EUROPEAN
COMMISSION

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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 5the 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.

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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 2016[1] ('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