

BOTSWANA



<p>DECISION, 1 June 2016 <u>OJ L 250/1 of 16.09.2016</u></p>
<p>AGREEMENT, Article 42 and 30 <u>OJ L 250/3 of 16.09.2016</u></p>
<p>PROTOCOL 2 <u>OJ L 250/2070 of 16.09.2016</u></p>

COUNCIL DECISION (EU) 2016/1623

of 1 June 2016

on the signing, on behalf of the European Union and provisional application of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(3) and (4) and Article 209(2), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 12 June 2002, the Council authorised the Commission to open negotiations for Economic Partnership Agreements with the African, Caribbean and Pacific Group of States.
- (2) The negotiations have been concluded and the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States (comprising Botswana, Lesotho, Mozambique, Namibia, Swaziland and South Africa), of the other part ('the Agreement'), was initialled on 15 July 2014.
- (3) The Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, calls for the conclusion of WTO-compatible Economic Partnership Agreements.
- (4) Article 113(3) of the Agreement provides for its provisional application by the Union and the SADC EPA States pending its entry into force.
- (5) The Agreement should be signed on behalf of the Union and it should be applied, as regards those elements falling within the competence of the Union, on a provisional basis, pending the completion of the procedures for its conclusion,

HAS ADOPTED THIS DECISION:

Article 1

1. The signing on behalf of the European Union of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part is hereby authorised on behalf of the Union, subject to the conclusion of the said Agreement.
2. The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

Article 3

1. As regards those elements falling within the competence of the Union, the Agreement shall be applied by the Union on a provisional basis as provided for in Article 113(3) thereof, pending the completion of the procedures for its conclusion. This does not prejudice the allocation of competences between the Union and its Member States in accordance with the Treaties.
2. Article 12(4) of the Agreement shall not be provisionally applied by the Union.
3. The Commission shall publish a notice indicating the date of provisional application of the Agreement.

Article 4

The Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts or tribunals.

Article 5

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 1 June 2016.

For the Council

The President

A.G. KOENDERS

ECONOMIC PARTNERSHIP AGREEMENT

between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part

THE EUROPEAN UNION, of the one part, and

THE REPUBLIC OF BOTSWANA,

THE KINGDOM OF LESOTHO,

THE REPUBLIC OF MOZAMBIQUE,

THE REPUBLIC OF NAMIBIA,

THE REPUBLIC OF SOUTH AFRICA, and

THE KINGDOM OF SWAZILAND

PART II

TRADE AND TRADE-RELATED MATTERS

CHAPTER I

Trade in goods

(...)

Article 30

Special provisions on administrative cooperation

1. The Parties agree that administrative cooperation is essential for the implementation and the control of the preferential treatment granted under this Chapter and underline their commitment to combat irregularities and fraud in customs and related matters.
2. The Parties also agree to cooperate in ensuring that the necessary institutional structures enable the responsible authorities to effectively respond to requests for assistance in a timely manner.
3. For the purpose of this Article, and without prejudice to Article 9 of Protocol 2, a failure to provide administrative cooperation shall mean, inter alia:
 - (a) repeated failure to respect the obligations to verify the originating status of the product or products concerned as provided for in Article 38 of Protocol 1;

(b) repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin as provided for in Article 38 of Protocol 1;

(c) repeated refusal or undue delay in obtaining authorisation to conduct administrative cooperation missions to verify the authenticity of documents or accuracy of information relevant to the granting of the preferential treatment in question as provided for in Article 7 of Protocol 2.

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

5. Where a Party has made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud, the Party concerned may, in exceptional circumstances, temporarily suspend the relevant preferential treatment of the product or the products concerned, and of the specific origin concerned in accordance with this Article.

6. For the purposes of this Article, exceptional circumstances mean those circumstances which have or might have a significant negative effect on a Party if a relevant preferential treatment of the product or the products concerned is to be continued.

