PAPUA NEW GUINEA

Council Decision of 13 July 2009 OJ L 272 of 16 October 2009
Article 27 of the Agreement OJ L 272 of 16 October 2009
Protocol I OJ L 272 of 16 October 2009

COUNCIL DECISION

of 13 July 2009

on the signature and provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part

(2009/729/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) On 12 June 2002 the Council authorised the Commission to open negotiations for Economic Partnership Agreements with ACP countries.

(2) Negotiations for an Interim Partnership Agreement, which establishes a framework for an Economic Partnership Agreement (hereinafter referred to as the 'interim EPA') were concluded on 23 November 2007 with Papua New Guinea and Republic of the Fiji Islands.

(3) Article 76(3) of the interim EPA provides for its provisional application pending its entry into force.

(4) The interim EPA should be signed on behalf of the Community and applied on a provisional basis subject to its conclusion at a later date,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Interim Partnership Agreement between the European Community and the Pacific States is hereby approved on behalf of the Community, subject to the Council Decision concerning the conclusion of the said interim EPA.

The text of the interim EPA is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the interim EPA on behalf of the European Community, subject to its conclusion.

Article 3

The interim EPA shall be applied on a provisional basis as provided for in Article 76(3) of the Agreement, pending completion of the procedures for conclusion. The Commission will publish a notice providing information on the date of provisional application.

Done at Brussels, 13 July 2009.

For the Council

The President

E. ERLANDSSON

INTERIM PARTNERSHIP AGREEMENT

between the European Community, of the one part, and the Pacific States, of the other part

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the EC Party',

of the one part, and

THE REPUBLIC OF THE FIJI ISLANDS,

THE INDEPENDENT STATE OF PAPUA NEW GUINEA (hereinafter referred to as 'Papua New Guinea'), hereinafter referred

to as 'the Pacific States', of the other part,

HAVING REGARD TO 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 and revised in 2005 (hereinafter referred to as the 'Cotonou Agreement');

HAVING REGARD TO the fact that the trade preferences granted under the Cotonou Agreement will expire on 31 December 2007;

HAVING REGARD TO the negative impact on the exports from Pacific States to the European Community that may result from the expiration of the Cotonou trade preferences in case no WTO compatible successor trade arrangement is in place by 31 December 2007 and that it is therefore necessary to establish an Interim Partnership Agreement that would safeguard the trade and development interests of the Pacific States affected;

HAVING REGARD TO the fact that the EC Party has offered improved market access within the framework of the negotiations on Economic Partnership Agreements (EPAs) and that Pacific States wish to start benefiting from this offer as from 1 January 2008;

REAFFIRMING their continuing commitment to the ongoing negotiations aiming at the conclusion of a comprehensive EPA by 31 December 2008 which will contain all relevant elements and include all interested Pacific Islands;

REAFFIRMING that development cooperation will be a crucial element of the comprehensive EPA and an essential factor for the realisation of its objectives;

REAFFIRMING their commitment to the objectives and the implementation of the Cotonou Agreement and desiring to build upon those commitments;

REAFFIRMING their commitment to the respect for human rights, democratic principles, the rule of law and to good governance, which constitute essential and fundamental elements of the Cotonou Agreement, and to sustainable and equitable development, along with greater involvement of an active and organised civil society and the private sector, which, along with

the market economy, are the main elements recognised in the Cotonou Agreement as contributing to achieving the objectives of the partnership;

REAFFIRMING their commitment to work together towards the achievement of the objectives of the Cotonou Agreement of poverty eradication, sustainable development and the gradual integration of the Pacific States into the world economy, with due regard for their political choices and development priorities;

REAFFIRMING their commitment to support the regional integration process within the Pacific region, and in particular to foster regional economic integration as a key instrument for their integration into the world economy and helping them face the challenges of globalisation and achieving the economic and social development to which they aim;

DESIRING to cooperate closely at the national level within the framework of the existing structures as set out in the Cotonou Agreement to maximise the synergies between development cooperation and the objectives of this Agreement;

DESIRING to progressively remove barriers to trade between them; while taking into account the principles of asymmetry and flexibility;

DESIRING to establish a framework for improved arrangements for trade between the Pacific States and the European Community that are consistent with their obligations under the World Trade Organisation ('WTO');

DESIRING to establish an institutional framework for their Interim Partnership Agreement and a mechanism to resolve any disputes that might arise in that relationship consistently with the objectives of this Agreement,

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:

(…)

Article 27 Customs

and administrative cooperation

1. The Parties agree to:

(a) exchange information concerning customs legislation and procedures;
(b) develop joint initiatives in mutually agreed areas;
(c) establish, wherever possible, common positions on customs issues in international fora;
(d) promote coordination between all related agencies, both internally and across borders.

