitation of goods and services, investment and transport and communication links mentioned specifically as areas of cooperation in the CARIFORUM, West Africa and Eastern and Southern Africa agreements.
6.	Relations with the Cotonou Agreement	Except for development cooperation, in case of any inconsistency, the agreement will prevail. Nothing in the agreement shall prevent the adoption of any measures deemed appropriate in the Cotonou Agreement (if consistent with the agreement).	Under the West Africa agreement, only the second provision is included.
7.	Relations with the WTO Agreement	Nothing in the agreement requires parties to act in a manner inconsistent with their WTO obligations.	Under the Eastern and Southern Africa agreement, parties acknowledge that some signatory States are not members of WTO. Any reference to WTO bodies or agreements is not imposed on those parties. Consequently, in case of inconsistency, the agreement shall prevail for the countries that are not WTO members.

No.	Provision	Common features	Differences
8.	Relation to other agreements		Under the Eastern and Southern Africa agreement, in case there is inconsistency between the comprehensive and the interim agreement, the comprehensive agreement shall prevail. Under the SADC agreement, the relationship between the agreement and the trade, development and cooperation agreement shall be governed by the provisions of Protocol 4. Under the Central Africa agreement, the parties agree to examine, in 2008, whether the provisions of the agreement are consistent with the customs unions to which the signatories to the agreement belong.30jj
9.	Entry into force	The agreement shall be signed and ratified, or approved, in accordance with the applicable rules of the parties. The agreement shall enter into force on the first day of the month following that in which the parties have notified each other of the completion of necessary procedures. Pending entry into force of the agreement, the parties may provisionally apply the provisions of the agreement, where possible or subject to ratification. Depository of the agreement is the Secretary-General of the Council of the European Union. Under the East African Community, West Africa, Central Africa and Eastern and Southern Africa agreements, the African, Caribbean and Pacific regional community is also a depository. All parties can take steps to apply the agreement before the provisional application, to the extent feasible. Under the East African Community and West Africa agreements, if applied provisionally, all references to the date of entry shall be deemed to refer to the date such provisional application takes place.	Under the East African Community agreement, the agreement will enter into force the first day of the second month following notification. Under the SADC agreement, the agreement will enter into force 30 days following the deposit of the last instrument of ratification, acceptance or approval. Under the West Africa agreement, provisional application shall be notified to the depository. The agreement shall apply on a provisional basis one month after receipt of the final notice of provisional application. Under the CARIFORUM and East African Community agreements, the same as the West Africa one, but within 10 days. Under the SADC, Central Africa and Eastern and Southern Africa agreements, 10 days or receipt of notification from the European Union or ratification of provisional application from (all: Central Africa and Eastern and Southern Africa agreements) relevant African, Caribbean and Pacific agreement State, whichever is later. Under the CARIFORUM agreement, provisional application shall be effected as soon as possible, but no later than 31 October 2008. Under the SADC agreement, provisional application excludes specific agricultural products, until all Southern African Customs Union members have ratified or specific conditions for those products are met. SADC is not a depository, but will be notified.

No.	Provision	Common features	Differences
10.	Duration	The agreement shall be valid indefinitely (CARIFORUM, West Africa, SADC and Central Africa agreements). Either party can give written notice of its intention to denounce the agreement. Denunciation shall enter into force six months after notification.	Not covered in the East African Community agreement. Under the Eastern and Southern Africa agreement, until a comprehensive agreement enters into force. Under the East African Community agreement, denunciation enters into force one year after notification and one month after notification, under the Eastern and Southern Africa agreement.
11.	Territorial application	The agreement shall apply to the territories of the parties.	
12.	Amendments	Amendments to the agreement will be adopted by the agreement council and enter into force when ratified. Any party can submit proposals for amendment (East African Community and SADC agreements).	Not covered in the CARIFORUM, West Africa and Central Africa agreements. The other party may comment on the proposals for amendment within 90 days from the date of receipt of the proposal (East African Community agreement).
13.	Continuation of negotiations	The parties agree to continue negotiations "in order to arrive at a full regional Agreement" (West Africa agreement) and "in accordance with the schedule set out in the Agreement" (Central Africa agreement).	Included only in the West Africa and Central Africa agreements. Under the West Africa agreement, the parties shall agree on a road map for the negotiations within six months of the conclusion of the agreement. The negotiations will cover services, intellectual property and innovation, current payments and capital movements, the protection of personal data, investment, competition, consumer protection, sustainable development and public contacts. Under the Central Africa agreement, when negotiations are concluded, the draft amendments will be submitted for the relevant national authorities for approval. Pending the establishment of the agreement committee (council) and other institutions in the agreement framework, the parties will take the measures necessary for the administration and implementation of the agreement (wherever a reference is made in the agreement to the council).

No.	Provision	Common features	Differences
14.	Accession of new European Union member States	The African, Caribbean and Pacific party will be informed of any application to become a member of the European Union. During the negotiations between the European Union and the applicant State, the African, Caribbean and Pacific party will be provided with any relevant information, and the African, Caribbean and Pacific party will convey any concerns they have. The African, Caribbean and Pacific party will be notified of any accession to the European Union. Any new European Union member State will accede to the agreement from the date of its accession to the European Union. If the act of accession to the European Union does not provide for this automatically, they shall deposit an act of accession to the general secretariat of the European Union, which shall send certified copies to the African, Caribbean and Pacific party. The parties will review the effects of accession of new European Union members to the agreement. The council may decide on transitional or amending measures, if necessary.	The East African Community agreement does not include the provision of informing a party of any application.
15.	Accession	The council will consider applications to accede to the agreement. The decision to accept the application will lead to negotiations on the terms of accession. Once the protocol for accession is adopted by the council, it will be submitted for ratification, acceptance or approval, in line with appropriate legal processes (SADC, Central Africa and Eastern and Southern Africa agreements – see right column). The parties will review the effects of the accession on the agreement. The council may decide on transitional or amending measures (East African Community, SADC and Central Africa agreements).	(Non-European Union) accession is not covered by the West Africa agreement. Any new member State of the East African Community shall automatically also accede to the agreement (as with new European Union member States). The Central Africa agreement is open to accession for any State or regional organization in Central Africa. Any State that submits a request shall attend council meetings as an observer. Under the Eastern and Southern Africa agreement, any of the following Eastern and Southern Africa States can accede to the agreement, subject to agreement of the parties: Djibouti, Eritrea, Ethiopia, Malawi and the Sudan. Accession by another country in the Eastern and Southern Africa region will be subject to council consideration. Under the CCARIFORUM and Eastern and Southern Africa agreements, any Caribbean State may accede to the agreement, subject to terms and conditions agreed between the country and the parties to the agreement, and following approval through the applicable legal process. Under the SADC agreement, in the case of Angola and its request to accede, the negotiations should be conducted on the basis of the agreement, taking into account the specific situation of Angola.

No.	Provision	Common features	Differences
16.	Authentic text	A duplicate is drawn up in Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovakian, Slovenian, Spanish and Swedish languages, all texts being equally authentic.	For the East African Community agreement, Croatian, Irish and Kiswahili are added. For the West Africa and SADC agreements, Croatian is added. For the SADC agreement, in case of contradiction, reference will be made to the language in which the agreement was negotiated.
17.	Balance of payment difficulties	When any signatory State of the European Union party is facing serious balance of payments (or the threat of), it may adopt or maintain restrictive measures with regard to the trade in goods, services and establishment (CARIFORUM agreement). Such measures must be temporary and non-discriminatory, and should not go beyond what is necessary to remedy the balance of payments issue. They shall be in accordance with WTO conditions and consistent with the articles of agreement of the International Monetary Fund. Prompt notification to the other party is required, and, as soon as possible, the schedule for removal. Consultations will be held with the implementation committee (in the case of CARIFORUM) or the council (in the case of East African Community) to assess the balance of payments issue and the adopted measures for compliance with the above provisions.	Included only in the CARIFORUM and East African Community agreements.
18.	Dialogue on finance issues	The parties agree to foster dialogue, transparency and to share best practices in tax policy and administration.	Included only in the CARIFORUM and Eastern and Southern Africa agreements.
19.	Collaboration in the fight against illegal financial activities	The parties commit themselves to preventing and combatting illicit, fraudulent and corrupt activities, money-laundering and terrorist financing through legislative and administrative measures. Parties agree to exchange information and cooperate in these areas.	Included only in the CARIFORUM and Eastern and Southern Africa agreements.

No.	Provision	Common features	Differences
20.	Other provisions		Under the Central Africa and Eastern and Southern Africa agreements, the provisions for setting up the agreement committee (council) are included in final and general provisions. Nothing in the SADC agreement shall be construed as conferring rights or imposing obligations on persons, other than those created between the parties under public international law. Under the East African Community agreement, notifications under the agreement shall be made in writing and sent to the East African Community secretariat or European Community, as appropriate. For SADC, in case of encountering difficulties in the implementation of the agreement as a result of factors beyond its control, the party shall immediately bring the matter to the attention of the council. For Central Africa, the Central African Economic and Monetary Community/Economic Community of Central African States shall be invited to attend all meetings of the council.
21.	Annexes	Annexes and protocols form an integral part of the agreement.	For Eastern and Southern Africa, the annexes and protocols can be reviewed by the agreement committee.

16. Revisions

Contents

1. General revision
2. Revision of the rules of origin
3. Institutional arrangements for revision
4. Future areas of negotiations

Selected highlights

- » All economic partnership agreements include provisions for the review and revision of the agreement.
 - » Specifically on rules of origin, all agreements contain an acknowledgement of the need to review and eventually modify the rules of origin. The provisions governing the time frames and frequencies for revision differ in all agreements:
- Central Africa agreement: within three years after entry into force;
 - CARIFORUM and West Africa agreements: within five years after entry into force;
 - Eastern and Southern Africa agreement during the period between the entry into force of the interim agreement and the conclusion of the comprehensive one;
 - East African Community and SADC agreements: provide for revisions every five years and annually, respectively.

No.	Provision	Similarity	Differences
1.	General revision	Although not always consolidated into one dedicated article (cf. Eastern and Southern Africa agreements), provisions are made in all agreements for review and possible amendments, notably in the light of the expiry of the Cotonou Agreement.	The CARIFORUM agreement also makes explicit provisions to possibly extend the scope of the agreement to overseas countries and territories.
2.	Revision of the rules of origin	All agreements include an acknowledgment of the need to review the rules of origin, with the aim of simplifying the rules and their administration, and taking into account technological advances and development of the productive capacities of both parties. In this regard, timely review is provided for under all agreements.	The provisions governing the time frames and frequencies for revision differ in all agreements. The CARIFORUM, West Africa, Central Africa and Eastern and Southern Africa agreements provide for revision within a specific amount of time. Specifically, the time frames for the revision of the rules of origin are: • Central Africa agreement: within three years after entry into force; • CARIFORUM and West Africa agreements: within five years after entry into force; • Eastern and Southern Africa agreement: during the period between the entry into force of the interim agreement and the conclusion of the comprehensive one. On the other hand, the East African Community and SADC agreements provide for revisions of their rules of origin every five years and annually, respectively.
3.	Institutional arrangements for revision	Similar mechanisms are provided for under the agreements. Indeed, all of them provide for review of the agreement by a committee of senior officials, which is responsible for reviewing and amending the text accordingly.	The CARIFORUM, East African Community, West Africa and SADC agreements make provisions for an additional institutional mechanism at the ministerial level, which is responsible for monitoring and making appropriate decisions concerning the implementation of the agreement and orientation of the regional configuration of the African, Caribbean and Pacific-European Union trade partnership, with the assistance of the committee of senior officials.
4.	Future areas of negotiations	All agreements make room for future negotiation of additional matters.	The agreements make non-exhaustive lists of future areas of negotiation, notably: • All agreements refer to the negotiation of services;^{II} • All agreements (except the Central Africa one) explicitly refer to negotiation of competition, public procurement and intellectual property rights; • The East African Community, West Africa, Central Africa and Eastern and Southern Africa agreements provide for future negotiations in the area of sustainable development; • The East African Community, West Africa, SADC and Eastern and Southern Africa agreements are also aimed at negotiating investment; • The West Africa, Central Africa and Eastern and Southern Africa agreements provide for the movement of capital; • The Eastern and Southern Africa agreement makes additional references to negotiation of sanitary and phytosanitary measures, technical barriers to trade and agriculture and trade facilitation, among others.

