

## **EXPLANATORY MEMORANDUM**

### **ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE SADC EPA STATES, OF THE ONE PART, AND THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE OTHER PART**

#### **BACKGROUND**

South Africa (SA) currently trades with the EU under the bilateral Trade Development and Cooperation Agreement (TDCA) that entered into force on 1 January 2000. Under the TDCA, SA and the EU provide each other preferential market access. The other member states of Southern African Customs Union (SACU), namely Botswana, Lesotho, Namibia and Swaziland, have historically received unilateral preferential access to the EU as part of the African Caribbean and Pacific (ACP) countries under the Lome Convention. The Convention was found to be in contravention of the World Trade Organization (WTO) rules and in 2002, the EU and ACP initiated negotiations to establish new WTO-compatible trading arrangements. In the region, Botswana, Namibia, Swaziland, Lesotho and Mozambique entered the negotiations as part of the SADC EPA Group (SEG).

SA joined the EPA negotiations as part of the SEG in 2007. South Africa's particular interests in EPA negotiations were two-fold i.e. to establish a single trading regime for SACU with the EU and to also improve the terms of bilateral trade in goods with the EU, in particular access for agricultural products. South Africa achieved its objectives through improvement of some of the TDCA provisions that curbed SA's policy space, acquiring additional or new market access for key agricultural products and preserving SACU functional coherence, particularly in regard to maintaining the common external tariff, although the EU continues to provide the other Members of SACU better access to its market than it offers South Africa. South Africa also negotiated a bilateral Protocol on Geographical Indications (GIs) with the EU. The key outcome of the GI negotiations is such that product names currently used by producers in South Africa would not be affected under the Protocol.

In July 2014, the Department tabled the assessment of the outcome of the EPA before the Cabinet and recommended for permission to initial the Agreement once the outstanding issues have been concluded. The outstanding issues were then concluded during the round convened on 14 and 15 July 2014. The negotiations were concluded and the Agreement was initialed by the Chief Negotiators on 15 July 2014. Thereafter, the Agreement went through legal scrubbing which was concluded on 23 October 2015. The EPA agreement was endorsed by the SA Cabinet on 31 May 2016. This paved the way for the EPA to be signed by SA.

The EU-SADC EPA was signed in Kasane, Botswana on 10 June 2016, by Dr. Rob Davies, Minister of Trade and Industry of the Republic of South Africa and Commissioner for Trade Cecilia Malmström on behalf of the EU.

## **CONSTITUTIONAL IMPLICATIONS**

The Agreement was taken through the legal process in South Africa, through Departments of Justice and Constitutional Development and International Relations and Cooperation as per the requirement. Both departments found that the Agreement is not in conflict with any domestic laws and it is also consistent with international law and the country's international obligations.

In terms of section 231 of the Constitution, all international agreements, after signing, have to be ratified by Parliament before they can be binding on the part of South Africa. The Additional Protocol falls within the ambit of section 231(2) of the Constitution of the Republic of South Africa of 1996. Thus, Parliament must approve that South Africa ratify the agreement. As a result, the EU-SADC EPA must be submitted to Cabinet for consideration and approval.

## **FINANCIAL IMPLICATIONS**

None

Pretoria,

13 June 2016

ECONOMIC PARTNERSHIP AGREEMENT  
BETWEEN THE SADC EPA STATES, OF THE ONE PART,  
AND THE EUROPEAN UNION  
AND ITS MEMBER STATES, OF THE OTHER PART

## PREAMBLE

PARTIES TO THE AGREEMENT

THE REPUBLIC OF BOTSWANA,

THE KINGDOM OF LESOTHO,

THE REPUBLIC OF MOZAMBIQUE,

THE REPUBLIC OF NAMIBIA,

THE REPUBLIC OF SOUTH AFRICA, and

THE KINGDOM OF SWAZILAND

hereinafter referred to as the “Southern African Development Community Economic Partnership Agreement States”, of the one part, (“the SADC EPA States”), of the one part, and

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE REPUBLIC OF CROATIA,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty on European Union and the Treaty on the functioning of the European Union, hereinafter referred to as “the Member States of the European Union”

and

THE EUROPEAN UNION, of the other part,

CONSIDERING the Parties' wish to further strengthen their trade links and establish close and lasting relations based on partnership and cooperation;

CONVINCED that this Agreement will further deepen and encourage economic and trade relations between the Parties;

DESIRING to create new employment opportunities, attract investment and improve living standards in the territories of the Parties while promoting sustainable development;

RECOGNISING the importance of development finance cooperation for the implementation of this Agreement;

RECOGNISING the efforts by the SADC EPA States to ensure economic and social development for their peoples in the context of deepening regional integration in the Southern African Development Community region ("SADC region");

CONFIRMING the Parties' commitment to promote regional cooperation and economic integration, and to encourage the liberalisation of trade in the SADC region;

RECOGNISING the special needs and interests of the SADC EPA States and the need to address their diverse levels of economic development, geographic and socio-economic concerns;

RECOGNISING the special circumstances of Botswana, Lesotho, Namibia and Swaziland (“BLNS States”) in this Agreement and the need to take into account the effects on them of trade liberalisation under the Trade, Development and Cooperation Agreement between South Africa and the European Community and its Member States, signed on 11 October 1999 (“TDCA”);

RECOGNISING the special circumstances and needs of the Least Developed Countries (“LDCs”) of the SADC EPA States through the use of special and differential treatment and asymmetry;

RECOGNISING the special circumstances of Lesotho as the only LDC in SACU and that the impact of the reduction of the tariff revenue as a result of the TDCA and this Agreement necessitates priority in aid for trade;

RECOGNISING the special circumstances of those SADC EPA States emerging from long-term armed conflict, necessitating special and differential treatment and asymmetry;

TAKING ACCOUNT of the Parties’ rights and obligations in terms of their membership of the World Trade Organisation (“WTO”), and reaffirming the importance of the multilateral trading system;

RECALLING the importance attached by the Parties to the principles and rules governing the multilateral trading system and to the need to apply them in a transparent and non-discriminatory manner;

BEARING IN MIND the Partnership Agreement between the Members of the African, Caribbean and Pacific (“ACP”) Group of States of the one part, and the European Community (“EC”) and its Member States of the other part, signed on 23 June 2000 and revised on 25 June 2005 (“Cotonou Agreement”);

CONFIRMING the Parties’ commitment to and support for economic development in the SADC EPA States to attain the Millennium Development Goals (“MDGs”);

BEARING IN MIND the TDCA;

BEARING IN MIND Parties’ commitment to ensuring that their mutual arrangements support the process of regional integration under the Treaty of the Southern African Development Community, signed on 17 August 1992, as amended (“SADC Treaty”);

