



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 2 February 2009
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**14062/08
ADD 4**

**ACP 174
WTO 187
COAFR 314
RELEX 737**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Annex 2 to the Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the SADC EPA States, of the other part

CUSTOMS DUTIES ON PRODUCTS
ORIGINATING IN SADC EPA STATES

1. Without prejudice to paragraphs 2, 4, 5, 6 and 7 customs duties of the EC Party (hereinafter "EC customs duties") shall be entirely eliminated on all products of Chapters 1 to 97 of the Harmonised System, except those of Chapter 93 thereof, originating in an SADC EPA State upon the entry into force of this Agreement. For indicative purposes the schedule of EC customs duties applicable to products originating in an SADC EPA State is found in Annex 1. For products of Chapter 93, the EC party shall continue to impose the applied MFN duties.
2. EC customs duties on the products of tariff heading 1006 originating in the SADC EPA States shall be eliminated as from 1 January 2010, with the exception of EC customs duties on the products of subheading 1006 10 10 which shall be eliminated as from the entry into force of this Agreement.
3. The EC Party and the SADC EPA States agree that the provisions of Protocol 3 of the Cotonou Agreement (hereinafter the "Sugar Protocol") shall remain applicable until 30 September 2009, and that thereafter the Sugar Protocol shall no longer be in force between them. For the purposes of Article 4(1) of the Sugar Protocol, the delivery period 2008/9 will last from 1 July 2008 to 30 September 2009. The guaranteed price for 1 July-30 September 2009 shall be decided following the negotiation provided for in Article 5(4) of the Sugar Protocol.

4. EC Customs duties on products of tariff heading 1701 originating in an SADC EPA State shall be eliminated as from 1 October 2009. Until EC customs duties are entirely eliminated, and in addition to the allocations of tariff rate quotas at zero duty set out in the Sugar Protocol, a tariff rate quota at zero duty of 30 000 tonnes for Swaziland and 20 000 tonnes for Mozambique shall be opened for marketing year¹ 2008/2009 for products of tariff heading 1701, white sugar equivalent, originating in Swaziland and Mozambique respectively. No import license shall be granted with regard to products to be imported under this additional tariff rate quota, unless the importer undertakes to purchase such products at a price at least equal to the guaranteed prices fixed for sugar imported into the EC Party under the Sugar Protocol.

5. (a) The EC Party may, during the period between 1 October 2009 and 30 September 2015 impose the applied Most Favoured Nation duty on the products originating in SADC EPA States of tariff heading 1701 imported in excess of the following levels expressed in white sugar equivalent, which are deemed to cause a disturbance in the EC Party sugar market:
 - (i) 3.5 million tonnes, in a marketing year, of such products originating in States members of the African, Caribbean and Pacific Group of States (ACP States) signatory to the Cotonou Agreement, and

¹ For the purpose of paragraphs 4, 5, 6 and 7 "marketing year" means the period between 1 October and 30 September.

- (ii) 1.38 million tonnes, in marketing year 2009/2010, of such products originating in ACP States that are not recognised by the United Nations as least developed countries. The figure of 1.38 million tonnes shall increase to 1.45 million tonnes in marketing year 2010/2011, and 1.6 million tonnes in the following four marketing years.

 - (b) The importation of products of tariff heading 1701 originating in any SADC EPA State that is recognised by the United Nations as a least developed country shall not be subject to the provisions of subparagraph 5(a) of this Annex. However, such imports shall remain subject to the provisions of Article 34 of this Agreement¹

 - (c) The imposition of the applied Most Favoured Nation duty shall cease at the end of the marketing year during which it was introduced.

 - (d) Any measure taken pursuant to this paragraph shall be notified immediately to the Implementation Committee and shall be the subject of periodic consultations within that body.
6. As of 1 October 2015, for the purpose of the application of the provisions of Article 34, bilateral safeguard of this Agreement, disturbances in the markets of products of tariff heading 1701 may be deemed to arise in situations where the European Community market price of white sugar falls during two consecutive months below 80 percent of the European Community market price for white sugar prevailing during the previous marketing year.

¹ For this purpose and by derogation from Article 34 of this Agreement, an individual SADC EPA State recognised by the United Nations as a least developed country may be subject to safeguard measures.

7. From 1 January 2008 until 30 September 2015 products of tariff heading 1704 90 99, 1806 10 30, 1806 10 90, 2106 90 59 and 2106 90 98 shall be subject to a special surveillance mechanism in order to ensure that the arrangements provided for in paragraph 5 are not circumvented. In the event of a cumulative increase of imports of such products originating in SADC EPA States by more than 20 percent in volume during a period of 12 consecutive months compared to the average of the yearly imports over the three previous 12-month periods, the EC Party shall analyse the pattern of trade, the economic justification and the sugar content of such imports and, if it considers that such imports are used to circumvent the arrangements provided for in paragraphs 4 and 5, it may suspend the preferential treatment and introduce the specific MFN duty applied to imports pursuant to the European Community Common Customs Tariff for products of tariff heading 1704 90 99, 1806 10 30, 1806 10 90, 2106 90 59 and 2106 90 98 originating in SADC EPA States. Subparagraphs 5(b), (c) and (d) shall apply mutatis mutandis to actions under this paragraph.
8. Between 1 October 2009 and 30 September 2012 with regard to the products of tariff heading 1701, no preferential import license shall be granted unless the importer undertakes to purchase such products at a price not lower than 90 percent of the reference price set by the EC Party for the relevant marketing year.
9. Paragraphs 1, 3, 4 and 5 shall not apply to products of tariff heading 1701 originating in SADC EPA States and released for free circulation in the French overseas departments. This provision shall be applicable for a period of ten years. This period shall be extended for a further period of ten years unless the Parties agree otherwise.