II Including the CARIFORUM agreement, which makes provisions for liberalizing further services.

17. Cooperation and capacity-building

Contents

1. Objectives, scope and principles
2. Cooperation priorities
3. Financing
4. Adjustment measures
5. Customs duties
6. Trade facilitation
7. Agriculture
8. Fisheries
9. Technical barriers to trade
10. Sanitary and phytosanitary
11. Tourism
12. E-commerce
13. Competition policy
14. Competitiveness and small and medium-sized enterprises
15. Information and communications technology
16. Energy
17. Intellectual property rights
18. Procurement
19. Environment
20. Social aspects
21. Personal data protection
22. Investment
23. Transport infrastructure

24. Water

25. Other specific cooperation commitments

Selected highlights

- » For all economic partnership agreements, priorities are set in a number of areas, including competitiveness support, infrastructure, diversification and research and development.
- » All agreements provide for financial assistance to the African, Caribbean and Pacific States from the European Development Fund, the European Union budget (where appropriate) and other donors.
- » The exact areas of cooperation vary between agreements. Key intervention areas include trade facilitation and fisheries (included in all agreements), fiscal adjustment, technical barriers to trade, sanitary and phytosanitary measures and environmental protection (included in five agreements), and agriculture and investment (included in four).

No.	Provision	Common features	Differences
1.	Objectives, scope and principles	The array of economic and development cooperation objectives is, in general, broad and echoes the general objectives of economic partnership agreements.	Given that the CARIFORUM and SADC agreements do not have any dedicated development and capacity-building section, the capacity-building provisions are scattered throughout the agreements.
2.	Cooperation priorities	Under all agreements, priorities are set in a number of areas, including competitiveness support, infrastructure, diversification and research and development.	Some agreements add more specific interventions, including adjustment measures and trade in services. The East African Community, Central Africa and Eastern and Southern Africa agreements have also annexed development matrices to their agreements, whereas the West Africa agreement provides for a whole agreement development programme. ^{mm}
3.	Financing	All agreements provide for financial assistance from the European Development Fund, the European Union budget (where appropriate) and funding from other donors. In addition, the East African Community, West Africa, Central Africa and Eastern and Southern Africa agreements provide for the setting up of an agreement. At this juncture, only the West Africa agreement fund has received financial commitments. ⁿⁿ	
4.	Adjustment measures	Fiscal adjustment provisions are provided for under all agreements, except the Eastern and Southern Africa one. The main instruments referred to are dialogue and fiscal reform to encourage the shift from tariff dependence to indirect taxation.	The CARIFORUM agreement provides for technical assistance to secure tax reform, whereas the East African Community, West Africa and Central Africa agreements provide for transitional contributions to mitigate the revenue loss. The SADC agreement also provides for complementary measures for mitigation upon agreement on the modalities. Nevertheless, the agreement includes a recognition of Lesotho's reliance on tariff revenues. In this light, special consideration is to be given to Lesotho in the application of the development cooperation provisions. In addition, the East African Community and SADC agreements provide for cooperation in the area of tax governance.

^{mm} See the West Africa agreement, art. 55, and its annex F, Protocol No. 3.

ⁿⁿ The European Union Council of Ministers agreed to provide the fund with "at least €6.5 billion" for the programming period 2015–2019. See European Commission, "Economic partnership agreement with West Africa: facts and figures" (2015). Available at: http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152694.pdf.

No.	Provision	Common features	Differences
5.	Customs duties		Technical assistance is to be provided under the Central Africa agreement in order to ensure full capacity in terms of interpretation and implementation of trade policy rules. Similarly, capacity-building is provided for under the West Africa agreement with trade defence.
6.	Trade facilitation	Trade facilitation attracts considerable attention in all agreements, with special emphasis on the modernization, simplification and harmonization of customs procedures based on international best practices and standards, including WTO and World Customs Organization rules. Attention is also paid to the need for automation.	The East African Community and West Africa agreements provide for the training of customs officials, whereas the SADC agreement gives attention to very specific areas of training, such as customs valuation, classification and rules of origin.
7.	Agriculture	All agreements (except the Central Africa and Eastern and Southern Africa ones) include provisions for enhancing the capacity of agricultural operators. In this regard, they all provide for the improvement in competitiveness through innovation and export capacity strengthening.	In more specific terms, the CARIFORUM agreement places an emphasis more on compliance with market requirements, including export marketing capabilities and quality standards for food products and fishery products. The SADC agreement, after reaffirming the general need for increased agricultural capacity as a means to achieve the objectives of the agreement, focuses on levelling the playing field through mainly restraining the parties from using agricultural exports subsidies. The East African Community agreement entails the most comprehensive and detailed list of cooperation areas, including: » Agricultural policymaking and capacity-building; » Agricultural infrastructure; » Food security and warning systems; » Value chains management; » Marketing of agricultural commodities; » Agricultural financial services; » Geographical indications. The West Africa agreement entails a relatively detailed list of areas of cooperation, including: » Irrigation and water management; » Environmentally friendly agricultural practices; » Organic farming; » Storage and preservation; » Land law reform. The West Africa agreement provides for the prohibition of the European Union using agricultural export subsidies when exporting to the West Africa region.

No.	Provision	Common features	Differences
8.	Fisheries	Emphasis is placed in all agreements to increase the capabilities of African, Caribbean and Pacific States to comply with the European Union market requirements, including quality standards, technical regulations and sanitary and phytosanitary measures. In addition, focus on research and development to deal with sustainability in the levels of catch is a cross-cutting topic.	The West Africa agreement also focuses on setting up adequate mechanisms to combat illegal, unreported and unregulated fishing and to enhance the traceability of products. The East African Community and Eastern and Southern Africa agreements make various provisions for marine fisheries and inland fisheries. With regard to marine fisheries, the East African Community agreement highlights the need for: » Building up adequate infrastructure, including storage, marketing and distribution; » Increasing value addition; » Creating linkages with small and medium-sized enterprises. On the same topic, the Eastern and Southern Africa agreement has a detailed list of proposed activities in the following areas of cooperation: » Cooperation with international partners for the conservation and management of sustainable fishery stocks; » Vessel management; » Fishery financing. With regard to inland fisheries, the East African Community and Eastern and Southern Africa agreements are more closely aligned and entail, notably: » Compliance with market access requirements; » Infrastructure; » Legal and regulatory framework enhancement; » Fishery financing; » Sustainable management of fishery stocks.
9.	Technical barriers to trade	With the exception of the Eastern and Southern Africa agreement, all agreements contain a recognition of the need to build their capacities to meet technical regulatory requirements. In this regard, experience-sharing, the enhancement of facilities and the participation in standards-setting meetings for standardization, metrology and conformity assessment are requirements that are equally addressed. The need for accreditation with international testing institutions is also referred to in all agreements.	The East African Community agreement contains calls for bilateral cooperation for testing. Regardless of the type of commitments, the Central Africa agreement provides for a list of products that attract specific attention and cooperation needs. The list applies to control capacities, where mentioned in annex I (a), and competitiveness where mentioned in annex I (b) of the Central African economic partnership agreement, for both technical barriers to trade and sanitary and phytosanitary matters.

No.	Provision	Common features	Differences
10.	Sanitary and phytosanitary	Similar to the technical barriers to trade cooperation areas, focus is placed on enhancing market access through: » Strengthening the capacities of official and private operators; » Harmonization of regulations; » Participation in standard-setting organization.	
11.	Tourism	Only the CARIFORUM and Eastern and Southern Africa agreements provide for cooperation in tourism.	Although both highlight the need for reinforcement of tourism marketing strategies and human resources, the CARIFORUM agreement goes beyond the areas of cooperation identified in the Eastern and Southern Africa agreement to also cover: » Participation in tourism standard-setting institutions; » Internet-based marketing; » Ecotourism; » Upgrading of national accounting systems.
12.	E-commerce	Only the CARIFORUM and Central Africa agreements provide for cooperation in e-commerce.	The CARIFORUM agreement focuses in large part on the establishment of an adapted regulatory framework and enhanced capacities for service suppliers to meet the criteria laid down under the said regulations.
13.	Competition policy	Only the CARIFORUM and SADC agreements provide for cooperation in the area of competition policy.	Although providing for cooperation in this area, the SADC agreement does not enter into more details on the area of cooperation. The article serves mainly as a rendez-vous clause for competition policy issues. The CARIFORUM agreement provides mostly for assistance in creating an environment that is favourable to a competition policy. In this regard, the area covers cooperation in legal drafting, the provision of independent experts and the training of key personnel.
14.	Competitiveness and small and medium-sized enterprises ^{oo}	In the CARIFORUM, East African Community and Eastern and Southern Africa agreements, the promotion of linkages for enhancement of private sector capacities is addressed explicitly in dedicated articles. The articles notably cover financing for small and medium-sized enterprises, research and development support and business dialogues.	The Eastern and Southern Africa agreement also covers specific means of cooperation under the article on small and medium-sized enterprises, including the setting up of micro-enterprises, small and medium-sized enterprises databases and institutional support.

^{oo} Although sometimes addressed separately (especially in the Eastern and Southern Africa agreement), the matters are closely intertwined, and thus addressed together.

No.	Provision	Common features	Differences
15.	Information and communications technology (ICT)	Only the CARIFORUM, East African Community and Eastern and Southern Africa agreements provide for cooperation in ICT.	The CARIFORUM agreement focuses on the areas of exchange of information on regulatory issues, capacity-building of human resources and research and development. The East African Community and Eastern and Southern Africa agreements focus on these same areas, along with some additions, including: ICT infrastructure; Dissemination of new ICT; Partnerships, linkages and joint ventures.
16.	Energy	Only the CARIFORUM, East African Community and Eastern and Southern Africa agreements provide for cooperation in energy.	The primary focus under the CARIFORUM agreement is on eco-innovation and research and development. Under the East African Community and Eastern and Southern Africa agreements, the focus is on energy production and distribution, with specific attention given to efficient infrastructure and development of an energy mix to mitigate the dependence on fossil energies.
17.	Intellectual property rights	Only the CARIFORUM and SADC agreements provide for cooperation in intellectual property rights.	Although providing for cooperation in the specific area of geographical indications, the SADC agreement does not provide more details on the area of cooperation. The article serves mainly as a rendez-vous clause for intellectual property rights cooperation issues. The CARIFORUM agreement provides mainly for the reinforcement of institutions that are able to assist with the development of an environment conducive for intellectual property rights and developing knowledge, including traditional, to achieve the potential of geographical indications.
18.	Procurement	Only the CARIFORUM and SADC agreements provide for cooperation in procurement.	Although providing for cooperation in the area of procurement, the SADC agreement does not provide more details on the area of cooperation. The article serves mainly as a rendez-vous clause for intellectual property rights cooperation issues.
19.	Environment	All agreements, except the West Africa one, provide for cooperation in the area of environment protection. The main focus is to enhance market access for African, Caribbean and Pacific operators by assisting in establishing and meeting environmentally friendly standards and developing environmental goods and services initiatives through research and development and awareness-raising.	Although the SADC agreement does not provide for any specific areas of cooperation per se, provision is made for cooperation of the parties in the implementation of multilateral environmental agreements.
20.	Social aspects	Only the CARIFORUM and SADC agreements provide for cooperation in social aspects.	The SADC agreement provides for cooperation only in the context of implementation of ILO conventions.

