



Brussels, 5.10.2020
COM(2020) 633 final

2020/0284 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken, on behalf of the EU, in the Joint Council established under 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, as regards the adjustment of certain reference quantities contained in Annex IV of the EPA

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This Proposal concerns the decision establishing the position to be taken, on behalf of the EU, in the Joint Council established under the Economic Partnership Agreement (the “EPA” or the “Agreement”) between the European Union and Southern African Development Community (SADC) EPA States, as regards the adjustment of the reference quantities for certain products listed in Annex IV of the EPA for the purpose of Article 35 of the EPA.

2. CONTEXT OF THE PROPOSAL

2.1. Reasons for and objectives of the proposal

Article 35 of the EPA provides for a possibility for the Southern African Customs Union to apply a safeguard measure in the form of an import duty if, during any given twelve-month period, the volume of imports into SACU of an agricultural product listed in Annex IV of the EPA originating in the EU exceeds the reference quantity for the product listed in that Annex.

Annex IV of the EPA consists of a table listing reference quantities for twenty-three (23) products for twelve (12) years (‘year 1’, ‘year 2’ etc.). Footnote (1) to the table states that “for the tariff lines indicated by an asterisk, in the case that the date of entry into force of this Agreement is after 2015, the reference quantity for Year 1 shall be the average of the previous three (3) years’ imports from the EU into SACU. The reference quantities for the following years (after Year 1) shall be adjusted proportionally to the reference quantities in this table”.

Article 113(8) of the EPA provides that “if pending the entry into force of this Agreement, the Parties decide to apply it provisionally, all references in this Agreement to the date of entry into force shall be deemed to refer to the date such provisional application takes effect”.

The EPA has been applied provisionally since 10 October 2016. Hence the reference quantities of eleven (11) products listed in Annex IV of the EPA (those indicated by an asterisk) should be adjusted in accordance with the footnote to the table of Annex IV.

2.2. The EU-SADC EPA Joint Council

Article 100 of the EPA establishes a Joint Council “which shall oversee and administer the implementation of this Agreement”

Article 101(1) provides that “the Joint Council shall be composed, on the one hand, of the relevant members of the Council of the EU and relevant members of the European Commission or their representatives, and, on the other hand, of the relevant Ministers of the SADC EPA States or their representatives”.

Article 101(3) lists the functions of the Joint Council as follows:

- (a) be responsible for the operation and implementation of this Agreement and monitor the fulfilment of its objectives;
- (b) examine any major issues arising under this Agreement that are of common interest and affect trade between the Parties;
- (c) examine proposals and recommendations from the Parties for the review of this Agreement;
- (d) make appropriate recommendations;
- (e) monitor the development of economic and trade relations between the Parties;

- (f) monitor and assess the impact of the cooperation provisions of this Agreement on sustainable development;
- (g) monitor and review progress on all matters covered by this Agreement;
- (h) establish its own rules of procedure;
- (i) establish the rules of procedures of the Trade and Development Committee;
- (j) monitor the work of the Trade and Development Committee; and
- (k) perform any other duties under this Agreement.

Article 102(1) establishes that the Joint Council may adopt decisions in respect of all matters covered by this Agreement. Footnote 1 to Annex IV of the EPA implies that a decision shall be adopted in order to adjust the reference quantities for the products marked by an asterisks when the date of entry into force of the EPA is after 2015 (as in the present case).

2.3. The envisaged decision of the EPA Joint Council

At the 5th meeting of the EU-SADC EPA Trade and Development Committee (which role is to assist the Joint Council “in the performance of its duties” and which is composed of representatives of the Parties “normally at the level of senior officials”) the Parties to the EPA reached an informal agreement on the adjustment of the agricultural safeguards trigger levels in accordance with footnote 1 of Annex IV of the EPA. The Joint Council at its first meeting on 19 February 2019 endorsed this agreement and concluded that it will “adopt this decision by written procedure or by electronic means as provided for in its Rules of Procedure”. To this end, the SADC EPA States committed to share with the EU, a draft Joint Council decision by 15th March 2019. The EU received such draft approximately one year later, on 19 February 2020.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The proposed Council decision establishes the position to be taken, on behalf of the EU, in the Joint Council established under the EPA, as regards the adjustment of certain reference quantities contained in Annex IV of the EPA.

Such position shall be based on the preliminary agreement of the Parties to the EPA at the first meeting of the EPA’s Joint Council.