RECOGNISING the particular case of the Southern African Customs Union (“SACU”) established under the Southern African Customs Union Agreement, 2002, between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of Swaziland, signed on 21 October 2002 (“SACU Agreement”);

CONFIRMING the Parties’ support and encouragement for the process of trade liberalisation;

EMPHASISING the importance of agriculture and sustainable development in poverty alleviation in the SADC EPA States;

HAVE AGREED to conclude this Agreement:

## PART I

### SUSTAINABLE DEVELOPMENT AND OTHER AREAS OF COOPERATION

#### CHAPTER I

#### GENERAL PROVISIONS

#### ARTICLE 1

##### Objectives

The objectives of this Agreement are to:

- (a) contribute to the reduction and eradication of poverty through the establishment of a trade partnership consistent with the objective of sustainable development, the MDGs and the Cotonou Agreement;
- (b) promote regional integration, economic cooperation and good governance to establish and implement an effective, predictable and transparent regional regulatory framework for trade and investment between the Parties and among the SADC EPA States;

- (c) promote the gradual integration of the SADC EPA States into the world economy in conformity with their political choices and development priorities;
- (d) improve the SADC EPA States' capacity in trade policy and trade-related issues;
- (e) support the conditions for increasing investment and private sector initiatives and enhancing supply capacity, competitiveness and economic growth in the SADC EPA States; and
- (f) strengthen the existing relations between the Parties on the basis of solidarity and mutual interest. To this end, consistent with WTO obligations, this Agreement shall enhance commercial and economic relations, consolidate the implementation of the Protocol on Trade in the Southern African Development Community (SADC) Region, signed on 24 August 1996 ("SADC Protocol on Trade") and the SACU Agreement, support a new trading dynamic between the Parties by means of the progressive, asymmetrical liberalisation of trade between them and reinforce, broaden and deepen cooperation in all areas relevant to trade.

## ARTICLE 2

### Principles

1. This Agreement is based on the Fundamental Principles, as well as the Essential and Fundamental Elements, as set out in Articles 2 and 9, respectively, of the Cotonou Agreement. This Agreement shall build on the achievements of the Cotonou Agreement, the TDCA and the previous ACP-EC agreements in regional cooperation and integration, as well as economic and trade cooperation.
2. This Agreement shall be implemented in a complementary and mutually reinforcing manner with respect to the Cotonou Agreement and the TDCA, subject to Articles 110 and 111.
3. The Parties agree to cooperate to implement this Agreement in a manner that is consistent with the development policies and regional integration programmes in which the SADC EPA States are or may be involved.
4. The Parties agree to cooperate to fulfil their commitments and obligations and to facilitate the capacity of the SADC EPA States to implement this Agreement.

## ARTICLE 3

### Regional integration

1. The Parties recognise that regional integration is an integral element of their partnership and a powerful instrument to achieve the objectives of this Agreement.
2. The Parties reaffirm the importance of regional and sub-regional integration among the SADC EPA States to achieve greater economic opportunities, enhanced political stability and to foster the effective integration of developing countries into the world economy.
3. The Parties support, in particular, the integration processes based on the SACU Agreement, the SADC Treaty, and the Constitutive Act of the African Union adopted on 11 July 2000, as well as the development policies and political objectives related to such processes. The Parties aim at implementing this Agreement in a mutually supportive manner with those instruments, taking into account the respective levels of development, needs, geographical realities and sustainable development strategies.

## ARTICLE 4

### Monitoring

1. The Parties undertake to continuously monitor the operation and impact of this Agreement through appropriate mechanisms and timing within their respective participative processes and institutions, as well as those set up under this Agreement, in order to ensure that the objectives of this Agreement are achieved, that it is properly implemented and that the benefits for their people deriving from it, in particular the most vulnerable groups, are maximised.
2. The Parties undertake to consult each other promptly over any issue concerning the implementation of this Agreement.

## ARTICLE 5

### Cooperation in international fora

The Parties shall endeavour to cooperate in all international fora where issues relevant to this Agreement are discussed.

## CHAPTER II

### TRADE AND SUSTAINABLE DEVELOPMENT

#### ARTICLE 6

##### Context and objectives

1. The Parties recall the Agenda 21 on Environment and Development of 1992, the ILO Declaration on Fundamental Principles and Rights at Work of 1998, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the ILO Declaration on Social Justice for a Fair Globalisation of 2008 and the UN Conference on Sustainable Development of 2012 entitled “The Future We Want”.
2. The Parties reaffirm their commitments to promote the development of international trade in such a way as to contribute to the objective of sustainable development, in its three pillars (economic development, social development, and environmental protection) for the welfare of present and future generations, and will strive to ensure that this objective is integrated and reflected at every level of their trade relationship.
3. The provisions of this Chapter shall not be subject to the provisions of PART III, with the exception of Article 7.

## ARTICLE 7

### Sustainable development

1. The Parties reaffirm that the objective of sustainable development is to be applied and integrated at every level of their economic partnership, in fulfilment of the overriding commitments set out in Articles 1, 2 and 9 of the Cotonou Agreement, and especially the general commitment to reducing and eventually eradicating poverty in a way that is consistent with the objectives of sustainable development.
2. The Parties understand this objective to apply in the case of this Agreement as a commitment that:
  - (a) the application of this Agreement shall fully take into account the human, cultural, economic, social, health and environmental best interests of their respective populations and of future generations; and
  - (b) the decision-making methods embrace the fundamental principles of ownership, participation and dialogue.
3. As a result, the Parties agree to work cooperatively towards the achievement of people-centred sustainable development.

## ARTICLE 8

### Multilateral environmental and labour standards and agreements

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems as well as decent work for all as a key element of sustainable development for all countries and as a priority objective of international cooperation.
2. Taking into account the Cotonou Agreement, and in particular its Articles 49 and 50, the Parties, in the context of this Article, reaffirm their rights and their commitment to implement their obligations in respect of the Multilateral Environmental Agreements (“MEAs”) and the International Labour Organisation (“ILO”) conventions that they have ratified respectively.

## ARTICLE 9

### Right to regulate and levels of protection

1. The Parties recognise the right of each Party to establish its own levels of domestic environmental and labour protection, and to adopt or modify accordingly its relevant laws and policies, consistently with internationally recognised standards and agreements to which they are a party.

2. The Parties reaffirm the importance of protection as afforded in domestic labour and environmental laws.
3. Recognising that it is inappropriate to encourage trade or investment by weakening or reducing domestic levels of labour and environmental protection, a Party shall not derogate from, or persistently fail to effectively enforce, its environmental and labour laws to this end.