No.	Provision	Common features	Differences
21.	Personal data protection	Only the CARIFORUM and Central Africa agreements provide for cooperation in personal data protection.	The Central Africa agreement provides only for cooperation in regulatory, legal and institutional development capacity-building. In addition to cooperation in capacity-building, the CARIFORUM agreement provides for the exchange of information and staff training.
22.	Investment	The CARIFORUM, East African Community, SADC and Eastern and Southern Africa agreements provide for cooperation in investment.	Whereas the CARIFORUM agreement provides for a list of investment areas (listed under annex IV), the East African Community and Eastern and Southern Africa agreements include provisions for cooperation in the establishment of harmonized investment policy. The SADC agreement provision is mainly a rendez-vous clause for future negotiations on the topic.
23.	Transport infrastructure	Only the East African Community and Eastern and Southern Africa agreements provide for cooperation in transport infrastructure. Similar cooperation provisions are provided for the improvement of transport infrastructure, the development of regionally harmonized standards and a favourable policy governing the sector.	
24.	Water	The East African Community, Eastern and Southern Africa and West Africa agreements provide for the sustainable use of water resources and management for productive purposes. ^{pp}	The East African Community and Eastern and Southern Africa agreements also provide for integrated management at national and regional levels for water management purposes.
25.	Other specific cooperation commitments		Some specific commitments have been made on: » Dispute settlement under the West Africa agreement; » Mining and minerals under the Eastern and Southern Africa agreement.

pp Essentially for agricultural purposes under the West Africa agreement, art. 48 (2) (a).

Annex II

Trade in services in economic partnership agreements: key issues

Trade in services under the economic partnership agreements

While no legal obligation to negotiate services commitments exists under the Cotonou Agreement, chapter 4, article 41, of that Agreement envisages that services would form a core part of the reciprocal trade agreements to be negotiated between the European Union and the African, Caribbean and Pacific Group of States. Herein, article 41 (2) includes a reaffirmation of the parties' relevant commitments under the General Agreement on Trade in Services, and highlights the need for special and differential treatment to African, Caribbean and Pacific suppliers of services, with paragraph 3 providing for the European Union to give sympathetic consideration to the African, Caribbean and Pacific States' priorities for improvement in the European Union schedule, with a view to meeting their specific interests. In article 41 (4), the parties agree on the objective of extending under the economic partnership agreement, and after they have acquired some experience in applying the most-favoured-nation treatment under the General Agreement, their partnership to encompass the liberalization of services in accordance with the provisions of the General Agreement, and in particular those relating to the participation of developing countries in liberalization agreements. Importantly, it is noted in article 41 (5) that the European Union shall support the African, Caribbean and Pacific States' efforts to strengthen their capacity in the supply of services and that specific attention shall be paid to services relating to labour, business, distribution, finance, tourism, culture and construction and related engineering services, with a view to

enhancing their competitiveness and thereby increasing the value and the volume of their trade in goods and services.

On 31 December 2007, however, with the Doha-negotiated WTO waiver on European Union preferential treatment for the African, Caribbean and Pacific States set to expire, the Caribbean was the only African, Caribbean and Pacific region to have concluded negotiations on trade in services. At the end of 2016, a full nine years later, the CARIFORUM-European Union comprehensive economic partnership agreement remained the only agreement that includes trade in services commitments. Interim agreements initialled or signed with African regional blocs and/or countries provide for possible future negotiations on trade in services.

State of economic partnership agreement services negotiations in Africa

As of September 2016, two regions in Africa were actively negotiating trade in services, with the European Community and Central Africa countries as a grouping bringing together members of the Economic Community of Central African States (ECCAS) and the Central African Economic and Monetary Community (CEMAC), and in Southern Africa, a subgroup of participating economic partnership agreement States from the Southern African Development Community (SADC). Both have draft texts under negotiation, with the most recent available versions dated June 2015 in Central Africa and February 2016 in SADC.

Contents^a

1. General provisions
2. Commercial presence
3. Cross-border supply of services^b
4. Temporary presence of natural persons for business purposes
5. Regulatory framework
 - (a) Provisions of general application
 - (b) Computer services
 - (c) Courier services
 - (d) Telecommunication services
 - (e) Financial services
 - (f) International maritime transport services
 - (g) Tourism services
6. Electronic commerce
7. Cooperation
8. Other provisions (not found elsewhere)

Selected highlights

- » The structure and approach of the economic partnership agreement services texts, in general, follow either the more commonly known General Agreement on Trade in Services-style or the European Union-style (which is based on the approved mandate from European Union member States to negotiate with bilateral partners).
- » The Central Africa draft text follows the European Union-style structure and approach (as in the CARIFORUM agreement), which includes:
 - A short initial chapter covering general provisions and cooperation (the latter features in its own chapter at the end of the text in the CARIFORUM agreement);
 - Various core provisions (e.g., sectoral coverage and definitions, including for market access and national treatment)

defined separately in various chapters according to mode of supply (i.e., for cross-border supply [merged mode 1 and 2], commercial presence [mode 3] and movement of natural persons [mode 4]);

- A chapter addressing regulatory matters, beginning with generally applied disciplines on mutual recognition, transparency and procedures, followed by individual sections containing sector-specific definitions and/or disciplines;
 - A concluding chapter on electronic commerce.
- » The SADC agreement draft text aligns more closely with the General Agreement on Trade in Services, wherein:
- Part I contains more detailed provisions and disciplines of general application (including on most-favoured-nation, transparency, domestic regulation, recognition, mutual recognition and general exceptions, akin to the General Agreement, Parts I and II);
 - The SADC agreement draft does not have separate chapters covering various modes of supply, but does include a Part II on the movement of natural persons, outlining various mode 4-specific definitions;
 - As in the General Agreement, Part III of the SADC agreement draft deals with the specific commitments in all modes, outlining the disciplines on market access, national treatment and additional commitments;
 - A separate chapter deals with cooperation between the parties, with Part V addressing institutional provisions (e.g.,

a The structure utilized here follows the CARIFORUM-European Union legal text. The number accorded to the provisions, however, is not related to numbering in the legal text and serves only for cross-referencing.

b In this usage, "cross-border supply of services" covers both mode 1 (cross-border supply) and mode 2 (consumption abroad). Merging modes 1 and 2 is more commonly observed in recent services trade agreements and can help to minimize challenges (especially in the Internet age) of distinguishing whether a specific service is being delivered by one mode or the other.

services committee, dispute avoidance and accession) and sections containing sector-specific disciplines. The final section deals with electronic commerce.

» Coverage:

- In the Central Africa agreement (as in the CARIFORUM one), the draft disciplines cover investment in service and non-service sectors (although elements remain in brackets);
 - The SADC agreement covers only services-related investment. Unlike the CARIFORUM agreement, however, neither the Central African nor SADC agreement covers government procurement in services;
 - Services “supplied in the exercise of government authority” are excluded;
 - Various sectors are carved out, including national and international air traffic rights and select air transport services relating directly to those rights; audiovisual services; national maritime cabotage; natural persons seeking access to the employment market of a party; and measures regarding citizenship, residence or employment on a permanent basis;
 - The Central Africa and SADC agreements exclude government procurement in services (the CARIFORUM agreement includes it under a separate chapter on government procurement);
 - The Central Africa agreement (as in the CARIFORUM one) excludes application to subsidies, whereas the SADC agreement includes a mandate for negotiating future disciplines.
- » The approach to scheduling varies by party and text, with the European Union maintaining its preferred approach (and format)

of using a positive list approach for scheduling sectors and a negative list for scheduling reservations. Separate schedules cover the various modes. The approach for the African, Caribbean and Pacific parties under the SADC agreement (as in the CARIFORUM one) aligns with the General Agreement, such that the scheduling of sectors is based on a positive list (the party indicates explicitly which sectors are covered) and the scheduling of reservations is based on a hybrid of a negative list for modes 1, 2 and 3 (the party indicates explicitly what treatment is not covered) and a positive list for mode 4. For the African, Caribbean and Pacific parties in the Central African agreement, a decision remains pending.

- » Both draft texts include disciplines covering market access and national treatment; however, in the SADC agreement, these apply in all modes equally, whereas in the Central Africa agreement, as in the CARIFORUM one, these disciplines are tailored to the various modes of supply (and feature in mode-specific chapters).
- » The SADC agreement (as in the CARIFORUM one) also includes disciplines on most favoured nation, whereas the Central Africa agreement does not provide for most favoured nation.
- » The Central Africa agreement includes an intraregional most-favoured-nation clause requiring the Central Africa parties to provide each other the same commitments and obligations offered to the European Union in modes 1 to 3. In that respect, the proposed agreement outcome will serve as the applicable regime governing intra-ECCAS/CEMAC services liberalization in those modes for signatory States.
- » With respect to the temporary presence/movement of natural persons, in the Central African agreement, as in the CARIFORUM one, various conditions on entry are

included in the text, as are the eligible list of sectors for contractual service suppliers and independent professionals. The SADC agreement includes some mode 4-specific definitions, but, as in the General Agreement, the list of eligible sectors and conditions on entry are to be included in the schedules. Economic needs tests feature fairly prominently in the European Union schedules in the CARIFORUM agreement, as in the Central Africa draft, but there is an absence of disciplines governing their use.

- » In terms of rules on domestic regulations, there are significant parallels with the General Agreement. Representing the General Agreement + disciplines, however, SADC provides (in brackets) for disciplines such that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, including that they are not more burdensome than necessary to ensure the quality of the services (i.e., a necessity test).
- » The section on computer services does not include disciplines per se, but rather elaborates on their definition.
- » The SADC and Central Africa agreements include regulatory disciplines on courier and postal services, whereas the CARIFORUM one appears to cover only courier services. The disciplines mirror in many ways the WTO telecommunications reference paper, notably vis-à-vis the need for independent regulatory bodies.
- » Disciplines on telecommunications mirror in large part the WTO reference paper (with some additions) and carry potentially meaningful new obligations for those African, Caribbean and Pacific countries that have not already subscribed to them at WTO.
- » With respect to financial services, many disciplines emulate those found under the General Agreement, as well as the Annex on Financial Services. Others align to varying degrees with the Understanding on Commitments in Financial Services. Given that not all WTO members have committed themselves to the provisions of the latter, this may carry potentially meaningful obligations.
- » Provisions on international maritime transport services appear to be aimed primarily at elaborating and/or elucidating definitions so as to sharpen the parameters of the associated market access commitments.
- » While absent under the SADC agreement, the regulatory provisions on tourism services are notable, in particular with respect to the provisions on anti-competitive practices, which are rampant among many larger European Union firms operating in some African, Caribbean and Pacific tourism markets. This is especially so in the Caribbean region, which was the *demandeur* for such disciplines.
- » The disciplines on electronic commerce focus primarily on cooperation and dialogue. They also agree that deliveries by electronic means shall be considered as the provision of services and not subject to customs duties, which has not yet been similarly agreed at the multilateral level.
- » All texts include a general section on cooperation recognizing the importance of cooperation and technical assistance (and capacity-building in the case of the Central Africa agreement) for complementing services liberalization and supporting African, Caribbean and Pacific State parties' efforts to strengthen their capacity in the supply of services, etc. The SADC agreement includes separate provisions specific to private sector cooperation. The Central Africa agreement includes multiple additional (non-binding) articles within each sector-specific section relating to the provision of technical assistance, training and capacity-building.

Provision	Common features	Differences
1. General provisions		
1.1 Objective	All texts reaffirm WTO commitments and the aim to develop trade in services between parties in a manner that supports regional integration and sustainable development of the African, Caribbean and Pacific party and its smooth and gradual integration into the world economy.	The CARIFORUM economic partnership agreement references arrangement for progressive, reciprocal and asymmetric liberalization of investment and trade in services and cooperation on e-commerce, whereas the SADC one references only trade in services (no investment or e-commerce). The Central Africa agreement includes e-commerce, but provides for both options in brackets: [European Union: investment and trade in services] [Central Africa: trade in services].
1.2 Scope	All texts apply to measures affecting trade in services. All texts retain each party's right to regulate and to introduce new regulations to meet policy objectives.	The CARIFORUM agreement also applies to measures affecting establishment (in goods and services). The Central Africa agreement offers two options in brackets: [European Union: establishment and trade in services] [Central Africa: trade in services].
1.3 Coverage	All texts exclude application of measures to: services/activities supplied in the exercise of governmental authority; national and international air traffic rights and select air transport services relating directly to those rights;^c audiovisual services; national maritime cabotage; natural persons seeking access to the employment market of a Party; and measures regarding citizenship, residence or employment on a permanent basis. The SADC agreement excludes the above for all modes of supply; the CARIFORUM and Central Africa agreements exclude them according to relevant modes of supply.	The SADC and Central Africa agreements exclude government procurement of services. The CARIFORUM agreement excludes it from this chapter, but includes public procurement of goods and services in a separate chapter. The CARIFORUM and Central Africa agreements exclude application of the provisions to subsidies. The SADC agreement reaffirms support for the General Agreement on Trade in Services, article XV, which provides a mandate for negotiating future subsidy disciplines. It also includes bracketed text explicitly calling for a review, should disciplines be agreed under the General Agreement and the ability of parties to raise concerns, should it consider adverse effect by a subsidy of the other party. With respect to commercial presence, the CARIFORUM and Central Africa agreements also exclude the mining, manufacturing and processing of nuclear materials, and production of or trade in arms, munitions and war material. The SADC agreement also excludes trade in arms, munitions and war and toxic material for all modes of supply.