The subject matter of the proposal concerns trade policy, an area for which the Union has an exclusive external competence by virtue of Article 3(2) of the TFEU.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘*the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.*’

The concept of ‘*acts having legal effects*’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’.

4.1.2. Application to the present case

The Joint Council is set up by the EPA.

The decision to be adopted by the Joint Council shall have legal effects. Once adopted, the envisaged amendment will have legal effects under international law in accordance with Article 35 and Annex IV of the Agreement .

The envisaged decision does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged decision in respect of which a position is taken on the Union's behalf. If the envisaged decision pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The objective and content of the envisaged decision relates to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision is the first subparagraph of Article 207(4) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be the first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED DECISION

As the decision of the Joint Council will amend the EPA, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

Proposal for a

COUNCIL DECISION

on the position to be taken, on behalf of the EU, in the Joint Council established under 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, as regards the adjustment of certain reference quantities contained in Annex IV of the EPA

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Economic Partnership Agreement between the European Union and its Member States, of the one part, and the Southern African Development Community ('SADC') EPA States, of the other part, was signed by the European Union and its Member States on 10 June 2016¹ ('the Agreement').
- (2) The Agreement is provisionally applied between the European Union and its Member States, of the one part, and Botswana, Lesotho, Namibia, Eswatini and South Africa, of the other part, from 10 October 2016, and between the European Union and its Member States, of the one part, and Mozambique, of the other part, from 4 February 2018.
- (3) Pursuant to Article 102(1) of the Agreement, the Joint Council may adopt decisions in respect of all matters covered by this Agreement. Pursuant to Article 101(3)(h) and (i) the Joint Council establishes its own rules of procedure and the rules of procedure of the Trade and Development Committee.
- (4) Article 35 of the Agreement establish the possibility for the Southern African Customs Union to apply a safeguard measure in the form of an import duty if, during any given twelve-month period, the volume of imports into SACU of an agricultural product listed in Annex IV of the EPA originating in the EU exceeds the reference quantity for the product listed in that Annex.
- (5) Footnote 1 to Annex IV of the EPA foresees that the reference quantities for the tariff lines indicated by an asterisk shall be adjusted, in case the date of entry into force of the Agreement is after 2015,

¹ Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part (OJ L 250, 16.9.2016, p. 3).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Joint Council as regards the adjustment, for the purposes of Article 35 of the Agreement, of certain reference quantities of the products listed in Annex IV of the EPA and marked by an asterisk, shall be based on the draft decision of the Joint Council annexed to this decision..

Article 2

This decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*



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ANNEX

ANNEX

to the

Proposal for a Council Decision

on the position to be taken, on behalf of the EU, in the Joint Council established under 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, as regards the adjustment of certain reference quantities contained in Annex IV of the EPA

DRAFT
DECISION No 2/2020
OF THE JOINT COUNCIL
ESTABLISHED UNDER 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

on the adoption of trigger levels for products eligible for safeguard measures and marked with an asterisk, in accordance with footnote 1 of Annex IV of the Agreement

THE JOINT COUNCIL,

Having regard to 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 Agreement'), and in particular Articles 35 and 102 thereof, and to Decision No 1/2019 of the Joint Council (Rules of Procedure of the Joint Council).

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to footnote 1 of Annex IV of the Agreement, the reference quantities for the product marked by an asterisk are adjusted, for the purposes of Article 35 of the Agreement, in accordance with the Annex to this Decision.

Article 2

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

For the Joint Council

Representative of the SADC EPA States

EU representative

PEGGY O. SERAME

VALDIS DOMBROVSKIS

Date:

Date:

Annex: Adjusted reference quantities (metric tons) of Annex IV of the Agreement (page L 250/1917-18 of the EU-SADC EPA)

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Tariff lines	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12
02062100	100	110	121	133	146	161	177	195	215	237	261	287
02062900	1 005	1 106	1 206	1 307	1 407	1 508	1 609	1 709	1 810	1 910	2 011	2 111
02064900	5 000	5 500	6 000	6 500	7 000	7 500	8 000	8 500	9 000	9 500	10 000	10 500
11041910	150	165	182	200	220	242	266	293	322	354	390	429
11071010	2 373	2 613	2 874	3 161	3 478	3 825	4 204	4 628	5 089	5 595	6 152	6 771
04012007	6 353	6 986	7 701	8 457	9 315	10 234	11 256	12 379	13 625	14 973	16 485	18 119
20011000	1 302	1 432	1 576	1 732	1 905	2 096	2 305	2 536	2 791	3 069	3 376	3 714
20019010	270	297	328	360	396	436	480	527	580	638	701	771
180631	3 046	3 350	3 655	3 959	4 264	4 569	4 873	5 178	5 482	5 787	6 091	6 396
180632	938	1 032	1 126	1 220	1 314	1 408	1 501	1 595	1 689	1 783	1 877	1 971
180690	7 196	7 916	8 635	9 355	10 074	10 794	11 514	12 233	12 953	13 672	14 392	15 112

Com 633 (2020)

Information Note

1. Proposal

Proposal for a Council Decision on the position to be taken, on behalf of the EU, in the Joint Council established under 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, as regards the adjustment of certain reference quantities contained in Annex IV of the EPA.

