



## *Amania – Measures Affecting Cocoa Beans from Genovia*

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### **Background**

1. Amania, Genovia, and Zamunda are neighbouring countries located on the Harmonia Peninsula, a region world-renowned for its award-winning cocoa beans and fine chocolate. All three countries are Members of the Treaty Establishing the Harmonia Community (Harmonia Community Treaty), which established the Harmonia Free Trade Area (Harmonia FTA). They have also all ratified the Agreement Establishing the African Continental Free Trade Area (AfCFTA Agreement) and are founding Members of the World Trade Organization (WTO).
2. All eight countries on the Harmonia Peninsula are Members of the Harmonia Community and the Harmonia FTA. The Harmonia Community was initially established as an economic cooperation area in 1981. It officially became an FTA and was recognised as a regional economic community (REC) by the African Union in 1994. While established as a REC, Harmonia Community members widely consider it a wider cooperative mechanism with wide-ranging objectives that include the promotion of peace and security on the Harmonia Peninsula. Its main objective, however, remains the formation of a Common Market. The Common Market aims to leverage its Members' collective capacities to achieve sustainable economic development in the region and to minimize trade barriers and allowing the free movement of all factors of production between the Members of the Harmonia Community
3. **Amania** has the largest economy on the Harmonia Peninsula. It is an **upper-middle-income** developing country with a population of 80 million and a Gross Domestic Income (GNI) per capita of US\$12,500. Among its six official languages are English, French, and Arabic. Currently, all cocoa beans on the Harmonia Peninsula are processed into chocolate and chocolate products and packaged in Amania for export to the rest of the continent and the world. Amania produces

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sufficient milk and sugar domestically to support its large chocolate manufacturing sector. In addition to chocolate production, Amania has a strong business process outsourcing (BPO) sector. The country has been successful in establishing customer support centres and back-office operations that serve various enterprises around the world. The growth of the BPO sector has been driven by the country's well-educated and multilingual workforce.

4. **Zamunda** is a small lower-income country with a population of 10 million and a GNI per capita of US\$3,950. In addition to producing cocoa beans, the Zamundan economy boasts a fast-growing pharmaceutical generics manufacturing sector. This sector has benefitted from technical and scientific research knowledge exchanges with the leading global pharmaceutical generics producer Saffronia on emerging vaccines especially against the COVID 19 virus. Historically, Zamunda was part of Amania, occupying an area in the north-western part of the country. However, a brutal Civil War broke out in the country two years before Amania gained independence. The majority Munda population sought to secede from Amania and establish their own independent state. As part of the Independence Pact of 1960, Amania and Zamunda were separated into two separate territories (The Separation) and the majority Munda population in Zamunda has governed the country since its independence.
  
5. Notwithstanding the close economic and cultural ties between Amania and Zamunda, the Zamundians have always considered that they were cheated in The Separation and were “pushed into the jungle.” In recent years, there have been allegations that the Government of Zamunda has been involved in training rebel groups in its dense jungles and funding terrorist groups that are active worldwide. In a recent live interview with world-renowned BNN journalist John Melon, President Shaka Kwena of Zamunda refused to confirm or deny these claims. He merely stated that “the Republic of Zamunda is dedicated to supporting democracy and the desires of all peoples to achieve self-determination.”
  
6. **Genovia** is a least-developed country (LDC) and the only country on the Harmonia Peninsula that does not have access to the Harmonia Ocean. It has a population of 25 million inhabitants and a GNI per capita of US\$2,500. The Genovian economy is heavily dependent on agriculture, with its main exports being cocoa beans, tobacco, and tea. Cocoa beans account for 50% of its exports and 90% of them are exported to Amania. Its cocoa beans are generally considered to be higher in quality than those from Zamunda because of the stringent food safety standards adopted by the government. The Government of Genovia has traditionally mediated conflicts in the region and, as a result, the Secretariat of the Harmonia Community was established in its capital Salem.