Provision	Common features	Differences
1.4 Definitions	All texts are in large part consistent in the following definitions: » Measures;* » Measures adopted or maintained by parties;* » Natural persons of a party; » Juridical person;* » Juridical person of a party;# * - In accordance with General Agreement on Trade in Services, article XXVIII # - The SADC agreement construction differs from that of the CARIFORUM and Central Africa ones and includes some bracketed text, but primarily maintains the conditions of “registered office, central administration or principal place of business” and, if not the latter, that it “engages in substantive business operations” in the party. The SADC agreement provides for the above for all modes of supply, whereas the CARIFORUM and Central Africa ones provide for some applicable to all modes of supply and others only according to the relevant mode of supply.	In defining “economic integration agreements”, the CARIFORUM and Central Africa agreements refer to an agreement substantially liberalizing trade in services and investment pursuant to WTO rules (with investment in brackets for Central Africa), whereas the SADC one omits investment and appends an explicit reference to the General Agreement on Trade in Services, article V, at the end. The CARIFORUM and Central Africa agreements include conditions of application of the agreement for shipping companies established outside either party but controlled by nationals of a party and registered in accordance with their relevant legislation, and carrying a party’s flag; however, in the SADC agreement, this is bracketed. The SADC agreement also includes a number of definitions drawn primarily from the General Agreement on Trade in Services but not found in this section in the CARIFORUM or the Central Africa agreement, including: » “Direct taxes” (in accordance with the General Agreement on Trade in Services, art. XXVIII.O); » “Measures by parties affecting trade in services” (in accordance with the General Agreement, art. XXVIII.C); » “Sector of a service” (in accordance with the General Agreement, art. XXVIII.E); » “Services”, excluding those supplied in the exercise of governmental authority (in accordance with the General Agreement, art. I.3.B) and defined as neither supplied on a commercial basis nor in competition with one or more service supplier (in accordance with the General Agreement, art. I.3.C); » Bracketed text on “small, micro and medium enterprises” defined in accordance with national legislation; » “Trade in services” (in accordance with the General Agreement, art. I.2). Other SADC agreement definitions included here are treated in the relevant sections below.

Provision	Common features	Differences
1.5 Future liberalization		The CARIFORUM agreement provides a mandate to enter into further negotiations on investment services no later than five years after the date of entry into force. The Central African agreement provides the same mandate as the CARIFORUM one, but only with respect to investment/commercial presence. The SADC agreement provides a best-endeavour provision to review, with a view to reducing or eliminating remaining barriers to trade in services, the services agreement and annexes five years after the date of entry into force (or if mutually agreed at an earlier time) and subsequently at regular intervals.
1.6 Regional integration	All texts recognize that economic integration through the removal of barriers and the provision of appropriate regulatory frameworks within the African, Caribbean and Pacific region will contribute to the deepening of their regional integration process and the realization of the objectives of the agreement text on services.	The CARIFORUM agreement references trade in services and investment, the Central Africa one references trade in services with investment in brackets and the SADC one only references trade in services. The Central Africa signatories agree to provide one another's investment, investors, services and service providers no less favourable treatment than they provide the European Union for measures affecting cross-border supply and commercial presence (i.e., modes 1, 2, and 3). In effect, they replicate the commitments accorded to the European Union in these modes as part of their own intraregional services integration. The Central Africa agreement also provides for a most-favoured-nation derogation for economic integration agreements comprising the Central Africa and African, Caribbean and Pacific parties, such that they may provide more favourable treatment to other Central African and African, Caribbean and Pacific investment, investors, services and services providers than they provide to the European Union. The CARIFORUM and SADC agreements contain further recognition of the potential for the principles as laid out in (CARIFORUM: the chapter on regulatory frameworks; SADC: the entire agreement) to provide a useful framework for further liberalization in the context of regional integration within the African, Caribbean and Pacific region. The Central Africa agreement has a provision similar to that of the CARIFORUM one, but it is bracketed. The SADC agreement further recognizes the prospects for future services liberalization between participating SADC agreement States and other developing countries.

Provision	Common features	Differences
1.7 Emergency safeguard measures		The SADC agreement includes a provision in brackets noting the General Agreement on Trade in Services mandate under article X to negotiate on the question of emergency safeguard measures on the basis of the principles of non-discrimination. It provides an obligation that, upon conclusion of such negotiations, the parties will discuss appropriate amendments to incorporate these results. The CARIFORUM and Central Africa agreements do not include this provision.
1.8 General exceptions		The SADC agreement includes provisions laying out general exceptions, based largely on the same provisions under the General Agreement on Trade in Services, article XIV (a)-(d), with some porting of provisions from the General Agreement on Tariffs and Trade, namely, its articles XX (f) and (e). It also includes a common provision found in other European Union free trade agreements (including the CARIFORUM agreement), such that the provisions of the agreement/chapter do not apply to relevant social security systems. The CARIFORUM agreement provides for general exceptions applied to the entire (comprehensive) agreement under Part IV. The Central Africa agreement includes in brackets a note to the effect that provisions on general and security exceptions (in accordance with General Agreement on Trade in Services, arts. XIV and XIV bis) are to be added.

Provision	Common features	Differences
2. Commercial presence		
2.1 Definitions	All texts are in large part consistent in the following definitions: commercial presence[#]; subsidiary; and branch. #- In defining commercial presence, the SADC agreement uses the definition as provided by the General Agreement on Trade in Services, article XXVIII.D, whereas the CARIFORUM and Central Africa agreements replace “for the purpose of supplying a service” with “for the purpose of performing an economic activity”, so as to provide application to activities beyond services.	According to the above, the SADC agreement covers only commercial presence in service sectors, whereas the CARIFORUM one covers commercial presence in both goods and services. Coverage beyond services in the Central Africa agreement is bracketed. The CARIFORUM and Central Africa agreements include the following additional definitions: • “Investor”: any natural or juridical that performs an economic activity through setting up a commercial presence; • “Economic activity”: which excludes activities carried out in the exercise of governmental authority. The CARIFORUM agreement includes an additional definition for “investor of a party”: natural or juridical person of a party that performs an economic activity through setting up a commercial presence.
2.2 Coverage	According to the exclusions described in 1.3 above, this applies to all measures affecting commercial presence in (CARIFORUM and Central Africa agreements: all economic activities; SADC: trade in services) with the exception of: audiovisual services; national maritime cabotage; national and international air traffic rights and select air transport services directly related to those rights. The SADC agreement excludes the above for all modes of supply; the CARIFORUM and Central Africa agreements exclude them here only for this mode.	The CARIFORUM and Central Africa agreements also exclude mining, manufacturing and processing of nuclear materials; and the production of or trade in arms, munitions and war material.

Provision	Common features	Differences
2.3 Market access	All texts are primarily consistent in their market access disciplines, in line with General Agreement on Trade in Services, article XVI.	The market access disciplines for the CARIFORUM and Central Africa agreements apply only to commercial presences and investors (in goods and services), whereas in the SADC one, they apply to services and service suppliers in all modes of supply. Accordingly, the CARIFORUM and Central Africa agreements omit the equivalent of General Agreement on Trade in Services, article XVI.D, dealing with limitations relating to natural persons. The SADC market access disciplines are taken verbatim from the General Agreement on Trade in Services (i.e., they include the limitation relating to natural persons).
2.4 National treatment	All texts are mainly consistent in their national treatment disciplines, in line with General Agreement on Trade in Services, article XVII.	The national treatment disciplines in the CARIFORUM and Central Africa agreements apply only to commercial presences and investors (in goods and services), whereas in the SADC one, they apply to services and service suppliers in all modes of supply.
2.5 List of commitments	All texts provide for the scheduling of commitments in annexes (i.e., sectors to be liberalized and reservations governing the degree of opening). All texts also provide for differentiated approaches for the European Union and the African, Caribbean and Pacific parties.	In the CARIFORUM and Central Africa agreements, as in a number of its other recent services free trade agreements, the European Union uses a positive list approach for scheduling sectors and a negative list for scheduling reservations. In the SADC agreement, the European Union retains flexibility, but is likely to proceed in the same manner as above.^d The approach to scheduling for the African, Caribbean and Pacific parties in the CARIFORUM and SADC agreements aligns with the General Agreement on Trade in Services in that the scheduling of sectors is based on a positive list (the party indicates explicitly which sectors are covered) and the scheduling of reservations is based on a hybrid of a negative list for modes 1, 2 and 3 (the party indicates explicitly what treatment is not covered) and a positive list for mode 4. The preferred approach to scheduling for the African, Caribbean and Pacific parties in Central Africa remains to be determined. With respect to formatting, all parties in the CARIFORUM and Central Africa agreements inscribe market access and national treatment reservations in a single column. The same holds for the European Union in the SADC agreement, whereas the SADC one will follow the General Agreement on Trade in Services format of inscribing these in their own column. The SADC agreement also makes provision for the scheduling of “Additional Commitments”, in accordance with General Agreement on Trade in Services, article XVIII.

Provision	Common features	Differences
2.6 Most favoured nation	Where most-favoured-nation disciplines exist (i.e., only in the CARIFORUM and SADC agreements), they are asymmetrically applied to the European Union and African, Caribbean and Pacific parties. Where most-favoured-nation disciplines exist, a “major trading economy” means any developed country or any country accounting for a share of world merchandise exports of more than 1 per cent in the year before the entry into force of the economic integration agreement in question, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports or more than 1.5 per cent in the year before the entry into force of the economic integration agreement in question. Where most-favoured-nation disciplines exist, they will not apply to treatment granted to third countries where that treatment occurs as part of a regional economic integration agreement creating an internal market or requiring legislative approximation, with a view to removing non-discriminatory obstacles to (CARIFORUM: commercial presence) trade in services. The European Economic Area pre-accession agreements to the European Union, the Caribbean Community (CARICOM) Single Market and Economy and the CARICOM-Dominican Republic free trade agreement and the SADC agenda on services are explicitly referenced. Where most-favoured-nation disciplines exist, the obligations shall not apply to treatment granted to measures providing for recognition of qualifications, licences or prudential measures in accordance with General Agreement on Trade in Services, article VII, or its Annex on Financial Services; under any international agreement or arrangement relating wholly or mainly to taxation; or under measures benefiting from the coverage of a most-favoured-nation exemption listed in accordance with General Agreement, article II.2. The list of excepted treatment in the SADC agreement includes, in brackets, the temporary movement of natural persons supply services.	The Central Africa agreement does include most-favoured-nation disciplines for commercial presence for either party (see also 1.6 above). The CARIFORUM agreement most-favoured-nation disciplines apply to commercial presences and investors (in goods and services). For the European Union, no less favourable treatment shall be accorded to the CARIFORUM party than is accorded to like commercial presences and investors of any third country with whom the European Union has concluded an economic integration agreement after the signature of the agreement. The same applies to the CARIFORUM party, but instead of applying for any third country, it applies only when an economic integration agreement is entered into with any “major trading economy” (see definition in other column). That said, should a CARIFORUM party provide more favourable treatment to any third party, the CARIFORUM agreement provides the possibility of launching consultations wherein the parties may decide whether the third party treatment can be denied to the European Union party. The SADC agreement most-favoured-nation disciplines apply to services and service suppliers in all modes of supply. For the European Union, no less favourable treatment shall be accorded to the SADC party than is accorded to like services and service suppliers of any third party with whom the European Union has concluded an economic integration agreement. Of note, the European Union obligation under the SADC agreement is not limited to economic integration agreements signed after the agreement services text is signed (as it is for the CARIFORUM agreement, as stated above). The same applies to the SADC party, but instead of applying for any third party, it applies only when an economic integration agreement is entered into with any “major trading economy”.
2.7 Other agreements	All texts protect the rights of (CARIFORUM and Central Africa: investors; SADC: services and service suppliers). In the SADC agreement, this article is bracketed.	

