

Explanatory Memorandum on the Economic Partnership Agreement between the Southern African Customs Union Member States and Mozambique, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part

Title of the Agreement: Economic Partnership Agreement between the Southern African Customs Union Member States and Mozambique, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part

Command Paper No CP 193

Subject Matter

Trade agreements aim to reduce barriers to trade and investment between countries. Barriers can be taxes charged on goods as they cross borders (tariffs), or different rules and regulations that can add to trade costs (non-tariff measures). Barriers make it more difficult and costly to trade or invest overseas. Reducing these barriers can improve the flow of trade between countries and help businesses to access new markets.

The United Kingdom of Great Britain and Northern Ireland (the “UK”) participates in a number of international agreements as a result of, or relevant to, its membership of the European Union (the “EU”) and which help underpin the UK’s relationships with third countries and international organisations. The Government is seeking, as far as possible, to continue the effect of its current arrangements as the UK leaves the EU.

In order to transition the trade agreements that the EU has concluded with third countries, the UK has agreed with Economic Partnership Agreement (EPA) partners that the most appropriate and proportionate form of legal instrument to ensure continuity is a long form agreement, which is an agreement based on the text of the EU-third country agreement. The EPA between the Southern African Customs Union Member States and Mozambique, of the one part and the United Kingdom of Great Britain and Northern Ireland, of the other part (“the Agreement”) is a long form agreement.

The UK’s current trading relationship with Botswana, Eswatini, Lesotho, Mozambique, Namibia and South Africa (“the SACU Member States and Mozambique”) is governed by the Agreement. The Agreement is based on the Economic Partnership Agreement between the European Union and its Member States and the Southern African Development Community Economic Partnership Agreement States (the “EU-SADC EPA”). The Agreement creates an economic partnership between the UK and the SACU Member States and Mozambique. It eliminates tariffs and quotas on all goods imported from Botswana, Eswatini, Lesotho, Mozambique and Namibia into the UK, as well as on products covering around 96% of goods imported from South Africa. It also provides for a gradual reduction of duties in the SACU Member States and Mozambique for goods originating in the UK. It is intended to provide continuity of the UK’s and the SACU Member States’ and Mozambique’s rights and obligations to each other under the EU-SADC EPA. The purpose of the Agreement is to maintain the effects and continuity of the EU-SADC EPA in a bilateral context.

In the event of either a negotiated agreement or no agreement with the EU, the Agreement is intended to take effect whenever the EU-SADC EPA ceases to apply to the UK (or as soon as possible thereafter); the mechanism by which the Agreement is anticipated to enter into force is discussed in the Parliamentary Report which accompanies this Explanatory Memorandum (the “Report”). The Report gives details of, and explains the reasons for, any significant differences between the trade-related provisions of the Agreement and those of the EU-SADC EPA. The Report describes what the EU-SADC EPA covered and what the Agreement will cover.

The Report first sets out the legal approach used, as well as the general drafting changes which are consistent across all the continuity trade agreements and which have no significant impact on the effect of the UK's current trade relationships. The Report focuses solely on the changes made to the trading relationship between the UK and the SACU Member States and Mozambique as a result of moving from the current arrangements to a new agreement. Any impacts resulting from the UK's exit from the EU or the nature of the future economic partnership have been excluded from the Report.

Ministerial Responsibility

The Secretary of State for International Trade has overall responsibility for UK policy relating to the UK's trade relations with the SACU Member States and Mozambique.

The Secretary of State for International Development is responsible for UK policy supporting poverty reduction through economic development in developing countries.

Policy considerations:

(i) General

Through its membership of the EU, the UK participates in around 40 free trade agreements, covering more than 70 countries. Ahead of the UK's withdrawal from the EU, the Government has committed to put in place the necessary arrangements to ensure there is no disruption to the UK's global trading relationships. Given that the SACU Member States and Mozambique have an existing trade agreement with the EU, the Government has concluded that replicating this agreement is the best way to ensure continuity of trade.

The UK is a long-standing supporter of the EU's EPAs. The EPAs are an important way for the partner countries to support economic growth and sustainable development. The EU-SADC EPA supports a significant number of jobs and livelihoods in the SACU Member States and Mozambique.

Additionally, preferential access to the SACU Member States' and Mozambique's markets represents increased trade opportunities and additional markets for UK exporters.

(ii) Financial

The Agreement provides for continuity of the UK's obligations under the EU-SADC EPA. There will be no direct financial implications beyond those needed to cover the process of signing the Agreement.

Further economic analysis on the impacts on key sectors can be found in the supporting Report.

(iii) Human Rights

The Agreement provides that respect for human rights, democratic principles and the rule of law constitute essential and fundamental elements of the Agreement. The Agreement may be suspended as a measure of last resort where a Party is considered to be failing to fulfil an obligation stemming from these essential and fundamental elements of the Agreement.

(iv) Reservations and Declarations

No reservations have been made in relation to the Agreement.

The Agreement includes a Joint Declaration on the trilateral approach to Rules of Origin. It also includes Declarations on fisheries, geographical indications and trade in wines and spirits, which have been retained from the EU-SADC EPA.

Implementation

The Government is working to implement the tariffs and tariff quotas in regulations to be made under the Taxation (Cross-Border Trade) Act 2018.

Non-tariff measures in the EU-SADC EPA are currently implemented in EU law. Where those non-tariff measures are incorporated into the Agreement, they will generally be implemented in the UK by virtue of the European Union (Withdrawal) Act 2018, to extent that the relevant EU law will, on or after exit day, continue to be, or form part of, domestic law as added to or otherwise modified under that Act or by other UK legislation.

