



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

**Communication to modify the directives for the negotiations of economic partnership
agreements with ACP countries and regions**

{SEC(2006)1427}

INTRODUCTION

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This communication aims at inviting South Africa to join the ACP group of States negotiating an EPA in Southern Africa (SADC).

- **General context**

This communication follows the SADC proposal tabled on 7th March 2006 and its Annex 2 is the draft response to their proposal.

EC-SADC EPA Negotiations, which were launched in July 2004, were suspended, at technical level in 2005 when both sides realised that any viable regional integration process in Southern Africa couldn't be achieved without sorting out the trade consequences of the EC-SA Trade, Development and Cooperation Agreement on the other members of the Southern African Customs Union. In this context, SADC proposal aims at aligning both the TDCA Review process and the EC-SADC EPA into one single negotiating process.

- **Existing provisions in the area of the proposal**

Directives for the Negotiations of Economic Partnership Agreements with ACP countries and regions (Annex 1 of doc. 9930/02).

- **Consistency with the other policies and objectives of the Union**

If adopted, this Communication will help to finalise the EC-SADC EPA Negotiations which is one of the objectives of the Union.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

In 2006, several rounds of EPA talks between the EU and SADC took place at Senior Officials level to discuss the implication of this proposal.

- **Collection and use of expertise**

There was no need for external expertise.

- **Preliminary indications of impact**

The attached Staff Working Document is a preliminary impact assessment on the potential effects of the proposed amendment.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposed addendum to the negotiation directives is structured as follows:

1. Following the proposal tabled by the SADC EPA negotiating group on 7th March 2006, South Africa should be invited to join the ACP group of States negotiating an EPA in Southern Africa.
2. Provided that an EPA is concluded with this group of ACP States, including South Africa, the EPA will replace TDCA trade provisions at the date of its entry into force.
3. Due to South Africa competitiveness, it is inevitable to maintain a separate trade regime for South Africa in so far as access of goods to the EC market is concerned.
4. Market access provisions for trade between the EC and South Africa will be negotiated on the basis of the TDCA provisions and founded on a complete analysis of the potential impact on the EU economy. A selected number of exceptions could be excluded from the scope of negotiations.
5. Particular attention will be devoted to put in place a system of rules of origin with appropriate enforcement measures such that the distinction between the two different trade regimes can be guaranteed, on the basis of a prior ad hoc assessment.
6. Safeguard measures as appropriate will be included.

- **Legal basis**

Article 133 of the Treaty establishing the EC and Directives for the Negotiations of Economic Partnership Agreements with ACP countries and Regions (doc. 9930/02 of 12.06.2002).

- **Subsidiarity principle**

The communication falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The communication complies with the proportionality principle for the following reason(s).

The proposed form of action (Addendum to the Negotiating Directives) is as simple as possible in the context EU-SADC EPA negotiations.

- **Choice of instruments**

Proposed instruments: Addendum to the Negotiating Directives.

Other means would not be adequate for the following reason(s).

It is the fastest way to resume EU-SADC EPA talks.

4) BUDGETARY IMPLICATION

The communication will have no financial implications.

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On 7th March 2006 SADC tabled to the EC a proposal which foresees to formally associate South Africa in the SADC EPA. This proposal singles out market access as the sole issue while rejecting further negotiations on trade related rules. In return the EU would be offered the access currently defined in the TDCA to all SACU members (*South Africa, Botswana, Lesotho, Namibia and Swaziland – the 'BLNS'*), with the possibility to raise some tariffs to take into account possible BLNS sensitivities.

As for the non-SACU countries that are members of the SADC EPA grouping i.e. Mozambique, Angola and Tanzania (*'MAT' - LDCs and therefore EBA beneficiaries*) the request is that EBA would be "contractualised" on a non-reciprocal and hence WTO incompatible basis.

This proposal raises the following questions: (1) Should we accept South Africa in an EPA? and if yes, at what conditions (2) Can we exclude all commitments on trade-related rules?