Provision	Common features	Differences
2.9 Behaviour of investors		The SADC and Central Africa agreements do not include this provision. The CARIFORUM agreement provides for measures necessary to prevent corruption, adhere to the ILO Declaration on Fundamental Principles and Rights at Work (1998), prevent the circumvention of international environmental or labour obligations to which the parties are party and ensure, where appropriate, community liaison processes, especially in natural resource-intensive projects.
2.10 Maintenance of standards		The SADC and Central Africa agreements do not include this provision. The CARIFORUM agreement includes calls for the parties to ensure that foreign direct investment is not encouraged by lowering domestic environmental, labour or occupational health and safety legislation and standards or by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity.
2.11 Review		The SADC agreement does not include an explicit provision to review commitments on commercial presence; see 1.5 above. The CARIFORUM and Central Africa agreements direct parties to review the investment legal framework, the investment environment and the flow of investment between them, consistent with their commitments in international agreements no later than three years after the entry into force of the agreement and at regular intervals thereafter.
3. Cross-border supply of services		
3.1 Coverage	According to the exclusions described in 1.3 above, this applies to all measures affecting services, with the exception of audiovisual services; national maritime cabotage; national and international air traffic rights and select air transport services relating directly to those rights. The SADC agreement excludes the above for all modes of supply; the CARIFORUM and Central Africa ones exclude them here for only this mode.	

Provision	Common features	Differences
3.2 Definitions	All texts are consistent in the following definitions: “Services”, excluding those supplied in the exercise of governmental authority (in accordance with General Agreement on Trade in Services, art. I.3.B), and defined as neither supplied on a commercial basis nor in competition with one or more service suppliers (in accordance with General Agreement, art. I.3.C); “Service supplier” as a natural or juridical person who seeks to supply or supplies a service; “Supply of a service” (in accordance with General Agreement, art. XXVIII.B). The SADC agreement provides for the above for all modes of supply, whereas the CARIFORUM and Central Africa ones provide for these here only for these modes.	According to 1.4 above, the SADC agreement utilizes the separate General Agreement on Trade in Services definitions for modes 1 and 2, respectively. The CARIFORUM and Central Africa agreements merge the General Agreement definitions of modes 1 and 2 under the heading “cross-border supply of services”. The CARIFORUM and Central Africa agreements also define for these purposes the “service supplier of a party” as a natural or juridical person of the European Union or African, Caribbean and Pacific party that seeks to supply or supplies a service.
3.3 Market access	All texts are in large part consistent in their market access disciplines, in line with General Agreement on Trade in Services, article XVI.	The market access disciplines here in the CARIFORUM and Central Africa agreements apply only to cross-border supply, whereas in the SADC one they apply to all modes of supply. Accordingly, the CARIFORUM and Central Africa agreements omit the equivalent of General Agreement on Trade in Services, article XVI.D, dealing with limitations relating to natural persons, article XVI.E, dealing with restrictions on the types of legal entities and article XVI.F, dealing with foreign capital limitations. The SADC market access disciplines are taken verbatim from the General Agreement.
3.4 National treatment	All texts are primarily consistent in their national treatment disciplines, in line with General Agreement on Trade in Services, article XVII.	The national treatment disciplines here in the CARIFORUM and Central Africa agreements apply only to cross-border supply, whereas in the SADC one they apply to all modes of supply.

Provision	Common features	Differences
3.5 List of commitments	All texts provide for the scheduling of commitments in annexes (i.e., sectors to be liberalized and reservations governing the degree of opening). All texts also provide for differentiated approaches for the European Union and the African, Caribbean and Pacific parties.	In accordance with 2.5 above, in the CARIFORUM and Central Africa agreements the European Union uses a positive list approach for scheduling sectors and a negative list for scheduling reservations. In the SADC agreement, the European Union retains flexibility, but is likely to proceed in the same manner above.^e The approach to scheduling for the African, Caribbean and Pacific parties in the CARIFORUM and SADC agreements aligns with the General Agreement on Trade in Services, in that the scheduling of sectors is based on a positive list (the party indicates explicitly which sectors are covered) and the scheduling of reservations is based on a hybrid of a negative list for modes 1, 2 and 3 (the party indicates explicitly what treatment is not covered) and a positive list for mode 4. The preferred approach to scheduling for the African, Caribbean and Pacific parties in the Central Africa agreement remains to be determined. With respect to formatting, all parties of the CARIFORUM and Central Africa agreements inscribe market access and national treatment reservations in a single column. The same holds for the European Union in the SADC agreement, whereas the SADC one will follow the General Agreement on Trade in Services format of inscribing these in their own column. The SADC agreement also makes provision for the scheduling of "Additional Commitments", in accordance with General Agreement on Trade in Services, article XVIII.

Provision	Common features	Differences
3.6 Most favoured nation	Where most-favoured-nation disciplines exist (i.e., only in the CARIFORUM and SADC agreements), they are asymmetrically applied to the European Union and African, Caribbean and Pacific parties. Where most-favoured-nation disciplines exist, a “major trading economy” means any developed country or any country accounting for a share of world merchandise exports of more than 1 per cent in the year before the entry into force of the economic integration agreement in question, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports of more than 1.5 per cent in the year before the entry into force of the economic integration agreement in question. Where most-favoured-nation disciplines exist, they will not apply to treatment granted to third countries where that treatment occurs as part of a regional economic integration agreement creating an internal market or requiring legislative approximation, with a view to removing non-discriminatory obstacles to trade in services. The European Economic Area pre-accession agreements to the European Union, the CARICOM Single Market and Economy and the CARICOM-Dominican Republic free trade agreement, and the SADC agenda on services are explicitly referenced. Where most-favoured-nation disciplines exist, the obligations shall not apply to treatment granted to measures providing for the recognition of qualifications, licences or prudential measures in accordance with General Agreement on Trade in Services, article VII, or its Annex on Financial Services; under any international agreement or arrangement relating wholly or mainly to taxation; or under measures benefitting from the coverage of a most-favoured-nation exemption listed in accordance with General Agreement, article II.2. The list of excepted treatment in the SADC agreement includes, in brackets, temporary movement of natural persons supply services.	The Central Africa agreement does include most-favoured-nation disciplines for commercial presence for either party (see also 1.6 above). Under the CARIFORUM agreement, these most-favoured-nation disciplines apply only to the cross-border supply of services. For the European Union, no less favourable treatment shall be accorded to the CARIFORUM party than is accorded to like services and service suppliers of any third country with whom the European Union has concluded an economic integration agreement after the signature of the agreement. The same applies to the CARIFORUM party, but instead of applying for any third country, it applies only when an economic integration agreement is entered into with any “major trading economy” (see definition in other column). That said, should a CARIFORUM party provide more favourable treatment to any third party, the CARIFORUM agreement provides the possibility of launching consultations wherein the parties may decide whether this third party treatment can be denied to the European Union party. In accordance with 2.6 above, the SADC agreement most-favoured-nation disciplines apply to all modes of supply. For the European Union, no less favourable treatment shall be accorded to the SADC party than is accorded to like services and service suppliers of any third party with whom the European Union has concluded an economic integration agreement. Of note, the European Union obligation under the SADC agreement is not limited to economic integration agreements signed after the agreement services text is signed (as it is for the CARIFORUM agreement, as stated above). The same applies to the SADC party, but instead of applying for any third party, it applies only when an economic integration agreement is entered into with any “major trading economy”.

Provision	Common features	Differences
4.1 Coverage and definitions	All texts are consistent in applying these disciplines to key personnel, business services sellers, contractual services suppliers and independent professionals. The CARIFORUM and Central Africa agreements also apply to graduate trainees (the SADC agreement covers them under key personnel). The CARIFORUM agreement also applies to short-term visitors for business purposes. All texts are mainly consistent in the following definitions: • “Key personnel”, as persons employed in a company of one of the parties (other than non-profit) who are responsible for the setting up or control, administration and operation of a commercial presence. Key personnel comprise “business visitors” and “intra-corporate transferees”; • “Intra-corporate transferees”, as persons of a party who have been employed by a company or have been partners in it for at least one year and who are temporarily transferred to a commercial presence in the territory of the other party. The individual must belong to the category of “managers” or “specialists”. In the Central Africa agreement, majority shareholders are excluded from qualifying as partners. In the SADC agreement, the natural person must reside outside the other party at the time of application. Employment in a branch of the juridical person also qualifies for eligibility. • “Managers”, as persons working in a senior position within a juridical person who primarily directs the management of the commercial presence, receive general supervision or direction principally from the board of directors or shareholders of the business or their equivalent. Roles include directing the company (or department/sub-division thereof); supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions; • “Specialists”, as persons working within a company who possess uncommon knowledge essential to the company’s production, research equipment, techniques or management. Assessment of such knowledge will include whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership in an accredited profession.	The CARIFORUM and Central Africa agreements share the following definitions: “Business visitors”, as persons working in a senior position who are responsible for setting up a company and who do not engage in direct transactions with the general public and do not receive remuneration from a source located in the host party. The SADC agreement defines “business visitors setting up a commercial presence” as persons employed in a senior position within a company of one party, who are responsible for setting up a company in the other party. The exclusion of activities of the person differs from those above in that the persons do not offer or provide services or engage in economic activities other than those required for setting up the company. Remuneration cannot be received from a source located within the other party, and the provider has its principal place of business in the territory of a party and has no other representative office, branch or subsidiary in the other party. • “Business services sellers”, as persons of a party who are representatives of a service supplier of that party seeking temporary entry into the territory of the other party for the purposes of negotiating the sale of services or entering into agreements to sell services for that supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host party. The SADC agreement modifies the above in defining these as “services sellers” seeking “entry and temporary stay”. Prohibited activities also include being commission agents.

Provision	Common features	Differences
4.1 Coverage and definitions, cont.	In the SADC agreement, instead of “uncommon” knowledge, bracketed text refers to [specialized] [or technical]. In addition, with respect to the qualification, SADC has bracketed [high level of qualification].^f “Graduate trainees”, as persons of a party who have been employed by a company of that party for at least one year, possess a university degree and are temporarily transferred to a commercial presence or to the parent company of the juridical person in the territory of the other party, for career development purposes or to obtain training in business techniques or methods. In the SADC agreement, graduate trainees are defined as a subset of key personnel, whereas in the CARIFORUM and Central Africa agreements they are defined as a separate category of natural persons. “Contractual services suppliers”, as employees of a company of that party that has no commercial presence in the other party and that has concluded a bona fide contract to supply services with a final consumer in the latter party requiring the temporary presence of its employees in that party in order to fulfil the contract; “Independent professionals”, as persons of the party engaged in the supply of a service and established as self-employed in the party who have no commercial presence in the territory of the other party and who have concluded a bona fide contract to supply services with a final consumer in the latter party requiring their presence on a temporary basis in that party in order to fulfil the contract. In the CARIFORUM and SADC agreements, a “bona fide contract” is qualified as excluding those through an agency for placement and supply of services personnel. The CARIFORUM agreement explicitly references CPC 872 (Placement and supply services of personnel). “Qualifications”, as diplomas, certificates and other evidence (of formal qualification) issued by an authority designated pursuant to legislative, regulatory or administrative provisions and certifying successful completion of professional training.	

