

CHAPTER II

TRADE REGIME FOR GOODS

TITLE I

General provisions

ARTICLE 4

Objectives

The objectives of cooperation in the area of trade are:

- (a) the provision of full duty free and quota free market access conditions for goods originating in the ESA States into the market of the UK on a secure, long term and predictable basis;
- (b) the promotion of trade between the Parties and the acceleration of export led growth to enable the integration of ESA countries into the global economy;
- (c) the progressive and gradual liberalisation of the goods market in ESA in accordance with the modalities established in this Agreement; and
- (d) the preservation and improvement of market access conditions to ensure that the ESA States are better and not worse off.

ARTICLE 5

Scope of application

1. Only the Signatory ESA States listed in Annex II shall take commitments under this Chapter.
2. The UK's commitments under this Chapter shall only be applicable to goods originating in the Signatory ESA States listed in Annex II.
3. For the purposes of this Chapter and for decisions adopted under this Chapter any reference to the Signatory ESA States or to goods originating in the Signatory ESA States shall extend only to the Signatory ESA States listed in Annex II.
4. When a Signatory ESA State not listed in Annex II wants to join Chapter II, it shall notify its intention to the EPA Committee. The EPA Committee is competent to amend Annex II.
5. The EPA Committee may decide on any transitional measures or amendments that might be necessary in order to facilitate the addition of such Signatory ESA States to Annex II.

TITLE II

Free movement of goods

ARTICLE 6

Customs duty

For the purposes of elimination of customs duties on imports, 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 in connection with such importation, but does not include:

- (a) charges equivalent to internal taxes levied on both imported and locally produced goods consistent with the provisions of Article 17;
- (b) anti-dumping or countervailing duties applied in accordance with the provisions of Article 18, and safeguard measures applied in accordance with Article 20; and
- (c) fees or other charges levied in accordance with the provisions of Article 9.

ARTICLE 7

Classification of goods

The classification of goods in trade covered by this Agreement shall be that set out in each Party's respective tariff nomenclature in conformity with the Harmonised Commodity Description and Coding System (HS). The Signatory ESA States will use the COMESA nomenclature.

ARTICLE 8

Basic duty

For each product, the basic customs duty to which the successive reductions are to be applied shall be that specified in each Party's Tariff Schedules.

ARTICLE 9

Fees and other charges

Fees and other charges referred to in Article 6(c), shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection for domestic products or a taxation of imports for fiscal purposes. They shall be based on specific rates. Trade related fees and charges shall not be imposed for consular services.

ARTICLE 10

Customs duties on products originating in the ESA States

Products originating in the ESA States shall be imported into the UK free of customs duties under the conditions defined in Annex I.

ARTICLE 11

Customs duties on products originating in the UK

1. Customs duties on imports of products originating in the UK shall be reduced or eliminated in accordance with the schedules of tariff liberalisation in Annex II, which shall contain the schedules of each Signatory ESA State or group of Signatory ESA States.
2. The Parties may review the schedules of tariff liberalisation in Annex II with a view to harmonising them taking into account regional integration processes.
3. Any new schedule of tariff liberalisation for customs duties on imports of products originating in the UK submitted after the ratification process of this Agreement has commenced may be annexed to this Agreement in Annex II by decision of the EPA Committee.

ARTICLE 12

Rules of origin

For the purposes of this Chapter, ‘originating’ means qualifying under the rules of origin set out in Protocol 1 to this Agreement. The Parties shall review the provisions of this Protocol with a view to their further simplification. In such review the Parties shall take into account the development needs of the ESA States and development of technologies, production processes and all other factors, including on-going reforms of rules of origin, which may require modifications to the provisions of this Protocol. Any such modifications shall be effected by a decision of the EPA Committee.

ARTICLE 13

Standstill

Subject to Article 11, the Parties agree not to increase their applied customs duties on products imported from the other Party.

ARTICLE 14

Duties, taxes on exports

1. Except as otherwise provided in Annex III and for the duration of this Agreement, the Parties shall not institute any new duties or taxes on or in connection with the exportation of goods to the other Party in excess of those imposed on like products destined for internal sale.
2. The EPA Committee may examine a request from any Signatory ESA State for a review of the goods listed in Annex III.