## ARTICLE 10

### Trade and investment favouring sustainable development

1. The Parties reconfirm their commitment to enhance the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions.
2. A Party may request, through the Trade and Development Committee, consultations with the other Party regarding any matter arising under this Chapter.
3. Dialogue and cooperation on this Chapter by the Parties, through the Trade and Development Committee, may involve other relevant authorities and stakeholders.

## ARTICLE 11

### Working together on trade and sustainable development

1. The Parties recognise the importance of working together on trade related aspects of environmental and labour policies in order to achieve the objectives of this Agreement.
2. The Parties may exchange information and share experience on their actions to promote coherence and mutual supportiveness between trade, social and environmental objectives, and shall strengthen dialogue and cooperation on sustainable development issues that may arise in the context of trade relations.
3. In respect of paragraphs 1 and 2, the Parties may cooperate, *inter alia*, in the following areas:
  - (a) the trade aspects of labour or environmental policies in international fora, such as the ILO Decent Work Agenda and MEAs;
  - (b) the impact of this Agreement on sustainable development;
  - (c) corporate social responsibility and accountability;
  - (d) trade aspects of mutual interest to promote the conservation and sustainable use of biological diversity;

- (e) trade aspects of sustainable forest management; and
- (f) trade aspects of sustainable fishing practices.

## CHAPTER III

### AREAS OF COOPERATION

#### ARTICLE 12

##### Development cooperation

1. The Parties commit to cooperating in order to implement this Agreement and to support the SADC EPA States' trade and development strategies within the overall SADC regional integration process. The cooperation may take both financial and non-financial forms.

2. The Parties recognise that development cooperation is a crucial element of their Partnership and an essential factor for the achievement of the objectives of this Agreement as laid down in Article 1. Development finance cooperation for regional economic cooperation and integration, as provided for in the Cotonou Agreement, shall be carried out to support and promote the efforts of the SADC EPA States to achieve the objectives and to maximise the expected benefits of this Agreement. Areas of cooperation and technical assistance are set out in this Agreement, as appropriate. Cooperation shall be implemented according to the modalities provided for in this Article. Such modalities shall be kept under ongoing review and shall be revised as necessary in accordance with the provisions of Article 116.
3. The EU<sup>1</sup> financing pertaining to development cooperation between the SADC EPA States and the EU supporting the implementation of this Agreement shall be carried out within the framework of the rules and relevant procedures provided for by the Cotonou Agreement, in particular the programming procedures of the European Development Fund, and within the framework of the relevant instruments financed by the General Budget of the Union. In this context, supporting the implementation of this Agreement shall be a priority.
4. The Member States of the European Union collectively undertake to support, by means of their respective development policies and instruments, development cooperation activities for regional economic cooperation and integration and for the implementation of this Agreement in the SADC EPA States and at regional level, in conformity with the principles of complementarity and aid effectiveness such as those contained in the Paris Declaration on Aid Effectiveness of 2005 and the Accra Agenda for Action of 2008.

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<sup>1</sup> The term "EU" used throughout this Agreement is defined in Article 104.

5. The Parties recognise that adequate resources will be required for the implementation of this Agreement and the fullest achievement of its benefits. In this respect, the Parties shall cooperate to enable the SADC EPA States to access other financial instruments as well as facilitate other donors willing to further support the efforts of the SADC EPA States in achieving the objectives of this Agreement.

6. The Parties agree that a regional development financing mechanism such as an EPA fund would provide a useful instrument for efficiently channelling development financial resources and for implementing EPA accompanying measures. The EU agrees to support the efforts of the region to set up such a mechanism. The EU will contribute to the fund following a satisfactory audit.

## ARTICLE 13

### Cooperation priorities

1. For the purpose of implementing this Agreement and taking into account the development policies of the SADC EPA States, the Parties agree that the areas listed in this Article and in Article 14 are priority areas for trade and economic cooperation.

2. Cooperation in trade in goods shall aim at enhancing trade in goods and the SADC EPA States capacity to trade, including by phasing out tariffs and customs duties in line with liberalisation commitments laid down in this Agreement, by properly implementing rules of origin, trade defence instruments, non-tariff measures, sanitary and phytosanitary (“SPS”) standards, and technical barriers to trade (“TBT”), by addressing non-tariff measures and by promoting customs cooperation and trade facilitation.
3. Cooperation in supply-side competitiveness shall aim at increasing the competitiveness of the SADC EPA States and remove supply side constraints at national, institutional and, in particular, at company level. This cooperation includes, amongst others, fields such as production, technology development and innovation, marketing, financing, distribution, transport, diversification of economic base, as well as development of the private sector, improvement of the trade and business environment and support to small and medium enterprises in the fields of agriculture, fisheries, industry and services.
4. Cooperation in business enhancing infrastructure shall aim at developing a competitive business enhancing environment in areas such as information and communication technology, transport and energy.
5. The Parties agree to cooperate to develop and enhance trade in services as provided for in Article 73.

6. The Parties agree to cooperate, to develop and enhance trade-related issues as provided for in Articles 8 to 11, 16 to 19, 73 and 74.

7. Cooperation in trade data shall aim at improving the capacity of the SADC EPA States in the area of trade data capture, analysis and dissemination.

8. Cooperation for EPA institutional capacity building shall aim at supporting institutional structures for EPA implementation management, capacity building for trade negotiations and for trade policy in cooperation with the relevant institutional mechanisms established under the SADC Treaty and SACU Agreement or in the respective SADC EPA States.

## ARTICLE 14

### Cooperation on fiscal adjustment

1. The Parties recognise that the phasing out or reduction of customs duties laid down in this Agreement may affect the fiscal revenues of the SADC EPA States and agree to cooperate on this matter.

2. The Parties agree to cooperate, in accordance with Article 12, in particular on:
- (a) support to fiscal reforms; and
  - (b) support measures complementary to fiscal reforms for the mitigation of the net fiscal impact of this Agreement to be determined in accordance with a jointly agreed mechanism.
3. The Parties recognise that the impact of tariff reduction will particularly affect Lesotho's fiscal revenues and agree to pay particular attention to Lesotho's situation in the application of Article 12.

## ARTICLE 15

### Types of interventions

Development cooperation under this Agreement may include, but is not limited to, the following interventions related to this Agreement:

- (a) policy development;
- (b) legislation and regulatory framework development;
- (c) institutional/organisational development;

- (d) capacity building and training<sup>1</sup>;
- (e) technical advisory services;
- (f) administrative services;
- (g) support in SPS and TBT areas; and
- (h) operational support including equipment, materials and related works.

## ARTICLE 16

### Cooperation on protection of intellectual property rights

1. The Parties reaffirm their commitments under Article 46 of the Cotonou Agreement and their rights, obligations and flexibilities as set out in the Agreement on Trade-related Aspects of Intellectual Property, contained in Annex IC to the Agreement establishing the World Trade Organisation (“TRIPS Agreement”).