Provision	Common features	Differences
4.2 Key personnel and graduate trainees	In the CARIFORUM and Central Africa agreements, subject to reservations listed (in the schedules), in sectors in which commitments are undertaken on commercial presence, investors shall be allowed to employ key personnel and graduate trainees in their commercial presence. In the CARIFORUM agreement, the terms for each party indicate up to three years for intra-corporate transferees, 90 days in any 12-month period for business visitors and one year for graduate trainees. The above terms apply for the European Union party under the Central Africa agreement, but for the Central Africa party, the specific period for each category is in brackets (providing the possibility for a differentiated allowance by party). For the CARIFORUM and Central Africa agreements, in terms of market access, for the same sectors above, unless specified in their schedule, measures which each party shall not maintain or adopt are defined as limitations on the total number of natural persons that an investor may employ as key personnel and graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations. This aligns with General Agreement on Trade in Services, art. XVI.2.D. Recall that, for the CARIFORUM agreement and (bracketed) for the Central Africa one, sectors covered with respect to commercial presence include some non-services activities.	The SADC agreement has no disciplines or specific conditions applying to this issue. Under a separate article, "Conditions", it provides that the conditions applicable to the temporary movement of natural persons shall be provided in the schedule of commitments^{41g} and in line with national legislations. This approach of including such elements in the schedule aligns with that taken under the General Agreement on Trade in Services. The SADC agreement adds: European Union to provide a proposal under key personnel (ICT and graduate trainees, service sellers), contractual services suppliers and independent professionals.
4.3 Business services sellers	In the CARIFORUM and Central Africa agreements, subject to reservations listed (in the schedules), in sectors in which commitments are undertaken on cross-border supply and commercial presence (i.e., modes 1-3), parties shall allow entry and stay of business services sellers for up to 90 days in any 12-month period.	The SADC agreement has no disciplines or specific conditions applying to this issue. Under a separate article, "Conditions", it provides that the conditions applicable to the temporary movement of natural persons shall be provided in the schedule of commitments^b and in line with national legislations. This approach of including such elements in the schedule aligns with that taken under the General Agreement on Trade in Services. The SADC agreement adds: European Union to provide a proposal under key personnel (ICT and graduate trainees, service sellers), contractual services suppliers and independent professionals.

Provision	Common features	Differences
4.4 Contractual services suppliers and independent professionals	Without prejudice to parties' related obligations under the General Agreement on Trade in Services, and subject to the conditions specified in the text (CARIFORUM; and the European Union's schedule), the CARIFORUM and Central Africa agreements include an obligation of the European Union party to allow the supply of services by contractual services suppliers of the African, Caribbean and Pacific CARIFORUM and Central Africa party in the following subsectors: legal advisory services in respect of international public law and foreign law (i.e., non-European Union law); accounting and bookkeeping services; taxation advisory services; architectural services; urban planning and landscape architecture services; engineering services; integrated engineering services; medical and dental services;# veterinary services;# midwives services;# services provided by nurses, physiotherapists and paramedical personnel;# computer and related services; research and development services; advertising services; market research and opinion polling;# management consulting services; services related to management consulting; technical testing and analysis services; related scientific and technical consulting services; maintenance and repair of equipment, including transportation equipment, notably in the context of an after-sales or after-lease services contract; translation and interpretation services; site investigation work; higher education services (only privately funded services); environmental services; travel agencies and tour operators' services; and tourist guides services.# The CARIFORUM agreement also includes the sub-sectors: chef de cuisine services, # fashion model services# and entertainment services other than audiovisual services. The Central Africa agreement also includes the subsector: wood fence installation services and wood carpentry and joinery services. # 43j (Sectors marked with # are not included in either the European Community General Agreement on Trade in Services schedule of commitments or their revised Doha offers.) For the CARIFORUM African, Caribbean and Pacific party, without prejudice to their obligations under the General Agreement on Trade in Services, European Union contractual services suppliers shall be allowed to supply services subject to the conditions specified in the text and the CARIFORUM African, Caribbean and Pacific parties' schedules.	The SADC agreement has no disciplines or specific conditions applying to this issue. Under a separate article, "Conditions", it provides that the conditions applicable to the temporary movement of natural persons shall be provided in the schedule of commitments¹¹ and in line with national legislations. This approach of including such elements in the schedule aligns with that taken under the General Agreement on Trade in Services. The SADC agreement adds: European Union to provide a proposal under key personnel (ICT and graduate trainees, service sellers), contractual services suppliers and independent professionals.

Provision	Common features	Differences
4.4 Contractual services suppliers and independent professionals, cont.	For the Central Africa African, Caribbean and Pacific party, without prejudice to their obligations under the General Agreement on Trade in Services, European Union contractual services suppliers shall be allowed to supply services subject to the conditions specified in the text in the following sub-sectors: legal advisory services in respect of international public law and foreign law (i.e., non-European Union law); architectural services; urban planning and landscape architecture services; engineering services; integrated engineering services; medical and dental services; veterinary services; midwives services; services provided by nurses, physiotherapists and paramedical personnel; computer and related services; research and development services; advertising services; technical testing and analysis services; related scientific and technical consulting services; maintenance and repair of equipment, including transportation equipment, notably in the context of an after-sales or after-lease services contract; translation and interpretation services; site investigation work; technical and vocational education services, higher education services; environmental services; travel agencies and tour operators' services; wood carpentry and joinery services; and marine carpentry services. The commitments on contractual services suppliers undertaken in the CARIFORUM and Central Africa agreements are subject to the following conditions: The persons must be engaged in the temporary supply of the service as employees of a company that has obtained a service contract not exceeding 12 months; The persons must have been offering these services as an employee of the company for at least one year before applying for entry and must possess at least three years' professional experience in the activity in question; The persons must possess: (a) a university degree or qualification demonstrating equivalent knowledge; and (b) professional qualifications where required by the party where the service is supplied; importing party may evaluate degree or qualification for equivalency. The following are exempt from the requirement immediately above – CARIFORUM agreement: fashion model services, chef de cuisine services and entertainment services other than audiovisual services; Central Africa agreement: wood fencing and carpentry and joinery services; The person shall not receive remuneration for the services provided other than the remuneration paid by the contractual service supplier during its stay in the other party;	

Provision	Common features	Differences
4.4 Contractual services suppliers and independent professionals, cont.	The stay of the persons shall cumulatively not exceed six months (25 weeks in Luxembourg) in any 12-month period or for the duration of the contract, whichever is less; Access accorded relates only to the contract-specific activity and does not allow the use of the professional title of the importing party; The number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as decided by importing party; Other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in the schedules. Without prejudice to parties' related obligations under the General Agreement on Trade in Services and subject to the conditions specified in the text (CARIFORUM agreement: and the European Union's schedule), the CARIFORUM and Central Africa agreements include an obligation on the European Union party to allow the supply of services by independent professionals of the African, Caribbean and Pacific CARIFORUM and Central Africa party in the following subsectors: legal advisory services in respect of international public law and foreign law (i.e., non-European Union law);# architectural services; urban planning and landscape architecture services; engineering services; integrated engineering services; computer and related services; research and development services;# market research and opinion polling; management consulting services;# services relating to management consulting; and translation and interpretation services. (Sectors marked with # are not included in either the European Community General Agreement on Trade in Services schedule of commitments or their revised Doha offers.) For the CARIFORUM African, Caribbean and Pacific party, without prejudice to their obligations under the General Agreement on Trade in Services, European Union independent professionals shall be allowed to supply services subject to the conditions specified in the text and the CARIFORUM parties' schedules.	

Provision	Common features	Differences
4.4 Contractual services suppliers and independent professionals, cont.	For the Central Africa African, Caribbean and Pacific party, without prejudice to their obligations under the General Agreement on Trade in Services, European Union independent professionals shall be allowed to supply services subject to the conditions specified in the text in the following subsectors: legal advisory services in respect of international public law and foreign law (i.e., non-European Union law); architectural services; urban planning and landscape architecture services; engineering services; integrated engineering services; computer and related services; research and development services. The commitments on independent professionals undertaken in the CARIFORUM and Central Africa agreements are subject to the following conditions: The persons must be engaged in the temporary supply of the service as self-employed persons established in the other party and must have obtained a service contract not exceeding 12 months; Before applying for entry, the persons must possess at least six years' professional experience in the activity in question; The persons must possess: (a) a university degree or qualification demonstrating equivalent knowledge; and (b) professional qualifications where required by the party where the service is supplied; importing party may evaluate degree or qualification for equivalency; The stay of the persons shall cumulatively not exceed six months (25 weeks in Luxembourg) in any 12-month period or for the duration of the contract, whichever is less; Access accorded relates only to the contract-specific activity and does not allow the use of the professional title of the importing party; Other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in the schedules.	

Provision	Common features	Differences
4.5 Short-term visitors for business purposes		The CARIFORUM agreement provides a best endeavour provision for the entry and temporary stay of short-term visitors for business purposes carrying out the following activities:^k research and design, marketing research, training seminars, trade fairs and exhibitions, sales, purchasing and tourism. When allowed, the stay shall be for up to 90 days in any 12-month period. Neither the SADC agreement nor the Central Africa one has disciplines or specific conditions applying to this issue. Under a separate article, "Conditions", the SADC agreement provides that the conditions applicable to the temporary movement of natural persons shall be provided in the schedule of commitments,^l which are annexed to this chapter, and in line with national legislation. This approach of including such elements in the schedule aligns with that taken under the General Agreement on Trade in Services. The CARIFORUM agreement: best endeavour clause.
5. Regulatory framework		
5.1 Provisions of general application		The CARIFORUM and Central Africa agreements follow the structure below. While the SADC agreement has a similar section covering institutional provisions and specific sectoral rules, much of the content below is drawn from Part I, General Provisions, Obligations and Disciplines. In the SADC agreement, all content in the section on institutional provisions and specific sectoral rules are bracketed.

Provision	Common features	Differences
5.1.1 Mutual recognition	All texts are consistent in providing the possibility (best endeavour) for the development of recommendations with respect to mutual recognition and the potential subsequent negotiations of mutual recognition agreements by the relevant professional bodies of the parties. Any such agreement shall conform with relevant WTO provisions, in particular General Agreement on Trade in Services, article VII (on recognition). All texts include a recognition of a party's right to require natural persons to possess the relevant qualifications/professional experience specified in the territory where the service is supplied, for the sector of activity concerned.	Under the CARIFORUM agreement, parties' professional bodies are encouraged to begin negotiations no later than three years after the entry into force of the agreement, among others, in the disciplines of accounting, architecture, engineering and tourism. Once a recommendation is received, it must be reviewed for consistency with the agreement within (CARIFORUM and SADC agreements: "a reasonable time"; Central Africa agreement: "a reasonable time, not exceeding 30 calendar days"). The SADC agreement further prescribes that the assessment be based notably on: (a) the extent to which the standard and criteria applied by each party for the authorization, licences, operations and certification of service providers and entrepreneurs are converging; and (b) the potential economic value of the mutual recognition agreements. Under the CARIFORUM agreement, progress in mutual recognition is to be reviewed every two years; under the SADC one, under periodic review. The SADC agreement includes additional provisions on recognition, in line with General Agreement on Trade in Services, articles VII.1, .2, and .3.
5.1.2 Transparency	All texts are consistent and aligned in large part with General Agreement on Trade in Services, article III.4, in that parties shall respond promptly to all requests by the other party for specific information on any of its measures of general application or international agreements that pertain to or affect this agreement. Enquiry points will also be established to provide information on all such matters.	The Central Africa agreement includes an additional provision on the disclosure of confidential information, in line with General Agreement on Trade in Services, article III bis.