7. The application of a temporary suspension pursuant to paragraph 5 shall be subject to the following conditions:

(a) the Party which has made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud shall without undue delay notify the Trade and Development Committee of its finding together with the objective information and enter into consultations within the Trade and Development Committee, on the basis of all relevant information and objective findings, including information related to capacity and/or structural constraints, with a view to reaching a solution acceptable to both Parties;

(b) where the Trade and Development Committee has examined the matter and has failed to agree on an acceptable solution within four (4) months from the receipt of the notification, the Party concerned may temporarily suspend the relevant preferential treatment of the product or products concerned, and of the specific origin concerned. A temporary suspension shall be notified to the Trade and Development Committee without undue delay. At the request of either Party, the period to agree on an acceptable solution may, where duly justified, be extended to five (5) months;

(c) temporary suspensions under this Article shall be limited to those necessary to protect the financial interests of the Party concerned. They shall not exceed a period of six (6) months, which may be renewed after the Trade and Development

Committee has had the opportunity to re-examine the matter. Temporary suspensions shall be notified immediately after their adoption to the Trade and Development Committee. They shall be subject to periodic consultations within the Trade and Development Committee in particular with a view to their termination as soon as the conditions for their application are no longer given.

Article 42

Customs and administrative cooperation

1. In order to ensure compliance with the provisions of this Chapter and effectively respond to the objectives laid down in Article 41, the Parties shall:

- (a) exchange information on customs legislation and procedures;
- (b) develop joint initiatives relating to customs and trade facilitation and the strengthening of administrative capacity;
- (c) exchange experience and best practices on combating corruption and fraud in matters relating to this Chapter;
- (d) exchange experience and best practices on issues relating to import, export and transit procedures and to improving the service to the business community;
- (e) exchange experience and best practices on facilitating transit;
- (f) facilitate the exchange of experts between customs administrations; and
- (g) promote coordination between all related agencies, both internally and across borders.

2. The Parties shall prepare and develop an enhanced cooperation on the implementation of the World Customs Organisation ('WCO') Framework of Standards to Secure and Facilitate Global Trade of 2005. This cooperation shall include initiatives in view of working towards the mutual recognition of the Authorised Economic Operator status and the exchange of advance information to allow an effective risk assessment and management for security purposes.

3. The Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of Protocol 2.

PROTOCOL 2

Mutual administrative assistance in customs matters

Article 1

Definitions

For the purposes of this Protocol:

- (a) 'goods' means all goods falling within the scope of the Harmonized System, irrespective of the scope of this Agreement;
- (b) 'customs legislation' means any legal or regulatory provisions applicable in the territory of a Party, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;
- (c) 'applicant Authority' means a competent administrative authority which has been designated by a Party, for the implementation of this Protocol and which makes a request for assistance on the basis of this Protocol;
- (d) 'requested Authority' means a competent administrative authority which has been designated by a Party for the implementation of this Protocol and which receives a request for assistance on the basis of this Protocol;
- (e) 'personal data' means all information relating to an identified or identifiable individual;
- (f) 'operation in breach of customs legislation' means any violation or attempted violation of customs legislation.

Article 2

Scope

1. The Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of the customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.
2. Assistance in customs matters, as provided for in this Protocol, shall apply to any administrative authority of the Parties which is competent for the application of this Protocol. It shall not be to the detriment of the rules governing mutual assistance in criminal

matters. Nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information has the prior authorisation of that authority.

3. Assistance in recovery proceedings regarding duties, taxes or fines is not covered by this Protocol.

Article 3

Assistance on request

1. At the request of the Applicant Authority, the Requested Authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.

2. At the request of the Applicant Authority, the Requested Authority shall inform it whether:

- (a) goods exported from the territory of the Party have been lawfully imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to those goods;
- (b) goods imported into the territory of the Party have been lawfully exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to those goods.

3. At the request of the Applicant Authority, the Requested Authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:

- (a) natural or legal persons in respect of whom there are reasonable grounds to believe that they are or have been involved in operations in breach of customs legislation;
- (b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds to believe that those goods are intended to be used in operations in breach of customs legislation;
- (c) goods that are or may be transported in such a way that there are reasonable grounds to believe that those goods are intended to be used in operations in breach of customs legislation; and
- (d) means of transport that are or may be used in such a way that there are reasonable grounds to believe that those means of transport are intended to be used in operations

in breach of customs legislation.

Article 4

Spontaneous assistance

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

- (a) operations which are or appear to be in breach of customs legislation and which may be of interest to the other Party,
- (b) new means or methods employed in carrying out operations in breach of customs legislation,
- (c) goods known to be subject to operations in breach of customs legislation,
- (d) natural or legal persons in respect of whom there are reasonable grounds to believe that they are or have been involved in operations in breach of customs legislation, and
- (e) means of transport in respect of which there are reasonable grounds to believe that they have been, are, or may be used in operations in breach of customs legislation.