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<sup>1</sup> For the purpose of this Article, “capacity building” may include in particular training, institutional development, organisational development (structures and procedures), operational support and inter-institutional communication and cooperation procedures.

2. The Parties agree to grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights (“IPRs”), and provide for measures for the enforcement of such rights against infringement thereof, in accordance with the provisions of the international agreements to which they are a party.
3. The Parties may cooperate in matters related to Geographical Indications (“GIs”) in line with the provisions of Section 3 (Articles 22 to 24) of the TRIPS Agreement. The Parties recognise the importance of GIs and origin-linked products for sustainable agriculture and rural development.
4. The Parties agree that it is important to respond to reasonable requests to provide information and clarification to each other on GI and other IPR related matters. Without prejudice to the generality of such cooperation, the Parties may, by mutual agreement, involve international and regional organisations with expertise in the areas of GIs.
5. The Parties consider traditional knowledge as an important area and may cooperate on it in future.
6. The Parties may consider entering into negotiations on the protection of IPRs in future, and the SADC EPA States have as their ambition, and will endeavour, to negotiate as a collective. Should negotiations be launched, the EU will consider including provisions on cooperation and special and differential treatment.

7. If a Party that is not a party to a future agreement on protection of IPRs negotiated in accordance with paragraph 6 wishes to join, it may negotiate the terms of its entry to that agreement.

8. If any agreement emanating from negotiations envisaged in paragraphs 6 and 7 were to result in outcomes that prove to be incompatible with the future development of a SADC regional IPRs framework, Parties shall jointly endeavour to adjust this Agreement to bring it in line with that regional framework while ensuring a balance of benefits.

## ARTICLE 17

### Cooperation on public procurement

1. The Parties recognise the importance of transparent public procurement to promote economic development and industrialisation. The Parties agree on the importance of cooperation to enhance the mutual understanding of their respective public procurement systems. The Parties reaffirm their commitment to transparent and predictable public procurement systems in accordance with national laws.

2. The Parties recognise the importance of continuing to publish their laws, or otherwise make publicly available their laws, regulations and administrative rulings of general application and any modifications thereof, in an officially designated electronic or paper form that is widely disseminated and remains readily accessible to the public. The Parties agree that it is important to respond to reasonable requests to provide information and clarification to each other on above-mentioned matters.
3. The Parties may consider entering into negotiations on public procurement in future, and the SADC EPA States have as their ambition, and will endeavour, to negotiate as a collective. Should negotiations be launched, the EU agrees to include provisions on cooperation and special and differential treatment.
4. If a Party that is not a party of a future agreement on public procurement wishes to join, it may negotiate the terms of its entry to that agreement.
5. If any agreement emanating from negotiations envisaged in paragraphs 3 and 4 were to result in outcomes that prove to be incompatible with the future development of a SADC regional public procurement framework, the Parties shall jointly endeavour to adjust this Agreement to bring it in line with the regional framework while ensuring a balance of benefits.

## ARTICLE 18

### Cooperation on competition

1. The Parties recognise that certain business practices, such as anti-competitive agreements or concerted practices and abuses of dominant positions, may restrict trade between the Parties and thereby undermine the fulfilment of the objectives of this Agreement.
2. The Parties agree to cooperate on competition matters in accordance with Article 13(6).
3. The Parties may consider entering into negotiations on competition in future, and the SADC EPA States have as their ambition, and will endeavour, to negotiate as a collective. Should negotiations be launched, the EU agrees to include provisions on cooperation and special and differential treatment.
4. If a Party that is not a party of a future agreement on competition wishes to join, it may negotiate the terms of its entry to that agreement.
5. If any agreement emanating from negotiations envisaged in paragraphs 3 and 4 were to result in outcomes that prove to be incompatible with the future development of a SADC regional competition framework, the Parties shall jointly endeavour to adjust this Agreement to bring it in line with the regional framework while ensuring a balance of benefits.

## ARTICLE 19

### Cooperation on tax governance

The Parties recognise the importance of cooperation on the principles of good governance in the area of taxation through the relevant authorities.

## PART II

### TRADE AND TRADE-RELATED MATTERS

## CHAPTER I

### TRADE IN GOODS

## ARTICLE 20

### Free trade area

1. This Agreement establishes a free trade area between the Parties, in conformity with the General Agreement on Tariffs and Trade ("GATT 1994"), and in particular Article XXIV thereof.

2. This Agreement shall respect the principle of asymmetry, commensurate to the specific needs and capacity constraints of the SADC EPA States, in terms of levels and timing for commitments under this Agreement.

## ARTICLE 21

### Scope

The provisions of this Chapter shall apply to trade in goods between the Parties.<sup>1</sup>

## ARTICLE 22

### Rules of origin

The tariff preferences provided for in this Agreement shall be applied to goods qualifying under the rules of origin laid down in Protocol 1.

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<sup>1</sup> Except where expressly provided, the terms “goods” and “product” shall have the same meaning.

## ARTICLE 23

### Customs duty

1. A customs duty shall include any duty or charge of any kind imposed on or in connection with the importation of goods, including any form of surtax or surcharge, but shall not include any:
  - (a) internal taxes or other internal charges imposed in accordance with Article 40; or
  - (b) duties imposed in accordance with Chapter II of PART II; or
  - (c) fees or other charges imposed in accordance with Article 27.
2. For all products subject to liberalisation, no new customs duties shall be introduced, nor shall those already applied be increased in trade between the Parties as from the entry into force of this Agreement, with the exception of:
  - (a) paragraph 7;
  - (b) paragraph 9;
  - (c) paragraph 7 of Section A of PART 1 of ANNEX I; and
  - (d) paragraph 8 of Section A of PART 1 of ANNEX II.

3. Except as otherwise provided for in this Agreement, for each product the basic duty to which the tariff reduction commitments set out in this Agreement apply, shall be the Most-Favoured-Nation (“MFN”) rate of duty applied at the date of entry into force of this Agreement.

4. In cases where the process of tariff reduction does not start at the entry into force of this Agreement, the basic duty to which the tariff reduction commitments set out in this Agreement apply shall be either the rate of duty referred to in paragraph 3, or the MFN rate of duty applied on the starting date of the relevant tariff reduction schedule, whichever is the lower.

5. At the date of entry into force of this Agreement, the EU shall notify its list of basic duties, to which the tariff reduction commitments set out in this Agreement apply, to the SACU Secretariat and the Ministry of Industry and Trade of Mozambique. At the date of entry into force of this Agreement, SACU and Mozambique shall notify their respective lists of basic duties, to which the tariff reduction commitments set out in this Agreement apply, to the European Commission. After notification, as provided for in this paragraph, each party shall make public each of these lists according to their own internal procedures and within one month after the exchange of the notifications. The Trade and Development Committee shall, at its first meeting after notification and publication, adopt the lists of basic duties communicated by the Parties or SACU, as the case may be. The duties listed in the Schedule of the EU included in PART II of ANNEX I and in the Schedule of Mozambique included in PART II of ANNEX III serve an indicative purpose and do not constitute basic duties within the meaning of paragraph 3.

