

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 ⁽¹⁾ 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.

⁽¹⁾ 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 ⁽¹⁾;
- (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').
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.

⁽¹⁾ 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.

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 ⁽¹⁾.

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.

⁽¹⁾ Except where expressly provided, the terms 'goods' and 'product' shall have the same meaning.