7. Businesses on the Harmonia Peninsula are closely connected with each other, often trading raw materials, intermediate goods, and final products amongst themselves. This connection is true of the chocolate value chain as well. Almost 90% of the cocoa beans produced in the Harmonia Peninsula are produced in Genovia and Zamunda. The remaining 10% are produced in neighbouring Avalon and Zenobia. These two countries have been increasing cocoa bean production and are discussing the possibility of developing joint chocolate and chocolate manufacturing facilities in Zenobia. The region is proud of its ancient chocolate manufacturing tradition and of the Harmonia Chocolate™ brand. Because of the integrated nature of chocolate production in this region, the Members of the Harmonia Community have ensured that there are no barriers to trading any product needed to produce Harmonia Chocolate. In fact, Amania has dedicated lanes for the swift clearance of cocoa beans at all of its points of entry.
8. On 1 November 2022, the President of Amania, Daphne Matata, announced the beginning of the negotiations of a bilateral free trade agreement with the Federation of Barea, a major player in the global chocolate industry. Borean enterprises are involved in the whole chocolate production value chain - from cocoa bean production to chocolate and chocolate products production. Amania wanted to diversify its sources of cocoa beans after receiving intelligence that the Government of Zamunda sought to “disrupt chocolate production on the Peninsula.” Barea is not a party to the AfCFTA Agreement. Negotiations swiftly progressed in several areas including agriculture and digital trade with both parties intending to finalize a Mutual Recognition Agreement (MRA) on cocoa beans and chocolate products food safety standards to “foster closer economic ties and the exchange of best practices in fine chocolate production.” The State Parties of the AfCFTA were duly notified of these negotiations.
9. On 17 March 2023, the Government of Amania was overthrown in a bloodless coup. Within 48 hours, the government was expelled and a rebel group called Omnia declared itself the new and legitimate Government of Amania. Senior government officials of the deposed Amanian government, including President Daphne Matata, escaped to Genovia where they were granted political asylum.
10. Upon assuming office on 20 March 2023, the new president of Amania, Gen. Octavio Matimba, issued **Decree 87/2023** which stated the following:

Effective immediately,

- (a) In order to protect the public from substandard food health and safety practices, the importation of cocoa beans originating from the Republic of Genovia into the territory of the Republic of Amania is hereby prohibited.
- (b) The dedicated clearance lanes at all Amanian points of entry are thus only preserved for cocoa beans originating from Zamunda, Avalon, and Zenobia.
- (c) This measure is based on the ISO standard ISO 22000:2018 Food Safety Management Systems.

11. Within days of issuing this Decree, President Matimba of Amania declared in various media interviews that the new and legitimate Government of Amania wanted nothing to do with hostile neighbouring governments that intervene in the domestic affairs of other sovereign states and that harbour the descendants of terrorists. Shortly thereafter, a photograph of Gen. Octavio Matimba and President Shaka Kwena of Zamunda shaking hands in the Zamundan jungle was leaked to BNN. The photograph was dated 10 March 2023, a week before the coup in Amania. When confronted with this photograph and asked for his opinion on the situation in Amania, Zamundian President Shaka Kwena consistently said “no comment”.
12. On 15 April 2023, the negotiations of the Amania-Barea FTA were concluded, including the MRA on cocoa beans and chocolate products food safety standards. The FTA entered into force on 15 May 2023, 30 days after the conclusion of the negotiations. It was duly notified to the AfCFTA State Parties.
13. On 21 May 2023, Genovia issued a request to Amania to negotiate the preferences provided under the Amania-Barea FTA, pursuant to Article 4.4 of the AfCFTA Agreement Protocol on Trade in Goods (Goods Protocol). Genovia hoped to conclude a similar MRA on cocoa beans and chocolate products food safety standards with Amania. The Government of Amania responded by saying that it is not obliged to extend preferences under bilateral agreements that do not concern AfCFTA State Parties.
14. Distressed by the state of affairs, cocoa farmers in Genovia approached the government to intervene on their behalf. They considered the Decree and Amania’s conduct in violation of Harmonia Community law and the AfCFTA Agreement. They explained that they had maintained the highest food safety standards on their farms and had not changed their usual practices. In fact,

like all commercial cocoa farmers on the Harmonia Peninsula, they have obtained the required Harmonia Good Practices in Cocoa Production certification, which is renewed annually. They feared for their livelihoods because they were losing market share in Amania to other countries in the region, particularly Zamunda. Moreover, it was impossible for them to divert their cocoa beans to other markets overnight considering that they are a landlocked country. The Government of Genovia tried to resolve the issue bilaterally, the manner in which all Harmonia Peninsula issues are resolved. However, after weeks of trying to communicate with the Matimba administration in Amania, the Government of Genovia decided to explore other options.

15. On 26 June 2023, Genovia initiated a dispute at the Harmonia Court of Justice (HCJ). Dispute resolution at the HCJ is notoriously slow. Members of the Harmonia Community amended the Treaty Establishing the Harmonia Community to allow private individuals and Non-Governmental Organizations (NGOs) to initiate disputes involving human rights violations against the Harmonia Community member states. This amendment has arguably contributed to the backlog of cases in the HCJ. The proceedings initiated by the Government of Genovia are still pending before the First Instance Division of the HCJ (See **Annex 1** for an excerpt explaining the Rules of Procedure of the HCJ).