6. The reduced duties calculated in accordance with the tariff reduction schedules contained in this Agreement shall be applied rounded to the first decimal place or, in case of specific duties, to the second decimal place.
7. For those tariff preferences that are expressed as a percentage of the applied MFN rate of duty, if at any moment after the date of entry into force of this Agreement, a Party increases or reduces its applied MFN rate of duty, the rate of duty applied in relation to the other Party shall simultaneously be increased or reduced as long as the margin of preference in accordance with the Party's Schedule is maintained.
8. For those tariff preferences that are wholly expressed as a fixed rate of duty in this Agreement, if at any moment after the date of entry into force of this Agreement, a Party reduces its applied MFN rate of duty, that reduced rate of duty shall apply in relation to the other Party if and for as long as it is lower than the customs duty fixed rate calculated in accordance with that Party's Schedule.
9. The provisions of this Article shall not apply to those products excluded from tariff reduction commitments that are denoted by staging category "X" in each Party's Schedule listed in ANNEX I, II and III respectively.

## ARTICLE 24

### Customs duties of the EU on products originating in the SADC EPA States

1. Products originating in Botswana, Lesotho, Mozambique, Namibia and Swaziland shall be imported into the EU in accordance with the duty-free quota-free treatment set out for those countries in ANNEX I.
2. Products originating in South Africa shall be imported into the EU in accordance with the treatment set out for South Africa in ANNEX I.

## ARTICLE 25

### Customs duties of the SADC EPA States on products originating in the EU

1. Products originating in the EU shall be imported into SACU in accordance with the treatment set out in ANNEX II.
2. Products originating in the EU shall be imported into Mozambique in accordance with the treatment set out in ANNEX III.

## ARTICLE 26

### Export duties or taxes

1. No new customs duties or taxes imposed on or in connection with the exportation of goods shall be introduced, nor shall those already applied be increased, in the trade between the Parties from the date of entry into force of this Agreement, except as otherwise provided for in this Article.
2. In exceptional circumstances, where justified for specific revenue needs, or where necessary for the protection of infant industries or the environment, or where essential for the prevention or relief of critical general or local shortages of foodstuffs or other products essential to ensure food security, Botswana, Lesotho, Namibia, Mozambique and Swaziland may introduce, after consultation with the EU, temporary customs duties or taxes imposed on or in connection with the exportation of goods, on a limited number of additional products.
3. In exceptional circumstances, where the SADC EPA States can justify industrial development needs, those SADC EPA States may introduce temporary customs duties or taxes imposed on or in connection with the exportation of a limited number of products to the EU. A SADC EPA State wishing to introduce such temporary custom duties or taxes shall notify the EU of such a duty, providing all relevant information and motivation and shall consult with the EU if the EU so requests. Such temporary duties or taxes shall only be applied on a total number of eight (8) products, as defined at an HS6 tariff line level, or in case of “ores and concentrates” at an HS4 tariff line level, per SADC EPA State at any given time and shall not be applied for a period exceeding twelve (12) years in total. This period can be extended or reinstated for the same product in agreement with the EU.

4. The following conditions shall apply to paragraph 3 but not to paragraph 2:

- (a) the SADC EPA State shall for the first six (6) years from the date of introduction of an export tax or duty exempt from the application of that tax or duty exports to the EU of an annual amount equal to the average volume of exports to the EU of such product over the three (3) years preceding the date of introduction of the tax or duty. The SADC EPA State shall from the seventh year following the introduction of the said tax or duty until its expiry pursuant to paragraph 3, exempt from the application of the duty or tax, exports to the EU on an annual amount equal to 50 per cent of the average volume of exports to the EU of such product over the three (3) years preceding the date of introduction of the tax or duty; and
- (b) export duties or taxes shall not exceed 10 per cent of the ad valorem export value of the product.

5. Any more favourable treatment consisting in or in relation to customs duties or taxes applied by the SADC EPA States to exports of any product destined for a major trading economy shall, from the entry into force of this Agreement, be accorded to the like product destined for the territory of the EU. For the purpose of this Article, “major trading economy” is defined under Article 28(6).

6. Whenever a SADC EPA State has reasonable doubts as to whether a consignment of a product to which export duties shall not apply by virtue of paragraphs 1, 3 and 4 has been re-exported from, or re-routed without reaching, the EU to one or more third countries, that SADC EPA State may raise this matter at the Trade and Development Committee.

7. The Trade and Development Committee shall examine the matter within ninety (90) days. After the examination, if the Trade and Development Committee takes no decision, the customs authorities of the SADC EPA State concerned may request the Trade and Development Committee to decide that the importer of the product concerned into the EU make a declaration that the imported product will be processed in the EU and will not be re-exported to third countries.
8. If, after a system using such declarations has been in operation for at least ninety (90) days, a SADC EPA State continues to have reasonable doubts as to whether a consignment of a product to which export duties shall not apply by virtue of paragraphs 1, 3 and 4 is re-exported from, or re-routed without reaching, the EU to one or more third countries, that SADC EPA State may inform the Trade and Development Committee of the grounds of its concerns.
9. Having followed these steps, should no solution be found within thirty (30) days, the SADC EPA State concerned may impose effective measures to prevent such circumvention provided that these measures are the least trade-restrictive and exclude operators who have proven not to be involved in the process of circumvention. The retroactive reinstatement of export duties on the consignment that has been re-exported from the EU to one or more third countries may offer an alternate option.
10. The Parties agree to review the provisions of this Article in the Joint SADC EPA States – EU Council (“Joint Council”) no later than three (3) years after the entry into force of this Agreement, taking fully into account their impact on development and diversification of the SADC EPA States' economies.

## ARTICLE 27

### Fees and charges

1. All fees and charges of whatever character, other than import and export duties and other than taxes within the scope of Article 40, imposed on or in connection with importation or exportation, shall not exceed the cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.
2. Without prejudice to Article 30, no Party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.
3. The provisions of this Article shall extend to fees and charges, imposed by governmental authorities in connection with importation and exportation, including those relating to:
  - (a) consular transactions, such as consular invoices and certificates;
  - (b) quantitative restrictions;
  - (c) licensing;

- (d) exchange control;
  - (e) statistical services;
  - (f) documents, documentation and certification;
  - (g) analysis and inspection; and
  - (h) quarantine, sanitation and fumigation.
4. Fees and charges shall not be imposed for consular services.