Provision	Common features	Differences
5.1.3 Procedures	As under General Agreement on Trade in Services, article VI.3, where a specific commitment has been made and authorization is required for the supply of a service or commercial presence, all texts require the competent authority to inform the applicant for authorization of their decision within a reasonable period of time after the submission of a complete application. Status on the application, if requested, should be provided without undue delay (SADC agreement omits “without undue delay”). All texts are also consistent in large part with General Agreement on Trade in Services, article VI.2.A, in ensuring the availability of an objective and impartial review procedure or tribunal for administrative decisions affecting (SADC/General Agreement on Trade in Services: trade in services; CARIFORUM/Central Africa: commercial presence, cross-border supply and temporary presence of natural persons for business purposes).	In this realm of disciplines on domestic regulation, the SADC agreement aligns more closely with the General Agreement on Trade in Services, article VI (in structure and content), providing that, where specific commitments are taken, all measures of general application affecting trade in services are administered in a reasonable, objective, transparent and impartial manner (note: transparent is not included under General Agreement on Trade in Services, art. VI.1). Of note, while the text is bracketed, the SADC agreement would subject measures relating to qualification requirements and procedures, technical standards and licensing requirements to a necessity test to ensure that they do not constitute unnecessary barriers to trade in services.^m Parties would further ensure such measures are based on objective and transparent criteria, such as competence and the ability to supply the service; not in themselves a restriction on the supply of the service; and required to achieve national development policy objectives. A separate provision in the SADC agreement provides for the amending of this article (on domestic regulation) to incorporate the results of WTO negotiations relating to General Agreement on Trade in Services, article VI.4, or similar negotiations in a multilateral setting in which both parties participate.
5.2 Computer services		
5.2.1 Understanding on computer services	All texts are in large part consistent in that they elaborate a definition for computer services. Discipline to overcome the protectionist abuse of computer services definition.	The Central Africa agreement includes a best endeavour provision for technical assistance, training and capacity-building for strengthening the regulatory framework for computer services, strengthening and enhancing the participation of professional bodies, the exchange of information and expertise and building the supply capacity of local computer services suppliers.
5.3 Courier services		
5.3.1 Scope and definitions	All texts apply to courier services. All texts are consistent in their definition of a “universal service”. All texts are consistent in large part in their definition of an “individual licence”; however, in the CARIFORUM and SADC agreements, the licence is granted by “a regulatory authority”, whereas in the Central Africa one there is bracketed text with the options of a “regulatory authority” or a “competent authority”.	The SADC and Central Africa agreements also apply to postal services, which are traditionally defined similarly to courier services, but delivered by the national postal administration. Of note, while the CARIFORUM agreement does not appear to cover postal services, a universal service is explicitly defined in all texts in reference to postal services.

Provision	Common features	Differences
5.3.2 Prevention of anti-competitive practices in the courier sector/postal and courier sector	All texts provide for measures to address the potential of a monopolistic or oligopolistic supplier (or suppliers) to engage in or continue anti-competitive practices.	Recalling differences in scope noted above, the name of this article for the SADC and Central Africa agreements refers to the “postal and courier sector”, whereas the CARIFORUM one lists only courier.
5.3.3 Universal service	All texts are consistent in providing each party the regulatory flexibility to define universal service obligations, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary.	
5.3.4 Individual licences	All texts are consistent in providing disciplines to prevent the abuse of licensing requirements under universal service obligations. They require all licensing criteria and expected timelines for an application decision, as well as the terms and conditions of the individual licences to be made publicly available. In the case of a denied application, they all require the reasons to be made known upon request and for an appeal procedure through an independent body. The latter must be transparent, non-discriminatory and based on objective criteria.	
5.3.5 Independence of the regulatory bodies	All texts provide that regulatory bodies shall be legally separate from and not accountable to any supplier of postal and courier services. The decision and procedures employed are to be impartial vis-à-vis all market participants.	

Provision	Common features	Differences
5.3.6 Co-operation in the area of postal and courier services		The CARIFORUM and SADC agreements do not include this provision. The Central Africa agreement includes a best endeavour provision for technical assistance, training and capacity-building for developing and strengthening the regulatory framework for postal and courier services, establishing and developing the regulatory bodies envisaged (in accordance with 5.3.6 above), defining and implementing a universal service obligation (in accordance with 5.3.3 above) and improving the capacity of local postal and courier service suppliers.
5.4 Telecommunication services		
5.4.1 Definitions and scope	All texts are in large part consistent in their definition of telecommunication services, regulatory authority,* essential telecommunications facilities,# major supplier,# interconnection# and universal service. # – In accordance with the General Agreement on Trade in Services telecommunications reference paper. * - The Central Africa agreement includes bracketed text providing for [European Union: “regulatory authorities”] [Central Africa: “regulators”] and include the task of “implementing legislation” in defining the body/bodies. They are also consistent in large part in setting out the scope of telecommunication services covered and in excluding broadcasting.	The Central Africa agreement includes a provision in brackets indicating that the principles set out here apply after the expiry of transition periods outlined in parties’ relevant schedule of commitments.
5.4.2 Regulatory authority	All texts are consistent in the disciplines governing regulatory authorities* for telecommunication services, including that they are legally distinct and functionally independent, that they are sufficiently empowered, that their decisions are impartial vis-à-vis all market participants and with regard to the right and procedures for appealing a decision. These disciplines in general represent elaborations of those found in the General Agreement on Trade in Services telecommunications reference paper. * - The Central Africa agreement again includes bracketed text providing for [European Union: “regulatory authorities”] [Central Africa: “regulators”].	

Provision	Common features	Differences
5.4.3 Authorization to provide telecommunications services	All texts provide for disciplines that go beyond the General Agreement on Trade in Services telecommunications reference paper.	The SADC and CARIFORUM agreements are consistent in the disciplines governing licences for providing telecommunication services, including that they shall, as much as possible, be authorized following mere notification (i.e., automatic); that they can address attributions of numbers and frequencies; and that, when a licence is required, the process and criteria are publicly available, that denials are made in writing if requested and that there is recourse before an appeal body if unduly denied. Licence fees shall not exceed administrative costs normally incurred. The Central Africa agreement is heavily bracketed, alternating between the disciplines referred to above in the SADC and CARIFORUM agreements and provisions simply indicating that a licence will be authorized, provided it meets the regulations in place. When a licence is required, in addition to providing that the process and criteria are publicly available and that denials are made in writing if requested, the Central Africa African, Caribbean and Pacific party offers the possibility of recourse before an appeal body (as opposed to requiring it above). Whereas the Central Africa African, Caribbean and Pacific party proposed text omits disciplines on licence fees, the European Union party text offers the same as in the SADC and CARIFORUM agreements, but goes further to explicitly exclude bids, auctions and other non-discriminatory methods for awarding licences, as well as mandatory contributions relating to the provision of universal service.
5.4.4 Competitive safeguards on major suppliers	All texts are consistent in providing for disciplines to prevent anti-competitive practices. These disciplines draw almost verbatim from the General Agreement on Trade in Services telecommunications reference paper.	
5.4.5 Interconnection	All texts are consistent in providing for disciplines on interconnection, with the bulk of the disciplines (paras. 3-6) mirroring those provided in the General Agreement on Trade in Services telecommunications reference paper.	With respect to recourse to an independent domestic body to resolve disputes over terms, conditions and rates for interconnection, the Central Africa agreement includes an additional bracketed provision to the effect that the regulator may assume its duty to resolve such disputes when necessary to ensure respect for fair competition, non-discrimination between operators or interoperability of services and networks.
5.4.6 Scarce resources	In accordance with the General Agreement on Trade in Services telecommunications reference paper, all texts are consistent in providing for the use of scarce resources, including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory way.	

Provision	Common features	Differences
5.4.7 Universal service	All texts are in large part consistent in the provision of disciplines for universal service, derived in part from the General Agreement on Trade in Services telecommunications reference paper, which allows for the maintenance of such obligations. The texts go further in providing disciplines on the use of such obligations, such as the right for all suppliers to be eligible to ensure universal services, and the possibility of assessing whether a universal service obligation represents an unfair burden. In such cases, it further provides for the possibility of a compensatory mechanism. The elements relating to assessing an unfair burden and compensation are bracketed in the Central Africa agreement.	
5.4.8 Confidentiality of information	All texts are consistent in large part in that parties are to ensure the confidentiality of telecommunications and related traffic data by means of a public telecommunication network and publicly available telecommunications services without restricting trade in services. The Central Africa agreement includes brackets on telecommunications and provides the alternative [Central Africa: communications].	
5.4.9 Disputes between suppliers	All texts are in large part consistent in that the national regulatory authority shall issue a binding decision to resolve disputes between suppliers of telecommunications networks or services with regard to rights and obligations. When concerning cross-border service provision, national regulatory authorities shall coordinate efforts towards resolution. On the above, the Central Africa agreement provides bracketed text vis-à-vis [European Union: "national regulatory authority/ies"] [Central Africa: "national regulator/s"].	
5.4.10 Co-operation in the area of telecommunications services		The CARIFORUM and SADC agreements do not include this provision. The Central Africa agreement includes a best endeavour provision for technical assistance, training and capacity-building for developing and strengthening the regulatory framework for telecommunication services, establishing and developing the [European Union: regulatory bodies] [Central Africa: regulators] envisaged (in accordance with 5.4.2 above), defining and implementing a universal service obligation (in accordance with 5.4.7 above), exchange of technological information and expertise and improving the capacity of local telecommunications service suppliers.

Provision	Common features	Differences
5.5 Financial services		
5.5.1 Scope and definitions	All texts are consistent in their scope and definition (in line with the General Agreement on Trade in Services Annex on Financial Services and, for “new financial services”, the Understanding on Commitments in Financial Services). ¹⁾	The Central Africa agreement includes a provision in brackets indicating that the principles set out apply after the expiry of transition periods outlined in the parties’ relevant schedule of commitments.
5.5.2 Prudential carve-out	All texts are consistent with the General Agreement on Trade in Services Annex on Financial Services in providing parties the right to adopt/maintain measures for prudential reasons, including the protection of investors, depositors, policyholders or persons to whom a fiduciary duty is owed by a financial service supplier and/or ensuring financial system integrity and stability. They similarly provide the right for non-disclosure of confidential information.	Going beyond General Agreement on Trade in Services, article 2 (a), of the General Agreement on Trade in Services Annex on Financial Services, the Central Africa and SADC agreements include a necessity test on prudential measures, such that they shall not be more burdensome than necessary to achieve their aim and shall not discriminate against like financial service suppliers of the other Party.
5.5.3 Effective and transparent regulation	All texts are consistent in providing a best endeavour obligation that any measure of general application that a party proposes to adopt be provided in advance to all interested persons to comment. This is akin to the transparency obligation under General Agreement on Trade in Services, article III.1; however, it deals with measures proposed (and not just adopted). Though bracketed in the Central Africa agreement, all texts also provide that the requirements for completing an application to supply financial services be made available upon request and that requests for status of an application shall be provided. Lastly, they provide a best endeavour obligation to facilitate the implementation and application of internationally agreed standards for the regulation and supervision of the financial sector.	In the SADC agreement and bracketed in the Central Africa one, when referencing internationally agreed standards, they explicitly reference a number of agreements, including the Basel Committee on Banking Supervision’s “Core Principles for Effective Banking Supervision”, the International Association of Insurance Supervisors’ “Insurance Core Principles”, the International Organization of Securities Commissions’ “Objectives and Principles of Securities Regulation”, the Organization for Economic Development’s “Agreement on exchange of information on tax matters” and the “Financial Action Task Force”. The forty recommendations on money-laundering” and “Nine special recommendations on terrorist financing”. CARICOM insisted that these be deleted in their negotiations. A further best endeavour commitment relates to trying to apply the “Ten Key Principles for Information Sharing”, promulgated by the finance ministers of the Group of Seven nations in bilateral contacts.
5.5.4 New financial services	Where disciplines on new financial services exist (i.e., CARIFORUM and SADC agreements), they are consistent in providing the obligation that, where a party permits a financial service by a domestic supplier, it shall permit a financial service supplier of the other party in like circumstances. This is similar to article 7 of the Understanding on Commitments in Financial Services; however, the Understanding limits the obligation to suppliers established in the other party’s territory (i.e., through mode 3). The juridical form through which the supply occurs may be prescribed and authorization may be required; however, authorization may be refused only for prudential reasons. Decisions on authorizations shall be made within a reasonable time.	The Central Africa economic partnership agreement does not include this provision.

Provision	Common features	Differences
5.5.5 Data processing	All texts provide for an obligation to allow a financial service supplier of the other party to transfer information in electronic or other form, into and out of its territory, for data processing, where required in the ordinary course of business. In addition, each party shall adopt adequate safeguards to the protection of privacy and fundamental rights, and freedom of individuals, in particular with regard to the transfer of personal data.	
5.5.6 Specific exceptions	All texts are consistent in providing exemptions for specific financial services of a public nature (i.e., the public retirement plan or statutory system of social security; the central bank, monetary authority or public entity pursuing monetary or exchange rate policies; or other activities of a public entity for the account or with the guarantee or using the financial resources of the State). The above aligns to an extent with the General Agreement on Trade in Services Annex on Financial Services, article 1 (b).	
5.5.7 Co-operation in the area of financial services		The CARIFORUM and SADC agreements do not include this provision. The Central Africa agreement includes a best endeavour provision for technical assistance, training and capacity-building for developing and strengthening the regulatory framework for financial services, establishing and developing the [European Union: regulatory bodies] [Central Africa: regulators] charged with regulating financial services markets, implementing the obligations emanating from disciplines on Effective and Transparent Regulation (in accordance with 5.5.3 above), exchange of information and best practices in financial services, especially with regard to the regulations envisaged in the section “Effective and Transparent Regulation”, and improving the capacity of local financial service suppliers.