#### **AfCFTA Consultations**

16. On 7 August 2023, the Government of Genovia requested consultations with the Government of Amania pursuant to Article 7 of the AfCFTA Protocol on Rules and Procedures on the Settlement of Disputes (Dispute Settlement Protocol), Article 30 of the Goods Protocol, and Article 16 of Annex 7: Sanitary and Phytosanitary Measures to the AfCFTA Agreement (SPS Annex) for the measures adopted by Amania affecting cocoa beans from Genovia. Specifically, Genovia argued that the measures were inconsistent with Article 5.1 of the SPS Annex. Moreover, Genovia considered that the measures were inconsistent with the most-favoured-nation (MFN) principle under Article 18 of the AfCFTA Agreement read together with Article 4 of the Goods Protocol.
17. After meeting for two rounds of consultations at the AfCFTA Secretariat both Amania and Genovia considered the consultations to be unsuccessful. Consequently, on 9 October 2023, Genovia submitted a request for the establishment of a panel to the AfCFTA Dispute Settlement Body (AfCFTA DSB) pursuant to Article 9 of the Dispute Settlement Protocol. The request for the establishment of the panel contained the following claims:

- a. The Decree violates Article 5.1 of the SPS Annex.
- b. Amania's refusal to negotiate with Genovia preferences granted under the Amania-Barea FTA is inconsistent with the MFN principle under Article 18 of the AfCFTA Agreement read together with Article 4 of the Goods Protocol.

18. In response, Amanian representatives claimed that they have the right to protect the health and lives of ordinary Amanians from unsafe food products, pursuant to Article 26(b) of the Goods Protocol. Additionally, Amania asserts that Article 27 of the Goods Protocol permits AfCFTA State Parties to adopt measures which they consider necessary to protect their essential security interests. In any event, Amania considers that these claims are not admissible before any AfCFTA panel because they are already pending litigation at the HCJ.<sup>1</sup>

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<sup>1</sup> Teams are expected to argue the admissibility claim and Article 26(b) (general exceptions), and Article 27(b)(iii) (security exceptions) of the Goods Protocol.

## **Annex 1: Excerpt explaining the Rules of Procedure of the Harmonia Court of Justice**

1. The Harmonia Court of Justice (HCJ) was established to ensure the interpretation, adherence to, and application of the Harmonia Community law. The HCJ has jurisdiction to adjudicate upon all matters which may be referred to it pursuant to the Treaty Establishing the Harmonia Community (Harmonia Community Treaty). The HCJ is divided into two divisions: the First Instance Division and the Appellate Division. The First Instance Division has jurisdiction to hear and determine at first instance, subject to the right of appeal to the Appellate Division, any matter brought before the Court in accordance with the Harmonia Community Treaty.
2. One of the avenues to engage the HCJ is through a Reference by Member States. A Member State which considers that another Member State has failed to fulfil an obligation or infringed a provision under the Harmonia Community Treaty may initiate a dispute at the HCJ. Additionally, a Member State may refer for determination by the Court, the legality of any act or omission, regulation, directive or decision of another member state on the grounds that such act or omission, regulation, directive or decision is ultra vires or unlawful or an infringement of the provisions of the Harmonia Community Treaty or any rule of law relating to its application or amounts to misuse or abuse of power.

**Annex 2 - Genovia's Export Market Shares and Trade Volumes from 2022 - September  
2023**

**Table 1: Genovia's Trade of Cocoa Beans within the Harmonia Peninsula for 2022 (before the adoption of the Decree)**

<b>Partner name</b>	<b>Share of Exports</b>	<b>Volume (in MT)</b>
Amania	90%	540 000
Zamunda	4%	24 000
Avalon	2%	12 000
Zenobia	1%	6 000
Sunara	1%	6 000
Zootopia	1%	6 000
Afrosia	1%	6 000
<b>Total</b>	<b>100%</b>	<b>600 000</b>

**Table 2: Genovia's Trade of Cocoa Beans within the Harmonia Peninsula from January-September 2023 (Decree adopted in March 2023)**

<b>Partner name</b>	<b>Export Volume</b>	<b>USD (Million)</b>
Amania	40%	96 000
Avalon	20%	48 000
Zenobia	15%	36 000
Sunara	10%	24 000
Zootopia	6.25%	15 000
Afrosia	6.25%	15 000
Zamunda	2.5%	6 000
<b>Total</b>	<b>100%</b>	<b>240 000</b>



**Annex 3 - An Excerpt from International Standard ISO 22000, second edition 2018-06:  
Food Safety Management Systems (FSMS) —Requirements for any Organization in the  
Food Chain**

**6. Planning**

6.1 Actions to address risks and opportunities

6.1.1 When planning for the FSMS, the organization shall ... determine the risks and opportunities that need to be addressed to:

- a) give assurance that the FSMS can achieve its intended result(s);
- b) enhance desirable effects;
- c) prevent, or reduce, undesired effects;
- d) achieve continual improvement.