## ARTICLE 28

### More favourable treatment resulting from free trade agreements

1. With respect to customs duties as defined in Articles 23(1) and 26(1) and fees and other charges as defined in Article 27, the EU shall extend to the SADC EPA States any more favourable treatment applicable as a result of the EU becoming party to a preferential trade agreement with third parties after the signature of this Agreement.

2. With respect to customs duties as defined in Articles 23(1) and 26(1) and fees and other charges as defined in Article 27, the SADC EPA States shall, upon request of the EU, extend to the EU any more favourable treatment applicable as a result of the SADC EPA States, individually or collectively as the case may be, becoming party to a preferential trade agreement with any major trading economy after the signature of this Agreement.

3. By derogation from paragraph 2, the SADC EPA States shall not extend to the EU the treatment applicable as a result of the SADC EPA States, individually or collectively as the case may be, becoming party to a preferential trade agreement with countries of the African, Caribbean and Pacific group or other African countries or regions.

4. By derogation from paragraph 2, where a SADC EPA State demonstrates that as a result of a preferential trade agreement it has entered into with a major trading economy, it receives substantially more favourable treatment overall than that offered by the EU, the Parties shall consult and jointly decide how best to implement the provisions of paragraph 2.

5. The provisions of this Article shall not be construed so as to oblige the EU or any SADC EPA State to extend reciprocally any preferential treatment applicable as a result of the EU or any SADC EPA State being party to a preferential trade agreement with third parties on the date of signature of this Agreement.

6. For the purposes of this Article, “major trading economy” means any developed country, or any country accounting for a share of world merchandise exports above 1 per cent in the year before the entry into force of the agreement referred to in paragraph 2, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1,5 per cent in the year before the entry into force of the agreement referred to in paragraph 2.

7. By derogation from paragraph 1, where the EU becomes party to a preferential trade agreement with a third party after the signature of this Agreement and such a preferential trade agreement provides for more favourable treatment to the third party than that granted by the EU to South Africa pursuant to this Agreement, the EU and South Africa shall enter into consultations with a view to deciding whether and how to extend the more favourable treatment contained in the preferential trade agreement to South Africa. The Joint Council may adopt proposals to amend the provisions of this Agreement in accordance with Article 117.

8. By derogation from paragraph 2, where SACU or a SADC EPA LDC becomes party to a preferential trade agreement with a major trading economy and such a preferential trade agreement provides for more favourable treatment granted by SACU or the SADC EPA LDC concerned to the major trading economy than to the EU pursuant to this Agreement, SACU or the respective SADC EPA LDC and the EU shall enter into consultations with a view to deciding whether and how to extend the more favourable treatment contained in the preferential trade agreement to the EU. The Joint Council may adopt proposals to amend the provisions of this Agreement in accordance with Article 117.

## ARTICLE 29

### Free circulation

1. Customs duties shall be levied only once for goods originating in the EU or in the SADC EPA States when imported into the territory of the EU or the SADC EPA States as the case may be.
2. Any duty paid upon importation in a SADC EPA State which is also a SACU Member State shall be refunded fully when the goods are re-exported from the customs territory of that SADC EPA State of first importation to a SADC EPA State which is not also a SACU Member State. Such products shall then be subject to the duty in the country of consumption. Pending agreement by the SADC EPA States on the procedures for this paragraph, the operation of this paragraph shall be in accordance with applicable customs legislation and procedures.
3. The Parties agree to cooperate with a view to facilitating the circulation of goods and simplifying customs procedures, within the SADC EPA States, in particular as provided for in Article 13(2).

## ARTICLE 30

### 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 Chapter and underline their commitment to combat irregularities and fraud in customs and related matters.
2. The Parties also agree to cooperate in ensuring that the necessary institutional structures enable the responsible authorities to effectively respond to requests for assistance in a timely manner.
3. For the purpose of this Article, and without prejudice to Article 9 of Protocol 2, a failure to provide administrative cooperation shall mean, *inter alia*:
  - (a) repeated failure to respect the obligations to verify the originating status of the product or products concerned as provided for in Article 38 of Protocol 1;
  - (b) repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin as provided for in Article 38 of Protocol 1;
  - (c) 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 as provided for in Article 7 of Protocol 2.

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

5. 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, in exceptional circumstances, temporarily suspend the relevant preferential treatment of the product or the products concerned, and of the specific origin concerned in accordance with this Article.

6. For the purposes of this Article, exceptional circumstances mean those circumstances which have or might have a significant negative effect on a Party if a relevant preferential treatment of the product or the products concerned is to be continued.

7. The application of a temporary suspension pursuant to paragraph 5 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 Trade and Development Committee of its finding together with the objective information and enter into consultations within the Trade and Development Committee, on the basis of all relevant information and objective findings, including information related to capacity and/or structural constraints, with a view to reaching a solution acceptable to both Parties;

- (b) where the Trade and Development Committee has examined the matter and has failed to agree on an acceptable solution within four (4) months from the receipt of the notification, the Party concerned may temporarily suspend the relevant preferential treatment of the product or products concerned, and of the specific origin concerned. A temporary suspension shall be notified to the Trade and Development Committee without undue delay. At the request of either Party, the period to agree on an acceptable solution may, where duly justified, be extended to five (5) months;
- (c) temporary suspensions under this Article shall be limited to those necessary to protect the financial interests of the Party concerned. They shall not exceed a period of six (6) months, which may be renewed after the Trade and Development Committee has had the opportunity to re-examine the matter. Temporary suspensions shall be notified immediately after their adoption to the Trade and Development Committee. They shall be subject to periodic consultations within the Trade and Development Committee in particular with a view to their termination as soon as the conditions for their application are no longer given.

## ARTICLE 31

### Management of administrative errors

The Parties recognise each other's right to correct administrative errors during the implementation of this Agreement. Where errors are identified, either Party may request the Trade and Development Committee to examine the possibilities of adopting all appropriate measures with a view to resolving the situation.

## CHAPTER II

### TRADE DEFENCE INSTRUMENTS

#### ARTICLE 32

##### Anti-dumping and countervailing measures

The rights and obligations of either Party in respect of the application of anti-dumping or countervailing measures shall be governed by the relevant WTO Agreements. The provisions of this Article shall not be subject to the provisions of PART III.

#### ARTICLE 33

##### Multilateral safeguards

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent a Party from adopting measures in accordance with Article XIX of the GATT 1994, the WTO Agreement on Safeguards, Article 5 of the WTO Agreement on Agriculture annexed to the Marrakesh Agreement Establishing the World Trade Organisation (“WTO Agreement”) and any other relevant WTO Agreements.

