

GHANA



DECISION 26 October 2015
[OJ L 287/1 of 21.10.2016](#)

NOTICE ON PROVISIONAL APPLICATION
[OJ 340/1 of 15.12.2016](#)

ANTI-FRAUD MEASURES, Article 21
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COUNCIL DECISION (EU) 2016/1850

of 21 November 2008

on the signature and provisional application of the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 133 and 181 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 of Economic Partnership Agreements with ACP countries.
- (2) Negotiations of a stepping stone Economic Partnership Agreement (hereinafter referred to as the 'stepping stone EPA') have been concluded with Ghana and the stepping stone EPA was initialled on 13 December 2007.
- (3) Article 75 of the stepping stone EPA provides for its provisional application pending its entry into force.
- (4) The stepping stone EPA should be signed on behalf of the Community and applied, as concerns elements falling within the competence of the Community, on a provisional basis subject to its conclusion at a later date,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part, is hereby approved on behalf of the Community, subject to the Council Decision concerning the conclusion of the said Agreement.

The text of the stepping stone EPA is attached to this Decision.

Article 2

For the purposes of Article 73(2) of the stepping stone EPA, the EPA Committee shall be composed, on the one hand, of the members of the Council and of representatives of the Commission and, on the other hand, of representatives of the Government of Ghana. The Commission shall propose to the Council, for its decision, the position of the European Community with a view to the negotiation of the EPA Committee's rules of procedure.

Article 3

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

Article 4

As concerns elements falling within the competence of the Community, the stepping stone EPA shall be applied on a provisional basis as provided for in Article 75 thereof, pending completion of the procedure for its conclusion. The Commission shall publish a notice providing information on the date of provisional application.

Done in Brussels, 21 November 2008.

For the Council

The President

E. WOERTH

Notice concerning the provisional application of the Stepping Stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part

The European Union and the Republic of Ghana have notified the completion of the procedures necessary for the provisional application of the Stepping Stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part (1), in accordance with Article 75 of that Agreement. Consequently, the Agreement applies provisionally as from 15 December 2016 between the European Union and the Republic of Ghana.

**STEPPING STONE ECONOMIC PARTNERSHIP AGREEMENT between Ghana, of the one part,
and the European Community and its Member States, of the other part.**

(...)

Article 21

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 Title and underline their commitment to combat irregularities and fraud in customs and related matters.

2. 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 temporarily suspend the relevant preferential treatment of the product(s) concerned in accordance with this Article.

3. For the purpose of this Article a failure to provide administrative cooperation shall mean, inter alia:

(a) a repeated failure to respect the obligations to verify the originating status of the product(s) concerned;

(b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin;

(c) a 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.

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

4. The application of a temporary suspension 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 EPA Committee of its finding together with the objective information and enter into consultations within the EPA Committee, on the basis of all relevant

information and objective findings, with a view to reaching a solution acceptable to both Parties;

(b) Where the Parties have entered into consultations within the EPA Committee as above and have failed to agree on an acceptable solution within three months following the notification, the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned. A temporary suspension shall be notified to the EPA Committee without undue delay;

(c) Temporary suspensions under this Article shall be limited to that necessary to protect the financial interests of the Party concerned. They shall not exceed a period of six months, which may be renewed. Temporary suspensions shall be notified immediately after their adoption to the EPA Committee. They shall be subject to periodic consultations within the EPA Committee in particular with a view to their termination as soon as the conditions for their application are no longer met.

5. At the same time as the notification to the EPA Committee under paragraph 4(a), the Party concerned should publish a notice to importers in its Official Journal. The notice to importers should indicate for the product concerned that there is a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud.

(...)

Article 28

Customs and administrative cooperation

1. In order to ensure compliance with the provisions of this Title, and effectively to respond to the objectives laid down in Article 27, the Parties shall:

- (a) exchange information concerning customs legislation and procedures;
- (b) develop joint initiatives relating to import, export and transit procedures, as well as towards ensuring an effective service to the business community;
- (c) cooperate on the automation of customs and other trade procedures and collaborate, where appropriate towards the establishment of common standards for the exchange of data;
- (d) establish as far as possible, common positions in international organisations in the field of customs such as the WTO, the World Customs Organization (WCO), the United Nations (UN) and the United Nations Conference on Trade and Development (UNCTAD);
- (e) cooperate in the planning and delivery of technical assistance, notably to facilitate customs and Trade Facilitation reforms in line with the provisions of this Agreement; and
- (f) promote coordination between all related agencies, both internally and across borders.

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

(...)

PROTOCOL

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 Ghana or the EC 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;

(b) 'applicant authority' means a competent administrative authority which has been designated by Ghana 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 Ghana or the EC Party 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 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 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 one of the Parties 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 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 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:

- activities which are or appear to be operations in breach of customs legislation and which may be of interest to the other Party,
- 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, 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 may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present to obtain in the offices of the requested authority or any other concerned authority 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.
4. Duly authorised officials of a Party involved may, with the agreement of the other Party 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 one Party is of the opinion that assistance under this Protocol would:

(a) be likely to prejudice the sovereignty of Ghana 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. 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 European Community authorities.

2. Personal data may be exchanged only where the Party 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 that may supply them. 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 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 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 Ghanaian Party 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 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 under any other international Agreement or Convention,
- be deemed to be complementary to Agreements on mutual assistance which have been or may be concluded between individual Member States of the European Community and Ghana,

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 Ghana 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 EPA Committee set up under Article 73 of the stepping stone EPA between Ghana and the European Community and its Member States.