Provision	Common features	Differences
5.6 International maritime transport services		
Scope, definitions and principle	The texts are in large part consistent in providing a range of definitions relating to international maritime transport services. They also stipulate obligations relating to the principle of unrestricted access to international maritime markets and trades on a commercial and non-discriminatory basis, as well as the provision of national treatment with regard to access to ports and the use of infrastructure and auxiliary maritime services, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading. Most-favoured-nation obligations apply vis-à-vis conditions of establishment for service suppliers between parties, and in the CARIFORUM and SADC agreements, also with those of any third country.⁶ A range of port-related services are also to be provided to suppliers on reasonable and non-discriminatory terms and conditions. Bracketed in the Central Africa agreement, parties are to abstain from cargo shipping arrangements in future bilateral agreements with third parties and terminate such existing arrangements within a reasonable period of time. Unilateral measures that could constitute a disguised restriction on the free supply of international maritime transport should also be abolished and abstained from in the future.	In the Central Africa agreement, this entire section is in brackets. In addition, the words “international maritime” have been removed from the section title. It also includes a provision in brackets indicating that the principles set out here apply after the expiry of transition periods outlined in parties’ respective schedule of commitments. With respect to definitions, the Central Africa agreement includes brackets around the exemption of direct activities of dockers from “maritime cargo handling services” when this workforce is organized independently of the stevedoring or terminal operator companies.
5.6.2 Co-operation in the area of maritime transport services		The CARIFORUM and SADC agreements do not include this provision. In brackets, the Central Africa agreement includes a best endeavour provision for technical assistance, training and capacity-building in the area of maritime transport, in particular to facilitate the export of maritime transport services from the Central Africa region.
5.7 Tourism services		
5.7.1 Scope	The CARIFORUM and Central Africa agreements are consistent in providing that the principles of the regulatory framework set out here apply to all tourism services liberalized in the agreement. The entire section on tourism services is bracketed in the Central Africa agreement.	The SADC agreement does not include disciplines on tourism services.

Provision	Common features	Differences
5.7.2 Prevention of anti-competitive practices	The CARIFORUM and Central Africa agreements provide for the maintenance or introduction of measures to prevent the anti-competitive practices of suppliers, notably those in tourism distribution networks. This includes, among other things, abuse of dominant position through the imposition of unfair prices, exclusivity clauses, refusal to deal, sales, quantity restrictions or vertical integration.	The SADC agreement does not include disciplines on tourism services.
5.7.3 Access to technology	The CARIFORUM and Central Africa agreements provide a best endeavour clause to facilitate transfer of technology on a commercial basis to commercial presences in the African, Caribbean and Pacific party.	The SADC agreement does not include disciplines on tourism services.
5.7.4 Small and medium-sized enterprises	The CARIFORUM and Central Africa agreements provide a best endeavour clause to facilitate the participation of small and medium-sized enterprises in the tourism sector.	The SADC agreement does not include disciplines on tourism services.
5.7.5 Mutual recognition	The CARIFORUM and Central Africa agreements provide for cooperation of the parties towards mutual recognition of requirements, qualifications, licences or other regulations, in accordance with the section on mutual recognition (see 5.1.1 above).	The SADC agreement does not include disciplines on tourism services.
5.7.6 Increasing the impact of tourism on sustainable development	The CARIFORUM and Central Africa agreements provide for the encouragement of the African, Caribbean and Pacific party services suppliers to participate in international, regional, subregional, bilateral and private financing programmes to support the sustainable development of tourism.	The SADC agreement does not include disciplines on tourism services.
5.7.7 Environmental and quality standards	The CARIFORUM and Central Africa agreements provide for the parties to encourage compliance with environmental and quality standards applicable to tourism services and a best endeavour commitment to facilitate the participation of African, Caribbean and Pacific State parties in relevant international standard setting organizations.	The SADC agreement does not include disciplines on tourism services.

Provision	Common features	Differences
5.7.8 Development cooperation and technical assistance	The CARIFORUM and Central Africa agreements include a best endeavour clause calling for parties to cooperate, including [CARIFORUM: facilitating support for] [Central Africa: technical assistance, training and capacity-building] in the following areas: - Upgrading national accounting systems with a view to introducing the tourism satellite accounts at local/regional levels; - Capacity-building at local/regional levels for environmental management in tourism areas; - Development of online marketing materials for small and medium-sized enterprises in the sector; - Mechanisms to ensure the effective participation of African, Caribbean and Pacific State parties in, among other things, international standard-setting bodies focused on sustainable tourism standards development; - Tourism exchange programmes and training.	The SADC agreement does not include disciplines on tourism services.
5.7.9 Exchange of information and consultation	The CARIFORUM and Central Africa agreements provide for parties to exchange information experiences, information and best practices on issues and to develop modalities for regular dialogue therein, including on the issuance of travel advisories. Other stakeholders, including the private sector, will be invited.	The SADC agreement does not include disciplines on tourism services. 1. The parties agree to exchange experiences, information and best practices and to consult on matters referred to and relevant to trade between the parties. The committee [...] [Central Africa: refer to the agreement committee] develop the modalities for this regular dialogue. 2. The parties shall invite relevant stakeholders, including the private sector, to take part in this dialogue when it lends and with their agreement. 3. The parties further agree that regular dialogue would be useful regarding the dissemination of advice to travellers.
6. Electronic commerce		
6.1 Objective and principles	All texts are consistent in that they provide for the parties to promote the development of e-commerce between them (which should be fully compatible with the highest international standards of data protection) and cooperate on issues raised by e-commerce under the services title. In addition, they agree that deliveries by electronic means, as services within the meaning defined in the text as cross-border supply, cannot be subject to customs duties.	

Provision	Common features	Differences
6.2 Regulatory aspects of e-commerce		The CARIFORUM and SADC agreements commit the parties to maintaining a dialogue on regulatory issues raised by e-commerce, including issues relating to the recognition of certificates of electronic signatures, the liability of intermediaries with respect to transmission or storage of information, treatment of spam and consumer protection. This cooperation can take the form of information exchanges of relevant legislation and on implementing such legislation. As in other cooperation articles, the Central Africa agreement characterizes the cooperation in terms of technical assistance, training and capacity-building, applying to the same issues listed above for the CARIFORUM and SADC agreements. The Central Africa agreement also lists training for undertaking mandatory information security and information technology security audits.
7. Cooperation		
7.1 Cooperation	All texts include the recognition of the importance of cooperation and technical assistance (Central Africa: and capacity-building) for complementing services liberalization (Central Africa: especially for developing appropriate regulatory frameworks) and supporting African, Caribbean and Pacific State parties' efforts to strengthen their capacity in the supply of services and facilitate the implementation of commitments and achievement of the objectives of the trade in services agreement. The SADC agreement also lists the improvement of the collection, the analysis and the dissemination of statistics on trade in services in the objectives above.	The SADC agreement includes an initial article objective linking the cooperation to the development needs of the African, Caribbean and Pacific party (as articulated in arts. 73.2.e and 73.3, which presumably reside in the main agreement text). In the CARIFORUM and SADC agreements, the parties agree to cooperate, including by providing support for technical assistance, training and capacity-building in, among other things, the following areas:

Provision	Common features	Differences
7.1 Cooperation, cont.		» Gathering information and meeting European Community national/sub-national regulations and standards; » Improving the export capacity of African, Caribbean and Pacific service suppliers (with varying references to small and medium-sized enterprises, tourism, franchising and mutual recognition agreements); » Facilitating interaction between parties' service suppliers (SADC: including for negotiating mutual recognition agreements); » Addressing needs relating to quality and standards in domestic/regional markets and in trade between parties; » Supporting the development and implementation of national and regional regulatory regimes; » SADC agreement: building human resource capacity and promoting the transfer of expertise (e.g., specific knowledge and technical know-how, and improving capacity for research; » SADC agreement: strengthening capacity for the collection, compilation, dissemination and management of trade in services statistics; » SADC agreement: strengthening capacity for addressing supply-side constraints and diversifying supply and export capacity; » CARIFORUM agreement: establishing mechanisms to promote investment and joint ventures between service suppliers and boost the capacity of investment promotion agencies. In the Central Africa agreement, the parties agree to cooperate, aiming at stimulating the development of service sectors and facilitating services exports from the region, including by providing support for technical assistance, training and capacity-building in, among others, the following areas: » Improving the quality and supply capacity of suppliers of services essential for development; » Establishing and developing institutions and training resources and information, including for enquiry points envisaged under the provisions on transparency (see 5.1.2 above); » Cooperation between parties' service suppliers and supplier associations; » Cooperation between national/regional service suppliers and institutions; » Technical assistance and cooperation between Governments and regional authorities (e.g., regulatory agencies and border services); » Cooperation to implement the various Central Africa African, Caribbean and Pacific party obligations under the disciplines on regulatory framework works, as specified in the articles on cooperation throughout the relevant sections. The Central Africa agreement also includes, in brackets, at the end of the text the heading for an annex entitled: "Technical cooperation and capacity-building for services".

Provision	Common features	Differences
7.2 Private sector co-operation		In the SADC agreement, the parties acknowledge the need for developing and strengthening the African, Caribbean and Pacific party private sector, notably small, micro and medium-sized enterprises. The provision commits the European Union to providing assistance to SADC African, Caribbean and Pacific State parties' programmes for private sector services suppliers' development under the agreement. Cooperation between parties' services suppliers shall also be promoted through, among other things, establishing and strengthening services-oriented private sector institutions; exchanging information to support firms' better understanding of European Union regulations and standards; encouraging technical know-how and technology transfer; promoting joint ventures; linking parties' service suppliers through business forums; through strategies and other instruments, promoting private sector initiatives for stimulating and diversifying services production and exports, enhancing small, micro and medium-sized enterprises' access to distribution channels and information networks. The CARIFORUM and Central Africa agreements do not have this provision.
8. Other provisions		
8.1 Final provisions		The Central Africa agreement includes an article such that amendments to the schedules of commitments may be made in accordance with relevant WTO provisions, in particular article V.
8.2 Special committee		The SADC agreement includes a provision in brackets to establish a special committee on trade in services, which shall meet within five years after the entry into force and every two years thereafter. The committee shall monitor and review implementation; adopt, improve and establish procedures for development support and cooperation; identify measures for increasing services trade between parties; undertake other duties assigned by the Trade and Development Committee; and may decide to modify the annexes of the protocol. In brackets, the Central Africa agreement refers in various provisions to a joint committee. The CARIFORUM agreement refers in various provisions to the CARIFORUM-European Union Trade and Development Committee.
8.3 Dispute avoidance		In brackets, the SADC agreement provides that the provisions laid down in Part III of the agreement shall apply to any relevant matter arising under the protocol, subject to: (a) references to parties being limited to the parties to the protocol; and (b) references to the Trade and Development Committee being read to refer to the Special Committee.

Provision	Common features	Differences
8.4 Entry into force		In brackets, the SADC agreement provides provisions on entry into force, which occurs the first day of the month following that in which the parties have notified each other of the completion of the necessary constitutional or internal rules and procedures.
Accession		In brackets, the SADC agreement provides that any party may accede to the protocol, subject to negotiations on the terms and conditions as may be agreed between the acceding party and the relevant acceded parties.
8.6 Monitoring of implementation		In brackets, the SADC agreement provides that the parties undertake to monitor continuously the operation of the protocol through their relevant participative processes and institutions, as well as those set up under the protocol, in order to ensure that the objectives of the protocol are realized, that the protocol is properly implemented and that its benefits, in particular to women and young people, are maximized. Either party may make proposals aimed at improving trade-related cooperation, taking into account the experience acquired during the implementation thereof.

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