2. Notwithstanding paragraph 1, the EU shall, in the light of the overall development objectives of this Agreement and the small size of the economies of the SADC EPA States, exclude imports from any SADC EPA State from any measures taken pursuant to Article XIX of the GATT 1994, the WTO Agreement on Safeguards and Article 5 of the WTO Agreement on Agriculture.
3. The provisions of paragraph 2 shall apply for a period of five (5) years, beginning from the date of entry into force of this Agreement. Not later than one hundred and twenty (120) days before the end of this period, the Joint Council shall review the operation of paragraph 2 in the light of the development needs of the SADC EPA States, with a view to determining their possible extension for a further period.
4. The provisions of paragraph 1 shall not be subject to the provisions of Part III.

## ARTICLE 34

### General bilateral safeguards

1. Notwithstanding Article 33, after having examined alternative solutions, a Party or SACU, as the case may be, may apply safeguard measures of limited duration which derogate from the provisions of Articles 24 and 25, under the conditions and in accordance with the procedures laid down in this Article.

2. Safeguard measures referred to in paragraph 1 may be taken if, as a result of the obligations incurred by a Party under this Agreement, including tariff concessions, a product originating in one Party is being imported into the territory of the other Party or SACU, as the case may be, in such increased quantities and under such conditions as to cause or threaten to cause:

- (a) serious injury to the domestic industry producing like or directly competitive products in the territory of the importing Party or SACU, as the case may be; or
- (b) disturbances in a sector of the economy producing like or directly competitive products, particularly where these disturbances produce major social problems, or difficulties which could bring about serious deterioration in the economic situation of the importing Party or SACU, as the case may be; or
- (c) disturbances in the markets of like or directly competitive agricultural products in the territory of the importing Party or SACU, as the case may be.

These safeguard measures shall not exceed what is necessary to remedy or prevent the serious injury or disturbances.

3. Safeguard measures referred to in this Article shall take the form of one or more of the following:

- (a) suspension of the further reduction of the rate of import duty for the product concerned, as provided for under this Agreement; or

(b) increase in the customs duty on the product concerned up to a level which does not exceed the MFN applied rate at the time of taking the measure; or

(c) introduction of tariff quotas on the product concerned.

4. Without prejudice to paragraphs 1 to 3, where any product originating in any SADC EPA State is being imported in such increased quantities and under such conditions as to cause or threaten to cause one of the situations referred to in paragraphs 2(a) to (c) to a like or directly competitive production sector of one or several of the EU's outermost regions, the EU may take surveillance or safeguard measures limited to the region or regions concerned in accordance with the procedures laid down in paragraphs 6 to 8.

5. Without prejudice to paragraphs 1 to 3, where any product originating in the EU is being imported in such increased quantities and under such conditions as to cause or threaten to cause one of the situations referred to in paragraph 2(a) to (c) to a SADC EPA State or SACU, as the case may be, the SADC EPA State concerned or SACU, as the case may be, may take surveillance or safeguard measures limited to its territory in accordance with the procedures laid down in paragraphs 6 to 8.

6. Safeguard measures referred to in this Article:

(a) shall only be maintained for such a time as may be necessary to prevent or remedy serious injury or disturbances as defined in paragraphs 2, 4 and 5;

- (b) shall not be applied for a period exceeding two (2) years. Where the circumstances warranting imposition of safeguard measures continue to exist, such measures may be extended for a further period of no more than two (2) years. Where a SADC EPA State or SACU, as the case may be, apply a safeguard measure, or where the EU apply a measure limited to the territory of one or more of its outermost regions, they may however apply that measure for a period not exceeding four (4) years and, where the circumstances warranting imposition of safeguard measures continue to exist, extend it for a further period of four (4) years;
- (c) that exceed one (1) year shall contain clear elements progressively leading to their elimination at the end of the set period, at the latest; and
- (d) shall not be applied to the import of a product that has previously been subject to such a measure, within a period of at least one (1) year from the expiry of the measure.

7. For the implementation of paragraphs 1 to 6, the following provisions shall apply:

- (a) where a Party or SACU, as the case may be, takes the view that one of the situations referred to in paragraphs 2(a) to (c), 4 and/or 5 exists, it shall immediately refer the matter to the Trade and Development Committee for examination;

- (b) the Trade and Development Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the Trade and Development Committee aimed at remedying the circumstances, or no other satisfactory solution has been reached within thirty (30) days of the matter being referred to the Trade and Development Committee, the importing party may adopt the appropriate measures to remedy the circumstances in accordance with this Article;
- (c) before taking any measure provided for in this Article or, in the cases to which paragraph 8 applies, the Party or SACU, as the case may be, shall, as soon as possible, supply the Trade and Development Committee with all relevant information required for a thorough examination of the situation, with a view to seeking a solution acceptable to the parties concerned;
- (d) in the selection of safeguard measures pursuant to this Article, priority must be given to those which least disturb the operation of this Agreement. If the MFN applied rate in effect the day immediately preceding the day of entry into force of this Agreement is lower than the MFN applied rate at the time of taking the measure, measures applied in accordance with the provisions of paragraph 3(b) may exceed the MFN rate in effect the day immediately preceding the day of entry into force of this Agreement. In such a case, the Party or SACU, as the case may be, shall supply, in accordance with the provisions of paragraph (c), the Trade and Development Committee with the relevant information indicating that an increase of the duty up to the level of MFN applied at the time of entry into force is not sufficient and that a measure exceeding this duty is necessary to remedy or prevent the serious injury or disturbances pursuant to paragraph 2;

- (e) any safeguard measure taken pursuant to this Article shall be notified immediately to the Trade and Development Committee and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their abolition as soon as circumstances permit.
8. Where delay would cause damage which would be difficult to repair, the importing Party or SACU, as the case may be, may take the measures provided for in paragraphs 3, 4, and/or 5 on a provisional basis without complying with the requirements of paragraph 7.
- (a) Such action may be taken for a maximum period of one hundred and eighty (180) days where measures are taken by the EU and two hundred (200) days where measures are taken by a SADC EPA State or SACU, as the case may be, or where measures taken by the EU are limited to the territory of one or more of its outermost region(s).
- (b) The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraph 6.
- (c) In taking such provisional measures, the interest of all parties involved shall be taken into account.
- (d) The importing Party or SACU, as the case may be, shall inform the other Party concerned and it shall immediately refer the matter to the Trade and Development Committee for examination.

9. If the importing Party or SACU, as the case may be, subjects imports of a product to an administrative procedure having as its purpose the rapid provision of information on the trend of trade flows liable to give rise to the problems referred to in this Article, it shall inform the Trade and Development Committee without delay.

10. Safeguard measures adopted under the provisions of this Article shall not be subject to WTO Dispute Settlement provisions.