The EC believes that it can accept the inclusion of South Africa into the EC-SADC EPA. However this acceptance is subject to certain conditions and requests concerning the trade regime to be applied to South Africa, the situation of MAT', the scope of the future agreement and the definition of tariff offers.

SADC proposal is welcomed in so far as it clarifies the role of South Africa in the negotiations and provides a much needed basis for further discussion, building on an institutionally coherent and economically integrated core group of countries, which could be gradually expanded to integrate more countries in the region. However, integrating South Africa into the EPA would pose significant challenges. SA being the most competitive economy of the region, it can't be treated as the other members of SACU. The EC will have to differentiate its tariff treatment while preserving the regional coherence of the group. In so far as the trade regime is differentiated, the EC will have to guarantee the feasibility of an appropriate and rigorous system of control for rules of origin and the establishment of an autonomous safeguard mechanism which will automatically apply in case of a trade surge linked to circumvention.

Excluding all commitments on trade-related rules (e.g. Services, Investment, Government procurement, trade facilitation, IPR and Competition) would be very difficult to reconcile with Cotonou. Moreover rules are the essence of the development dimension of EPAs. On these areas it is clear that the EC does not look for access for its companies. Its objective is to promote regional harmonisation as well as regional preference so that operators would be faced with predictable, transparent and enforceable rules. A step-by-step approach with Review clauses in order to define an acceptable package of EPA rules would be an acceptable compromise.

Finally 'Contractualising' EBA regime, as requested by Mozambique, Angola and Tanzania (MAT) is not compatible with WTO rules, insofar as it would not fulfil GATT Art. XXIV requirements and therefore would create a discrimination with other EBA beneficiaries. The

EC believes that these countries should not be left aside the EPA negotiation process, as it would lead to a further fragmentation of the region, rather than fostering regional integration which is a core EPA objective. In any case whatever the final EPA format, the future agreement should remain open to the ACPs of the region who wish to join later.

The objective of the present Communication is to explain the advantages of modifying the Directives for the negotiations of Economic Partnership Agreements with ACP countries and regions in order to formally include South Africa into the EC-SADC EPA negotiating process, as well as the conditions that would be linked to this modification.

Annex 1 to the present Communication is the draft Addendum to modify the Directives for the negotiations of Economic Partnership Agreements with ACP countries and regions.

Annex 2 contains the EC response to the SADC EPA Framework tabled on 7th March 2006.

The attached Commission staff working document is a preliminary impact assessment which explains briefly the state of EC-SADC EPA negotiations, the problems to overcome and the economic and institutional questions linked to this modification.

Annex 1

ADDENDUM TO THE DIRECTIVES FOR THE NEGOTIATION OF ECONOMIC PARTNERSHIP AGREEMENTS WITH ACP COUNTRIES AND REGIONS

(doc. 9930/02 of 12.06.2002)

1. Following the proposal tabled by the SADC EPA negotiating group on 7th March 2006, South Africa should be invited to join the ACP group of States negotiating an EPA in Southern Africa.
2. Provided that an EPA is concluded with this group of ACP States, including South Africa, the EPA will replace TDCA trade provisions at the date of its entry into force.
3. Due to South Africa competitiveness, it is inevitable to maintain a separate trade regime for South Africa in so far as access of goods to the EC market is concerned.
4. Market access provisions for trade between the EC and South Africa will be negotiated on the basis of the TDCA provisions and founded on a complete analysis of the potential impact on the EU economy.
5. Particular attention will be devoted to put in place a system of rules of origin with appropriate enforcement measures such that the distinction between the two different trade regimes can be guaranteed, on the basis of a prior ad hoc assessment
6. Safeguard measures as appropriate will be included.