ARTICLE 15

More favourable treatment resulting from free trade agreements

1. With respect to the subject matter covered by this Chapter, the UK shall accord to the Signatory ESA States any more favourable treatment applicable as a result of the UK becoming party to a free trade agreement with third parties after the signature of this Agreement.
2. With respect to the subject matter covered by this Chapter, the Signatory ESA States shall accord to the UK any more favourable treatment applicable as a result of the Signatory ESA States becoming party to a free trade agreement with any major trading economy after the signature of this Agreement.
3. The provisions of this Chapter shall not be so construed as to oblige the Parties to extend reciprocally any preferential treatment applicable as a result of one of them being party to a free trade agreement with third parties on the date of signature of this Agreement.
4. The provisions of paragraph 2 shall not apply in respect of trade agreements between Signatory ESA States with other African countries and regions.
5. For the purposes of this Article, ‘free trade agreement’ means an agreement substantially liberalising trade and providing for the absence or elimination of substantially all discrimination between or among parties thereto through the elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures, either at the entry into force of that agreement or on the basis of a reasonable time frame.
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 percent in the year before the entry into force of the free trade agreement referred to in paragraph 2, or any group of countries acting individually, collectively or through a free trade agreement accounting collectively for a share of world merchandise exports above 1,5 percent in the year before the entry into force of the free trade agreement referred to in paragraph 2 (¹).

TITLE III

Non-tariff measures

ARTICLE 16

Prohibition of quantitative restrictions

Except as otherwise specified in Annexes I and II of this Agreement, all prohibitions or restrictions in trade on the importation, exportation or sale for export between the Parties, other than customs duties, taxes, fees and other charges provided for under Article 6, whether made effective through quotas, import or export licences or other measures, shall be eliminated upon the entry into force of this Agreement. No new such measures shall be introduced.

ARTICLE 17

National treatment on internal taxation and regulation

1. Imported products originating in the other Party shall not be subject, either directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like national products. Moreover, the Parties shall not otherwise apply internal taxes or other internal charges so as to afford protection to national production.

2. Imported products originating in the other Party shall be accorded treatment no less favourable than that accorded to like national products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

3. No Party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no Party shall otherwise apply internal quantitative regulations so as to afford protection to national production.

4. The provisions of this Article shall not prevent the payment of subsidies exclusively to national producers, including payments to national producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of national products.

5. The provisions of this Article shall not apply to laws, regulations, procedures or practices governing public procurement.

6. The EPA Committee may decide to authorise a Signatory ESA State to depart from the provisions of this Article to promote the establishment of domestic production and protect infant industry. In this respect the development needs of Signatory ESA States and, in particular, the special needs and concerns of ESA LDCs will be taken into account.

7. A list of provisional derogations is attached as Annex III. Such derogations are granted to the interested Signatory ESA States for the periods of time which are set out in the same Annex.

(¹) For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used.

TITLE IV

Trade defence measures

ARTICLE 18

Anti-dumping and countervailing measures

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the UK or Signatory ESA States, whether individually or collectively, from adopting anti-dumping or countervailing measures in accordance with the relevant WTO agreements. For the purpose of this Article, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.

2. Before imposing definitive anti-dumping or countervailing duties in respect of products imported from ESA States, the UK shall consider the possibility of constructive remedies as provided for in the relevant WTO agreements.

3. Where anti-dumping or countervailing measures have been imposed on behalf of two or more Signatory ESA States by a regional authority, there shall be one single forum of judicial review, including at the stage of appeals.

4. Where anti-dumping or countervailing measures can be imposed on a regional or sub-regional basis and on a national basis the Parties shall ensure that such measures are not applied simultaneously in respect of the same product by regional or sub-regional authorities on the one hand, and national authorities on the other.

5. The UK shall notify the exporting Signatory ESA States of the receipt of a properly documented complaint before initiating any investigation.

6. The provisions of this Article shall be applicable in all investigations initiated after this Agreement enters into force.

7. The provisions of this Article shall not be subject to the Dispute Settlement provisions of this Agreement.

ARTICLE 19

Multilateral safeguards

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the Signatory ESA States and the UK from adopting measures in accordance with Article XIX of GATT 1994, the WTO Agreement on Safeguards, and Article 5 of the WTO Agreement on Agriculture. For the purpose of this Article, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.

2. Not later than 120 days after the entry into force or provisional application of this Agreement, the EPA Committee shall meet to determine whether, notwithstanding paragraph 1, the UK, taking into account the development needs of the ESA States, shall, for such period as the EPA Committee shall determine, exclude imports from any ESA State from any measures taken pursuant to Article XIX of GATT 1994, the WTO Agreement on Safeguards and Article 5 of the WTO Agreement on Agriculture.

3. The provisions of paragraph 1 shall not be subject to the Dispute Settlement provisions of this Agreement.

ARTICLE 20

Bilateral safeguards

1. After having examined alternative solutions, a Party may apply safeguard measures of limited duration which derogate from the provisions of Articles 10, 11 and 16, under the conditions and in accordance with the procedures laid down in this Agreement.

2. Safeguard measures referred to in paragraph 1 may be taken where a product originating in one Party is being imported into the territory of the other Party 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;
- (b) disturbances in a sector of the economy, 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;
- (c) disturbances in the markets of agricultural like or directly competitive products ⁽¹⁾ or mechanisms regulating those markets.