2. Notwithstanding paragraph 1, the administrations of the Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of Protocol I.

PROTOCOL I

On mutual administrative assistance in customs matters

Article 1
Definitions

For the purposes of this Protocol:

(a) 'customs legislation' means any legal or regulatory provisions applicable in the territories of the EC Party and Pacific States, 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;
(b) 'applicant authority' means a competent administrative authority which has been designated by a Pacific State or the EC Party for this purpose and which makes a request for assistance on the basis of this Protocol;
(c) 'requested authority' means a competent administrative authority which has been designated by a Party or a Pacific State for this purpose and which receives a request for assistance on the basis of this Protocol;
(d) 'personal data' means all information relating to an identified or identifiable individual;
(e) 'operation in breach of customs legislation' means any violation or attempted violation of customs legislation.

Article 2
Scope

1. The Parties and the Pacific States 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 and the Pacific States and which is competent for the application of this Protocol. It shall not prejudice 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 is authorised by that authority.

3. Assistance to recover 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:

(a) whether goods exported from the territory of the Pacific States or the EC Party have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;
(b) whether goods imported into the territory of the Pacific States or the EC Party have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the 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 for believing 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 for believing that these 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 for believing that they 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 for believing that they are intended to be used in operations in breach of customs legislation.

Article 4
Spontaneous assistance

The Parties and the Pacific States shall assist each other, on 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:

— activities which are or appear to be operations in breach of customs legislation and which may be of interest to the other Party or a Pacific State,
— new means or methods employed in carrying out operations in breach of customs legislation,
— goods known to be subject to operations in breach of customs legislation,
— natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation, and
— means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

Article 5
Delivery and notification

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 deliver any documents, or

— to 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.

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.

2. Requests pursuant to paragraph 1 shall include the following information:

(a) 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 target of the investigations; 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 or Pacific State, 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 or Pacific State.

3. Duly authorised officials of a Party or Pacific State may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present in the offices of the requested authority or any other concerned authority in accordance with paragraph 1 to

obtain 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.

4. Duly authorised officials of a Party or Pacific State involved may, with the Agreement of the other Party or Pacific State involved and subject to the conditions laid down by the latter, be present 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. This information may be in computerised 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 Pacific State or the EC Party is of the opinion that assistance under this Protocol would:

(a) be likely to prejudice the sovereignty of a Pacific State or that of a Member State of the European Community 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); 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 whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Parties

or the Pacific States. 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 or the Pacific State that received it and the corresponding provisions applying to the European Community authorities.

2. Personal data may be exchanged only where the Party or the Pacific State which may receive them undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party or the Pacific State that may supply them. To that end, 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 Community.

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 or the Pacific States 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 or Pacific State 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 or Pacific States shall waive all claims against each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses of experts and witnesses, and those of 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 Pacific States and on the other hand to the competent services of the Commission of the European Communities and the customs authorities of the Member States

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. They may recommend to the competent bodies amendments which they consider should be made to this Protocol.

2. The Parties and the Pacific States 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
Other Agreements

1. Taking into account the respective competences of the European Community and the Member States, the provisions of this Protocol shall:

— not affect the obligations of the Parties and the Pacific States under any other international agreement or convention,

— be deemed complementary to Agreements on mutual assistance which have been or may be concluded between individual Member States of the European Community and Pacific States, and shall

— not affect the European Community provisions governing the communication between the competent services of the Commission of the European Communities and the customs authorities of the Member States of the European Community of any information obtained under this Protocol which could be of interest to the European Community.

2. 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 Community and any Pacific State in so far as the provisions of the latter are incompatible with those of this Protocol.

3. 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 Trade Committee set up under Article 68 of this Agreement.