Annex 2

EC response to the SADC EPA Framework

tabled on 7th March 2006

Background

On 7th March 2006 the SADC EPA group tabled a proposal on how to approach EPA negotiations, as follows: South Africa should participate in the EPA negotiation; Mozambique, Angola and Tanzania should be granted a non-reciprocal EBA like treatment on a contractual basis; market access should be the sole issue for the negotiation; new generation issues could be discussed in a cooperative manner but with no binding commitment made under the EPA. As regards market access, extension of EBA equivalence to all countries including South Africa is requested from the EC. In return the EU would be offered the access currently defined under the EC-South Africa Trade, Development and Cooperation Agreement (TDCA) to all members of the Southern African Customs Union (SACU). This market access offer for the EU could however be subject to increases of currently applicable TDCA duties on a number of products in order to accommodate concerns from Botswana, Lesotho, Namibia and Swaziland (BLNS). Lesotho should be given special consideration due to its LDC status.

Configuration

SADC proposal is welcomed in so far as it clarifies the role of South Africa in the negotiations and provides a much needed basis for further discussion, building on an institutionally coherent and economically integrated core group of countries, which could be gradually expanded to integrate more countries in the region.

The EC can therefore accept the inclusion of South Africa into the EC-SADC EPA. However this acceptance is subject to certain conditions and requests concerning the situation of Mozambique, Angola and Tanzania (the 'MAT'), the scope of the future agreement and the definition of tariff offers.

The EC believes that the SADC EPA group proposal would leave aside Mozambique, Angola and Tanzania from the EPA negotiation process, and increase fragmentation of the region, rather than fostering regional integration which is a core EPA objective.

In any event and regardless of the final SADC EPA configuration, the agreement should remain open to all ACP States of the region that would wish to join at a later stage, subject to the agreement of the Parties.

Market access in goods

Due to South African competitiveness, especially in agriculture, it is inevitable to grant a different regime for the access to the EU market to South Africa and the other EPA members.

The EC tariff offer would be based on a situation which, de facto, already exists, the TDCA on the one hand and Cotonou provisions on the other hand. Any additional tariff concession for the 'BLNS' and the 'MAT' would be the outcome of the EPA negotiation and depend on

the efforts of these countries to take commitments on trade related rules. Extension of DFQF treatment to South Africa is not envisaged in the foreseeable future.

Concerning access of EU goods to the SADC EPA market, the TDCA should also be the starting line for the negotiation. As a matter of principle the EC opposes TDCA tariff increase on EU goods for exports to South Africa.

The EC also recognises that, within SACU, Lesotho due to its LDC status should be given special consideration. This will be taken care of during the negotiation process.

A non-reciprocal and contractual DFQF treatment for Angola, Mozambique and Tanzania is not compatible with WTO rules, as it would not fulfil GATT Art. XXIV requirements and would create a discrimination with EBA beneficiaries. EPA should aim at achieving full market access to the greatest extent possible for SADC EPA countries (other than South Africa), while recognizing the need to address the import regime for a few sensitive products.

Should finally any country decide not to join the EPA market access provisions, their tariff treatment would then be based on the unilateral EU GSP regime (EBA as long as they are LDCs), or, in the case of South Africa, the TDCA.

New generation issues

Regarding the scope of the future agreement the EC considers that the EPA cannot limit itself to market access provisions only, and leave aside all references to regulatory supply-side commitments (e.g. services; investment; government procurement; trade facilitation; intellectual property rights; competition; labour and environment). These issues are the essence of the EPA sustainable development package and necessary to progress further towards a deeper regional integration. Where lack of capacity risks making the implementation of commitments difficult in these areas, appropriate measures should be considered in the framework of the development cooperation instruments, in particular within the Cotonou Agreement, or Member States or other donors programmes. Assistance could be provided against clear commitments on rules.

The EC may consider that a 'step-by-step' approach could help define an acceptable package. The objective should be to focus primarily on rules that govern trade such as services, investment, and trade facilitation, and to deal with other trade-related rules at a later stage.

EPA and TDCA

Finally the EC agrees that the negotiating process should be streamlined. Both TDCA review (as far as trade issues are concerned) and EPA negotiation should be merged into one single process and a clear set of technical and senior officials meetings should be agreed and clearly structured to ensure that SADC Member States' capacity is not overstretched. A Ministerial meeting could be organised by the end of 2006 to provide political guidance to this process.