3. Safeguard measures referred to in this Article shall not exceed what is necessary to remedy or prevent the serious injury or disturbances, as defined in paragraph 2 and 4(b). Those safeguard measures of the importing Party may only consist 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;
- (b) increase in the customs duty on the product concerned up to a level which does not exceed the customs duty applied to other WTO Members, and
- (c) introduction of tariff quotas on the product concerned.

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

- (b) A Signatory ESA State may take safeguard measures where a product originating in the UK as a result of the reduction of duties is being imported into its territory in such increased quantities and under such conditions as to cause or threaten to cause disturbances to an infant industry producing like or directly competitive products. Such provision is only applicable until 14 May 2022 for non- LDCs and 14 May 2027 for LDCs. Measures must be taken in accordance with the procedures laid down in paragraphs 5 to 8.

⁽¹⁾ For the purpose of this Article agricultural products are those covered by Annex I of the WTO Agreement on Agriculture.

5. (a) Safeguard measures referred to in this Article 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 and 4.

(b) Safeguard measures referred to in this Article shall not be applied for a period exceeding two 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 years. Where the Signatory ESA States or a Signatory ESA State apply a safeguard measure, such measure may however be applied for a period not exceeding four years and, where the circumstances warranting imposition of safeguard measures continue to exist, extended for a further period of four years.

(c) Safeguard measures referred to in this Article that exceed one year shall contain clear elements progressively leading to their elimination at the end of the set period, at the latest.

(d) No safeguard measure referred to in this Article shall be applied to the imports of a product that has previously been subject to such a measure, for a period of at least one year since the expiry of the measure.

6. For the implementation of the above paragraphs, the following provisions shall apply:

(a) where a Party takes the view that one of the circumstances set out in paragraphs 2 and 4 exists, it shall immediately refer the matter to the EPA Committee for examination;

(b) the EPA Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the EPA Committee aimed at remedying the circumstances, or no other satisfactory solution has been reached within 30 days of the matter being referred to the EPA 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 7 of this Article applies, as soon as possible, the UK or the Signatory ESA State concerned shall supply the EPA 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;

(e) any safeguard measure taken pursuant to this Article shall be notified immediately to the EPA 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.

7. Where exceptional circumstances require immediate action, the importing Party concerned, whether the UK, the ESA States or a Signatory ESA State as the case may be, may take the measures provided for in paragraph 3 and/or 4 on a provisional basis without complying with the requirements of paragraph 6. Such action may be taken for a maximum period of 180 days where measures are taken by the UK and 200 days where measures are taken by the ESA States or a Signatory ESA State. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraph 5. In the taking of such provisional measures, the interest of all Parties involved shall be taken into account. The

importing Party concerned shall inform the other Party concerned and shall immediately refer the matter to the EPA Committee for examination.

8. If an importing Party 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 EPA Committee without delay.

9. The WTO Agreement shall not be invoked to preclude a Party from adopting safeguard measures in conformity with this Article.

TITLE V

Administrative provisions

ARTICLE 21

Special provision on administrative cooperation

1. The Parties agree that administrative cooperation is essential for the implementation and control of the preferential treatment granted under this Chapter and underline their commitment to combat irregularities and fraud in customs and related matters.

2. Where a Party has made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud, the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned in accordance with this Article.

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

- (a) a repeated failure to respect the obligations to verify the originating status of the product(s) concerned;
- (b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin;
- (c) a repeated refusal or undue delay in obtaining authorisation to conduct administrative cooperation missions to verify the authenticity of documents or accuracy of information relevant to the granting of the preferential treatment in question.

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 satisfactory 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. The application of a temporary suspension shall be subject to the following conditions:

- (a) the Party which has made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud shall without undue delay notify the EPA Committee of its finding together with the objective information and enter into consultations within the EPA Committee, on the basis of all relevant information and objective findings, with a view to reaching a solution acceptable to both Parties.

- (b) where the Parties have entered into consultations within the EPA Committee as above and have failed to agree on an acceptable solution within three months following the notification, the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned. A temporary suspension shall be notified to the EPA Committee without undue delay.
- (c) temporary suspensions under this Article shall be limited to that necessary to protect the financial interests of the Party concerned. They shall not exceed a period of six months, which may be renewed. Temporary suspensions shall be notified immediately after their adoption to the EPA Committee. They shall be subject to periodic consultations within the EPA Committee in particular with a view to their termination as soon as the conditions for their application are no longer satisfied.

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

ARTICLE 22

Management of administrative errors

In case of error by the competent authorities in the proper management of the preferential system of export, and in particular in the application of the provisions of Protocol 1 concerning the definition of the concept of 'originating products' and methods of administrative cooperation, where this error leads to consequences in terms of import duties, the Party facing such consequences may request the EPA Committee to examine the possibilities of adopting all appropriate measures with a view to resolving the situation.

ARTICLE 23

Custom valuation

1. Article VII of GATT 1994 and the Agreement on the implementation of Article VII of GATT 1994 shall govern customs valuation rules applied to reciprocal trade between the Parties.

2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.