NOTE In the context of this document, the concept of risks and opportunities is limited to events and their consequences relating to the performance and effectiveness of the FSMS. Public authorities are responsible for addressing public health risks. Organizations are required to manage food safety hazards (see 3.22) and the requirements related to this process that are laid down in Clause 8.

6.1.2 The organization shall plan:

- a) actions to address these risks and opportunities;
- b) how to:
  - 1) integrate and implement the actions into its FSMS processes;
  - 2) evaluate the effectiveness of these actions.

6.1.3 The actions taken by the organization to address risks and opportunities shall be proportionate to:

- a) the impact on food safety requirements;
- b) the conformity of food products and services to customers;
- c) requirements of interested parties in the food chain.

NOTE 1 Actions to address risks and opportunities can include: avoiding risk, taking risk in order to pursue an opportunity, eliminating the risk source, changing the likelihood or consequences, sharing the risk, or accepting the presence of risk by informed decision.

NOTE 2 Opportunities can lead to the adoption of new practices (modification of products or processes), using new technology and other desirable and viable possibilities to address the food safety needs of the organization or its customers.

6.2 Objectives of the food safety management system and planning to achieve them

6.2.1 The organization shall establish objectives for the FSMS at relevant functions and levels.

The objectives of the FSMS shall:

- a) be consistent with the food safety policy;
- b) be measurable (if practicable);

- c) take into account applicable food safety requirements, including statutory, regulatory and customer requirements;
- d) be monitored and verified;
- e) be communicated;
- f) be maintained and updated as appropriate.

The organization shall retain documented information on the objectives for the FSMS.

6.2.2 When planning how to achieve its objectives for the FSMS, the organization shall determine:

- a) what will be done;
- b) what resources will be required;
- c) who will be responsible;
- d) when it will be completed;
- e) how the results will be evaluated.

### 6.3 Planning of changes

When the organization determines the need for changes to the FSMS, including personnel changes, the changes shall be carried out and communicated in a planned manner.

The organization shall consider:

- a) the purpose of the changes and their potential consequences;
- b) the continued integrity of the FSMS;
- c) the availability of resources to effectively implement the changes;
- d) the allocation or re-allocation of responsibilities and authorities.

### Illustrative List of WTO Disputes

1. Panel Report, *Costa Rica – Measures Concerning the Importation of Fresh Avocados from Mexico*, [WT/DS524/R](#) and Add.1, adopted 31 May 2022.
2. Appellate Body Report, *Korea – Import Bans, and Testing and Certification Requirements for Radionuclides*, [WT/DS495/AB/R](#) and Add.1, adopted 26 April 2019, DSR 2019:VII, p. 3653.
3. Appellate Body Report, *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union*, [WT/DS475/AB/R](#) and Add.1, adopted 21 March 2017, DSR 2017:I, p. 207.
4. Panel Report, *United States – Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina*, [WT/DS447/R](#) and Add.1, adopted 31 August 2015, DSR 2015:VIII, p. 4085.
5. Appellate Body Report, *Australia – Measures Affecting Importation of Salmon*, [WT/DS18/AB/R](#), adopted 6 November 1998, DSR 1998:VIII, p. 3327.
6. Appellate Body Report, *European Communities – Measures Concerning Meat and Meat Products (Hormones)*, [WT/DS26/AB/R](#), [WT/DS48/AB/R](#), adopted 13 February 1998, DSR 1998:I, p. 135.
7. Panel Report, *United States – Tariff Measures on Certain Goods from China*, [WT/DS543/R](#) and Add.1, circulated to WTO Members 15 September 2020, appealed 26 October 2020.
8. Appellate Body Reports, *Brazil – Certain Measures Concerning Taxation and Charges*, [WT/DS472/AB/R](#) and Add.1 / [WT/DS497/AB/R](#) and Add.1, adopted 11 January 2019, DSR 2019:I, p. 7.
9. Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, [WT/DS2/AB/R](#), adopted 20 May 1996, DSR 1996:I, p. 3.
10. Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, [WT/DS58/AB/R](#), adopted 6 November 1998, DSR 1998:VII, p. 2755.
11. Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, [WT/DS135/AB/R](#), adopted 5 April 2001, DSR 2001:VII, p. 3243.
12. Panel Report, *Russia – Measures Concerning Traffic in Transit*, [WT/DS512/R](#) and Add.1, adopted 26 April 2019, DSR 2019:VIII, p. 4301.
13. Panel Report, *United States – Origin Marking Requirement*, [WT/DS597/R](#) and Add.1, circulated to WTO Members 21 December 2022, appealed 26 January 2023.
14. Panel Report, *United States – Certain Measures on Steel and Aluminium Products*, [WT/DS544/R](#), Add.1 and Suppl.1, circulated to WTO Members 9 December 2022, appealed 26 January 2023.