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Committee on Regional Trade Agreements

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**INTERIM ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE EUROPEAN UNION AND
THE ESA STATES (MADAGASCAR, MAURITIUS, SEYCHELLES AND ZIMBABWE) (GOODS)**

QUESTIONS AND REPLIES

Revision

The following communication, dated 3 and 10 November 2017, is being circulated at the request of the delegations of the European Union and the ESA States (Madagascar, Mauritius, Seychelles and Zimbabwe).

Question from the delegation of Canada

1.1. Paragraph 2.1 indicates that Article 3 of Chapter 1 of the EU-ESA Economic Partnership Agreement aims "to establish an agreement consistent with GATT Article XXIV and to establish the framework, scope and principles for further negotiations on the basis of proposals already submitted and for potential negotiations on other issues as identified in the Cotonou Agreement and of interest to the Parties". Considering that the Africa, the Caribbean and the Pacific, ACP-EU cooperation (the Cotonou Agreement) has been revised to incorporate new challenges such as climate change (see Article 32A in the Ouagadougou Cotonou Agreement revised on 22 June 2010):

Building on the Cotonou Agreement, should Parties engage in further negotiations, would they consider including additional provisions on environment and climate change?

Response from the Parties

The EU-ESA Agreement includes, in its Chapter 5- Art. 53, a rendez-vous clause on issues for future negotiations, including Agriculture, Development, Sanitary and Phyto-sanitary issues, Technical Barriers to Trade and Sustainable development. The parties could consider additional provisions on environment and climate change, based in particular on their multilateral commitments such as the Paris agreement and on the EPA's principle to build on the "acquis of the Cotonou agreement" when Parties will engage in further negotiations with a view to reaching a comprehensive EPA (art 4.a).

Response from the delegation of Madagascar

Madagascar is currently in the implementation phase of the ESA-EU interim Economic Partnership Agreement (EPA). Madagascar is one of the five ESA members that have signed and are implementing this Agreement. A transition phase is under way until 2020, when the current Cotonou Agreement will come to an end and the comprehensive EPA will be implemented.

The interim EPA primarily concerns trade, giving rise to reciprocal but asymmetrical exchanges. However, in order to benefit from the support and countervailing measures linked to the implementation of the Agreement, the signatories, including Madagascar, must show good faith and goodwill by respecting certain values and principles on which the jointly agreed provisions are based.

These values include respecting the rule of law and fundamental rights, consolidating peace and political stability, and combating climate change. These aspects of the Agreement require just as much negotiation and discussion as the trade-related provisions.

The European Union is currently working, in agreement with the ACP countries, for a renegotiation of the Cotonou Agreement in order to bring it closer into line with reality, and make it more binding in certain respects, while retaining some of its flexibility. The commitments of the parties to the Agreement, particularly those that relate to the environment, could therefore be redefined and clarified so as to optimize their positive impact.

Additional response from the delegation of Madagascar

Yes, especially in terms of awareness-raising. Given the precarious state of the Malagasy environment and the negative impact of climate change on the economy in general, provision should be made for binding safeguard measures.

Questions from the delegation of the United States

1.2. Paragraph 2.1 of the Factual Presentation states that the Agreement was signed by the Parties on 29 August 2009 and provisionally applied since 14 May 2012. Was any preferential tariff treatment provided – either by the EU to the ESA states or the ESA states to the EU – between the date of signature in 2009 and the date of provisional application in 2012? Please provide the date or dates that the European Union began to provide preferential tariff treatment to each of the ESA states under the interim Agreement, including those ESA states that have not yet signed the interim agreement. For each ESA state providing preferential tariff treatment to the EU, please provide the date or dates in which that preferential tariff treatment began.

Response from the Parties

The ESA-EU interim EPA was concluded and initialled by six ESA countries, namely Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe, by December 2007, and Zambia did so in September 2008. Pending signature and ratification of the agreement, the EPA provided in its Article 62(6) for a transitional arrangement¹, advancing the EPA market access to these countries. In 2009, four of them, Madagascar, Mauritius, Seychelles and Zimbabwe, signed the agreement and the agreement is provisionally applied since May 2012. Comoros and Zambia as LDCs benefit from duty free quota free system of the Everything But Arms (EBA) regime under the Generalised Scheme of Preferences. All the other ESA members that had not taken the steps towards signing and ratifying an EPA are also LDCs, and therefore benefit from the EBA preferential regime. The dates in which each ESA state begun granting preferential tariff treatment to the EU is indicated in section 3.1.2 of the Factual Presentation.

Response from the delegation of Madagascar

Madagascar signed the interim EPA in December 2007. As of that date, and in accordance with the Agreement's principle of asymmetry, Madagascar has benefited from the preferential treatment laid down in the Agreement for its exports to the European Union.

Imports originating in the EU began to benefit from the terms of the Agreement in 2014.

Additional response from the delegation of Madagascar

Madagascar initialled the interim EPA with a 15-year schedule of tariff liberalization on 11 December 2007. The accession was confirmed by the official signing of the interim EPA on 29 August 2009 in Mauritius. On 23 June 2011, the Malagasy authorities notified the EU Council and the COMESA Secretariat of the provisional application of the Agreement. On 8 November 2011, the Government confirmed its agreement to submit a joint notification to the WTO with the EU. On 14 May 2012, the interim EPA entered into provisional application pursuant to Article 62 of the interim EPA.