The entry into force provisions in the EU-SADC EPA have been replaced in the Agreement with new provisions to ensure that, whatever the scenario in which the EU-SADC EPA ceases to apply to the UK, the Agreement can enter into force as swiftly as possible. For the Agreement to enter into force, it must first be ratified by the UK and each of the SACU Member States and Mozambique, and then the UK and the SACU Member States and Mozambique need to exchange notifications of the completion of the necessary domestic procedures. In UK domestic law, before a treaty subject to ratification may be ratified, it must be laid before Parliament for scrutiny under the Constitutional Reform and Governance Act 2010.

The UK and the SACU Member States and Mozambique agreed to a non-legally binding Memorandum of Understanding (“MoU”) as a Bridging Mechanism to ensure continuity of trade in the event that the UK left the EU without an agreement on 31 October 2019, given that required domestic approval processes could not be completed by that date. The MoU was therefore intended to bridge the gap between a no-deal exit on 31 October 2019 and the date the Agreement comes into force. Should the UK and the SACU Member States and Mozambique be unable to complete all the required domestic processes to bring the Agreement into effect before the EU-SADC EPA ceases to apply to the UK, agreement on a new Bridging Mechanism may be needed to ensure continuity of trade.

The Agreement establishes a Joint SACU Member States and Mozambique-UK Council (the “Joint Council”) which is responsible for the implementation and operation of the Agreement. The Agreement also creates a SACU Member States and Mozambique-UK Trade and Development Committee (“the TDC”) which shall assist the Joint Council.

The Parties may agree to amend the text of the Agreement through proposals submitted to the Joint Council, which is composed of representatives of the UK and the SACU Member States and Mozambique. Upon adoption by the Joint Council, such amendments will enter into force subject to ratification, acceptance or approval by the UK and the SACU Member States and Mozambique. This would trigger scrutiny procedures required by the Constitutional Reform and Governance Act 2010.

Any amendment to a treaty which would require changes to UK law would, before coming into effect, first require those changes to be made domestically. This means that Parliament would have the opportunity to scrutinise and debate such changes to UK law in the normal manner.

Territorial Application

Territorial application provisions in a treaty set out the territory to which the treaty applies and how it applies to them. In the EU-SADC EPA, the Territorial Application article defined the EU's territorial coverage of the agreement by referencing the Treaty on European Union ("TEU") and the Treaty on the Functioning of the European Union ("TFEU"). In the Agreement this has been replaced by an article which ensures that it applies to the UK and the territories engaged in trade for whose international relations it is responsible in the same way as the EU-SADC EPA did. The territories, other than UK itself, to which the Agreement may apply can be separated into categories based upon the application of the EU Treaties under EU law to date. These categories of territory are:

- a. Gibraltar, to which, broadly, provisions not relating to goods or customs apply; and
- b. the Channel Islands and the Isle of Man, to which, broadly, provisions relating to tariffs and trade in goods apply.

The Overseas Territories (Anguilla, Cayman Islands, Falkland Islands, South Georgia and the South Sandwich Islands, Montserrat, Pitcairn, Saint Helena, Ascension and Tristan da Cunha, British Antarctic Territory, British Indian Ocean Territory, Turks and Caicos Islands, British Virgin Islands and Bermuda) benefit from some specific provisions on cumulation with respect to rules of origin.

The relevant Secretaries of State have been informed of the application of the Agreement to the territories for which they are responsible.

These territories have been consulted and the Government is working with these territories to ensure any necessary implementation will have taken place ahead of provisional application or entry into force of this agreement.

Accession of third countries or organisations

Article 119 of the Agreement carries over the provision to allow a third country or organisation to request to accede to the Agreement. If the Joint Council agrees to the request, the third country or organisation shall conduct negotiations on the terms of accession for approval by the Joint Council and ratification.

Consultation

The Department for International Trade ("DIT") engages extensively with a variety of stakeholders. This programme of engagement has included regular progress updates on transitioning existing EU free trade agreements. As part of the Government's commitment to a transparent and inclusive trade policy, DIT has held regular 'town hall' style meetings to update business organisations and has run a series of regional roundtables in collaboration with the British Chamber of Commerce to ensure that this dialogue extends across the UK.

International relations, including the making of treaties, and the regulation of international trade are not devolved matters. However, as there is likely to be a significant impact on Scotland, Wales and Northern Ireland, the Government has regularly updated the Devolved Administrations (the "DAs").

Throughout the Trade Agreement Continuity Programme, the Government has engaged with the DAs. Both Ministers and officials have spoken to their counterparts in the DAs on a regular basis, sharing progress and inviting them to highlight international agreements of importance or concern.

DIT can confirm that the text of agreements, once stable, are shared with the DAs, Crown Dependencies and Gibraltar. DIT has also offered briefings on the agreements, where appropriate, at the request of the DAs, Crown Dependencies and Gibraltar. DIT shares draft

Parliamentary Reports and Explanatory Memoranda on individual agreements with the DAs, Crown Dependencies and Gibraltar; and DIT welcomes the views of the DAs, Crown Dependencies and Gibraltar as progress is made.

A handwritten signature in blue ink, appearing to read 'Conor Burns', with a horizontal line underneath the name.

**The Rt Hon Conor Burns MP
Minister of State for Trade Policy
Department for International Trade**