## ARTICLE 35

### Agricultural safeguards

1. Notwithstanding Article 34, a safeguard measure in the form of an import duty may be applied if, during any given twelve-month period, the volume of imports into SACU of an agricultural product listed in Annex IV originating in the EU exceeds the reference quantity for the product therein indicated.

2. A duty which shall not exceed 25 per cent of the current WTO bound tariff or 25 percentage points, whichever is higher, may be imposed to the agricultural products referred to in paragraph 1. Such duty shall not exceed the prevailing MFN applied rate.

3. Safeguard measures referred to in this Article shall be maintained for the remainder of the calendar year or five (5) months, whichever is the longer.

4. Safeguard measures referred to in this Article shall not be maintained or applied with respect to the same good at the same time as:

- (a) a general bilateral safeguard measure in accordance with Article 34;
- (b) a measure under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards; or
- (c) a special safeguard measure under Article 5 of the WTO Agreement on Agriculture.

5. Safeguard measures referred to in this Article shall be implemented in a transparent manner. Within ten (10) days after applying such a measure, SACU shall notify the EU in writing and shall provide relevant data concerning the measure. On request, SACU shall consult the EU regarding the application of the measure. SACU shall also notify the Trade and Development Committee within thirty (30) days after such imposition.

6. The implementation and operation of this Article may be the subject of discussion and review in the Trade and Development Committee. On request of either Party, the Trade and Development Committee may review the reference quantities and agricultural products as provided for in this Article.

7. The provisions of this Article may only be applied during the period of twelve (12) years from the date of entry into force of this Agreement.

## ARTICLE 36

### Food security safeguards

1. The Parties acknowledge that the removal of barriers to trade between them, as envisaged in this Agreement, may pose significant challenges to the SADC EPA States' producers in the agricultural and food sectors and agree to consult with each other on these issues.
2. Notwithstanding Article 34, where essential for the prevention or relief of critical general or local shortages of foodstuffs or other products in order to ensure food security of a SADC EPA State and where this situation gives rise or is likely to give rise to major difficulties for such a SADC EPA State, that SADC EPA State may adopt safeguard measures in accordance with the procedure set out in paragraph 7(b) to (d), 8 and 9 of Article 34. The measure will be reviewed at least annually and shall be removed as soon as the circumstances leading to its adoption cease to exist.

## ARTICLE 37

### BLNS transitional safeguards

1. The Parties acknowledge the sensitivity of the liberalised products listed in Annex V for the BLNS States.

2. Notwithstanding Article 34, in the event that one of the products listed in Annex V and originating in the EU being imported into the territory of a BLNS State in such increased quantities as to cause or threaten to cause serious injury in any BLNS State, that BLNS State may apply a transitional safeguard measure.
3. Safeguard measures referred to in paragraph 2 shall take the form of a duty on the product concerned listed in Annex V up to a level which does not exceed the MFN applied rate at the time of taking the measure or introduce a zero duty tariff rate quota (TRQ), provided that the level of the duty outside the quota does not exceed the MFN applied rate at the time of taking the measure.
4. Thirty (30) days in advance of applying the safeguard measure, the BLNS State concerned shall notify the measure to the EU in writing. After notification, the BLNS State concerned shall have sixty (60) days to provide all relevant information concerning the measure.
5. Without prejudice to paragraph 2, the BLNS State concerned and the EU shall, upon request of either Party, enter into consultations on the safeguard measure.
6. Safeguard measures referred to in this Article shall be applied for a period not exceeding four (4) years. Where the circumstances warranting imposition of the measure continue to exist, such a measure may be extended for a further period of no more than four (4) years.
7. No safeguard measure referred to in this Article may be adopted after twelve (12) years from the entry into force of this Agreement.

## ARTICLE 38

### Infant industry protection safeguards

1. Notwithstanding Article 34, Botswana, Lesotho, Namibia, Mozambique and Swaziland may temporarily suspend further reductions of the rate of customs duty or increase the rate of customs duty up to a level which does not exceed the applied MFN duty, where a product originating in the EU, as a result of the reduction of duties, is being imported into its territory in such increased quantities and under such conditions as to threaten the establishment of an infant industry, or cause or threaten to cause disturbances to an infant industry producing like or directly competitive products.
2. Safeguard measures adopted in accordance with the conditions of paragraph 1 by a SADC EPA State which is also a SACU Member State shall take the form of the levying of additional duties exclusively by the SADC EPA State invoking this provision.
3. Safeguard measures referred to in paragraph 1 may be applied for a period of up to eight (8) years and may be further extended by a decision of the Joint Council

4. With regard to the implementation of paragraphs 1 and 2, the following provisions shall apply:

- (a) where a SADC EPA State takes the view that the circumstances set out in paragraph 1 exist, it shall immediately refer the matter to the Trade and Development Committee for examination. The SADC EPA State concerned shall supply the Trade and Development Committee with all relevant information required for a thorough examination of the situation;
- (b) the Trade and Development Committee may make any recommendation with a view to seeking an acceptable solution needed to remedy the circumstances which have arisen. If no recommendation has been made by the Trade and Development Committee, or no other satisfactory solution has been reached within thirty (30) days of the matter being referred to the Trade and Development Committee, the SADC EPA State concerned may adopt measures in accordance with this Article;
- (c) in the application of measures pursuant to paragraph 1, priority must be given to those which least disturb the operation of this Agreement; and
- (d) any measure taken pursuant to this Article shall be notified immediately to the Trade and Development Committee and shall be the subject of periodic consultations within that body.

5. In critical circumstances where delay would cause damage which would be difficult to repair, the SADC EPA State concerned may take measures provided for in paragraph 1 on a provisional basis without complying with the requirements of paragraph 4. Such measure may be taken for a maximum period of two hundred (200) days. The duration of any such provisional measure shall be counted as part of the period referred to in paragraph 3. In taking such provisional measures, the interest of all parties involved shall be taken into account. The importing SADC EPA State concerned shall inform the EU, and it shall immediately refer the matter to the Trade and Development Committee for examination of such provisional measure.

6. SACU Member States shall have the right to have recourse to Article 26 of the SACU Agreement.

### CHAPTER III

#### NON-TARIFF MEASURES

#### ARTICLE 39

##### Prohibition of quantitative restrictions

The Parties may apply quantitative restrictions provided such restrictions are applied in conformity with the WTO Agreement.

## ARTICLE 40

### National treatment on internal taxation and regulation

1. The Parties recognise that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.
2. Imported products originating in the other Party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, the Parties shall not otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.<sup>1</sup>

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<sup>1</sup> A tax conforming to the requirements of the first sentence of this paragraph would be considered to be inconsistent with the provisions of its second sentence only in cases where competition was involved between, on the one hand, the taxed product and, on the other hand, a directly competitive or substitutable product which was not similarly taxed.