2. Date of Commission document

05/10/2020.

3. Number of Commission document

COM (2020) 633.

4. Number of Council document:

11557/20 & 11557/20 ADD 1 (Annex).

5. Dealt with in Brussels by

Foreign Affairs Council - African, Caribbean and Pacific (ACP) Working Party.

6. Department with primary responsibility

Department of Business, Enterprise and Innovation.

7. Other Departments involved

Department of Foreign Affairs; Department of Agriculture, Food and the Marine; Revenue Commissioners.

8. Background to, Short summary and aim of the proposal

Economic Partnership Agreements (EPAs) between the EU and African, Caribbean and Pacific (ACP) countries and regions aim at promoting ACP-EU trade and ultimately contribute, through trade and investment, to sustainable development and poverty reduction. While EPAs have some common characteristics, they differ from each other in order to respect the interests and needs of different regions.

The EPA between the European Union and its Member States and the Southern African Development Community (SADC) EPA States was signed by the European Union and its Member States on 10 June 2016. The Agreement is provisionally applied between the European Union and its Member States and Botswana, Lesotho, Namibia, Eswatini and South Africa from 10 October 2016, and between the European Union and its Member States and Mozambique from 4 February 2018.

Article 35 of the Agreement establishes the possibility for the Southern African Customs Union to apply a safeguard measure in the form of an import duty if, during any given twelve-month period, the volume of imports into SACU of an agricultural product listed in Annex IV of the EPA originating in the EU exceeds the reference quantity for the product listed in that Annex.

Footnote 1 to Annex IV of the EPA foresees that the reference quantities for the tariff lines indicated by an asterisk shall be adjusted, in case the date of entry into force of the Agreement is after 2015 (as in the present case).

This technical Proposal concerns the decision establishing the position to be taken, on behalf of the EU, in the Joint Council established under the EPA between the European Union and Southern African Development Community (SADC) EPA States, as regards the adjustment of the reference quantities for certain products listed in Annex IV of the EPA for the purpose of Article 35 of the EPA.

9. Legal basis of the proposal

The legal basis of the proposed decision is the first subparagraph of Article 207(4), in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union TFEU.

10. Voting Method

QMV.

11. Role of the EP

Sent to the European Parliament for information only.

12. Category of proposal

Purely technical.

13. Implications for Ireland & Ireland's Initial View

Ireland is committed to the EU international trade agenda, including support for trade and sustainable development. Part of that agenda is a broad range of trade agreements including EPAs between the EU and African, Caribbean and Pacific (ACP) countries and regions, opening up EU markets and trading opportunities to least developed countries.

This is a procedural decision, which will serve to enhance the implementation and operation of the provisions of the EPA, and as such has no direct implications for Ireland. The Parties to the EPA have reached an informal agreement on it, and this has been endorsed by the Joint Council established under the EPA. Ireland supports the technical update of Annex IV of the Agreement and efforts to ensure that the legal framework of EU trade relations with partner countries is kept up to date.

14. Impact on the public

N/A.

15. Have any consultations with Stakeholders taken place or are there any plans to do so?

The Department of Foreign Affairs, the Department of Agriculture, Food and the Marine, and the Revenue Commissioners have been consulted and have no issues to raise in relation to this technical Proposal.

16. Are there any subsidiarity issues for Ireland?

No.

17. Anticipated negotiating period

Ongoing.

18. Proposed implementation date

Date not known. The Commission's Proposal states that: "As the decision of the Joint Council will amend the EPA, it is appropriate to publish it in the Official Journal of the European Union after its adoption."

19. Consequences for national legislation

N/A.

20. Method of Transposition into Irish law

N/A.

21. Anticipated Transposition date

N/A.

22. Consequences for the EU budget in Euros annually

None.

23. Contact name, telephone number and e-mail address of official in Department with primary responsibility

Date 20/10/2020

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