Article 5

Delivery and notification

1. At the request of the Applicant Authority, the Requested Authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order to:

- (a) deliver any documents emanating from the Applicant Authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the Requested Authority, and, where appropriate;
- (b) notify any decisions emanating from the Applicant Authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the Requested Authority.

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

Article 6

Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately. Requests may also be communicated in electronic form.
2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the name of the Applicant Authority;
 - (b) the measure requested;
 - (c) the object of and the reason for the request;
 - (d) the legal or regulatory provisions and other legal elements involved;
 - (e) indications as exact and comprehensive as possible on the natural or legal persons who are the subject of the request; and
 - (f) a summary of the relevant facts and of the enquiries already carried out.
3. Requests shall be submitted in an official language of the Requested Authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.
4. If a request does not meet the formal requirements set out above, its correction or completion may be requested. In the meantime, precautionary measures may be ordered.

Article 7

Execution of requests

1. In order to comply with a request for assistance, the Requested Authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the Requested Authority when the latter cannot act on its own.

2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.

3. Duly authorised officials of a Party, with the agreement of the other Party, and subject to the conditions laid down by the latter, may be present:

(a) to obtain in the offices of the Requested Authority or any other authority concerned in accordance with paragraph 1, information relating to activities that are or may be operations in breach of customs legislation which the Applicant Authority needs for the purposes of this Protocol;

(b) at enquiries carried out in the latter's territory.

Article 8

Form in which information is to be communicated

1. The Requested Authority shall communicate results of enquiries to the Applicant Authority in writing together with relevant documents, certified copies or other items.

2. If requested, the information provided for in paragraph 1 may be in electronic form.

3. Original documents shall be transmitted only upon request in cases where certified copies would be insufficient. These originals shall be returned at the earliest opportunity.

Article 9

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party concerned is of the opinion that assistance under this Protocol would:

(a) be likely to prejudice the sovereignty of a SADC EPA State or that of a Member State of the European Union which has been requested to provide assistance under this Protocol; or

(b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10(2) of this Protocol; or

(c) violate an industrial, commercial or professional secret.

2. Assistance may be postponed by the Requested Authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the

Requested Authority shall consult with the Applicant Authority to determine if assistance can be given subject to such terms or conditions as the Requested Authority may require.

3. Where the Applicant Authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the Requested Authority to decide how to respond to such a request.

4. For the cases referred to in paragraphs 1 and 2, the decision of the Requested Authority and the reasons thereof, must be communicated to the Applicant Authority without delay.

Article 10

Information exchange and confidentiality

1. Any information communicated in any form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Parties. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party that received it and the corresponding provisions applying to the EU authorities.

2. Personal data may be exchanged only where the Party which may receive them agrees to ensure an adequate level of protection of such data. To that end, the Parties shall communicate to each other information on their applicable rules, including, where appropriate, legal provisions in force in the Member States of the European Union.

3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Protocol, is considered to be for the purposes of this Protocol. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

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

Article 11

Experts and witnesses

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

have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

Article 12

Assistance expenses

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

Article 13

Implementation

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

Article 14

Amendments

The Parties may recommend to the Trade and Development Committee amendments which they consider should be made to this Protocol.

Article 15

Final Provisions

1. This Protocol shall complement and not impede application of any agreements on mutual administrative assistance which have been concluded or may be concluded between the Parties, nor shall it preclude more extensive mutual assistance granted under such agreements.
2. The provisions of this Protocol shall not affect the obligations of the Parties under any other international agreement or convention.
3. The provisions of this Protocol shall not affect the EU provisions governing the communication between the competent services of the European Commission and the

customs authorities of the Member States of the European Union of any information obtained under this Protocol which could be of interest to the EU.

4. Notwithstanding the provisions of paragraph 1, the provisions of this Protocol shall take precedence over the provisions of any bilateral Agreement on mutual assistance which has been or may be concluded between individual Member States of the European Union and any SADC EPA State in so far as the provisions of the latter are incompatible with those of this Protocol.

5. In respect of questions relating to the applicability of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the Special Committee on Customs and Trade Facilitation set up under Article 50 of this Agreement.