¹ Council Regulation (EC) No 1528/2007 of 20 December 2007.

1.3. Paragraph 2.1 states that one of the goals of the Agreement is to support African regional integration, yet the African parties to this Interim EPA represent a subset of regional economic communities that aspire to have harmonized and even unified trade regimes. Could the parties explain how they believe this agreement accomplishes the stated goal of supporting African regional integration?

Response from the Parties

The ESA-EU interim EPA was initially negotiated by all the ESA members and aims at supporting the regional integration of this region. It aims at facilitating meeting the Rules of Origin requirement through provisions on cumulation with the broader ACP constituency and with the regions within the ACP such as COMESA, SADC, etc. It also aims at facilitating trade, including improvements of customs procedures, removal of non-tariff barriers and harmonizing standards, thus improving the business climate attracting foreign investments, and contributing to growth and jobs. This will eventually strengthen and corroborate the regional integration process even if not all members are part of the EPA.

Currently, four ESA members are implementing the EPA. Comoros signed the agreement last July and informed the EU of its intention to complete its ratification process by the end of this year. Zambia and all other ESA members may also decide at a later stage when they are ready to join the agreement. The EU cannot impose the EPA on the ESA members that do not want it or do not feel ready to join, nor can it refuse to apply it to the ESA members wishing to implement it.

The EPA helps promoting regional solutions, which are good for trade and development, by harnessing ACP regional integration initiatives already underway. Furthermore, Art. 12(2) allows for the Parties to review the schedules of tariff liberalization in Annex II with a view to harmonizing them taking into account regional integration processes.

Response from the delegation of Madagascar

The Agreement signed with the European Union contributes to strengthening regional integration in Africa because many African countries maintain trade relations with Europe. In the interests of harmonization, it is always more beneficial for the different African countries to adopt the same policy towards one of their main partners.

Furthermore, the funds for assisting the LDCs in the framework of their partnership with the European Union promote regional integration, enabling the beneficiary countries to develop local production and thus increase their access to regional markets.

Additional response from the delegation of Madagascar

The Agreement is chiefly based on an asymmetrical free-trade relationship under a non-reciprocal preferential regime. The market opening for EU member States is 100%, while the market opening for Madagascar (ESA) is 80% with the application of a 15-year schedule of tariff liberalization.

1.4. Per paragraphs 3.3 through 3.5, under the Interim EPA would the EU be exempt from an African Union peacekeeping levy were one to be applied by the ESA states? Do the ESA states currently charge any levies that the EU is exempt from paying? If so, please provide a full list of such levies by country.

Response from the European Union

The EU is not exempted under the EPA of any levy that the ESA members would apply. To the EU's knowledge, none of the signatory ESA countries of the EPA applies such a levy.

Response from the delegation of Madagascar

Madagascar has no peacekeeping levy, so no such charge is applied to the European Union.

1.5. Related to paragraph 3.4, what is the EU's rationale for the MFN clause in the interim EPA that it is entitled to any tariff concession subsequently granted to any major trading economy? Please provide a complete list of all countries that would, at the time of this review, be considered a "major trading economy."

Response from the Parties

The EU liberalizes 100% of its market for the ESA signatory countries of an EPA, whereas the development status of the ESA EPA countries is taken into account by giving them the possibility to shield their most sensitive products from liberalization, within the limits of Article XXIV GATT. If these countries decided, however, to liberalise these products for other major trading economies, the EU would naturally expect to be treated equally. This is not applicable to agreements with ACP countries or regions.

The term "major trading economy" means any developed country, or any country accounting for a share of world merchandise exports above 1% 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%. The countries that can be considered as "major trading economy" can therefore vary over time.

1.6. Paragraph 4.15 of the Secretariat document notes that, "The Agreement is to remain in force until the comprehensive EPA enters into force." What occurs if the comprehensive EPA never enters into force with respect to certain of the African partners? Does the interim EPA have a termination date? What domestic approval procedures are required by the EU and its partners for an interim EPA to enter into force?

Response from the Parties

The interim EPA concluded with the ESA partners does not include trade related issues which would make it a comprehensive agreement. This is the reason why the interim EPA text refers to the comprehensive EPA and includes a rendezvous clause (art 53) to continue negotiations on these issues. However, the currently implemented EPA is a self-standing international agreement that can enter into force irrespective of the discussions on the comprehensive EPA. Furthermore, the interim EPA does not include any termination date.

The EU and its ESA partner states need to follow their applicable constitutional or internal rules and procedures in order to sign, ratify or approve the agreement. The Agreement is currently provisionally applied by the EU and four ESA Members (Madagascar, Mauritius, Seychelles and Zimbabwe) in accordance with its Article 62(4).

In accordance with the EU rules and procedures, all the ESA signatory countries need to ratify the agreement before it proceeds to its ratification by all EU member states. The agreement will then enter into force the first day of the first month following the deposit of the last instrument of ratification, acceptance or approval.

As a general comment, the EU would like to note that several documents presenting the main characteristics of the EPAs as well as their benefits have been published on the EU web page: <http://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships>

Response from the delegation of Madagascar

The (15-year) schedule began to be applied in 2014 and will cease to be applied in 2022 (end of duties); the termination of this agreement will depend on government policy.