European Parliament

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Committee on International Trade

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DRAFT RECOMMENDATION

on the proposal for a Council decision on the conclusion of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part (COM(2016)0018 – C8-0000/2016 – 2016/0005(NLE))

Committee on International Trade

Rapporteur: Alexander Graf Lambsdorff

Symbols for procedures

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure (first reading)
***II	Ordinary legislative procedure (second reading)
***III	Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

CONTENTS

Page

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council decision on the conclusion of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part
(COM(2016)0018 – C8-0000/2016 – 2016/0005(NLE))**

(Consent)

The European Parliament,

– having regard to the proposal for a Council decision (COM(2016)0018),

– having regard to the request for consent submitted by the Council in accordance with Articles 207(3) and (4) and 209(2), in conjunction with Article 218(6), second subparagraph, point (a) of the Treaty on the Functioning of the European Union (C8-0000/2016),

– having regard to Rule 99(1), first and third subparagraphs, Rule99(2), and Rule 108(7) of its Rules of Procedure,

– having regard to the recommendation of the Committee on International Trade and the opinion of the Committee on Development (A8-0000/2016),

1. Gives its consent to conclusion of the agreement;

2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and of the SADC States (Namibia, Mozambique, Botswana, Swaziland, Lesotho, South Africa).

SHORT JUSTIFICATION

History of Economic Partnership Agreements

When the Cotonou Partnership Agreement was established in 2000, it called for fundamental changes in the longstanding non-reciprocal trade preferences that had governed the economic and political relationship between the African, Caribbean and Pacific Group of States (*ACP*) and the European Union for almost 40 years. The main reason for this was that the impact of these unilateral preferences had been disappointing: firstly, the share of ACP trade in the EU market was continuously falling and most countries did not manage to use these preferences to diversify their economic structures. Secondly, the preferences were not compatible with the rules of the WTO, as they discriminated against non-ACP developing countries.

The EU and ACP agreed to negotiate reciprocal, though asymmetric trade agreements known as Economic Partnership Agreements. ACP countries themselves decided in which regional grouping they wanted to negotiate. Negotiations of Economic Partnership Agreements (EPA) started in 2002 and were expected to be concluded by the end of 2007, a date by which the WTO waiver would expire. Besides ensuring that ACP products would secure indefinite, duty free quota free market access to the EU, EPAs were mainly meant to be a development tool enabling ACP countries to deepen their own regional integration dynamics and to facilitate their integration into the global economy.

Today, all non-EPA states have the EU's "*Generalised Scheme of Preferences*" (*GSP*) or the "*Everything But Arms*" arrangement (*EBA*). However, for those countries that had concluded an interim EPA in 2007, in order to avoid market disruption and to allow the sufficient time to sign and ratify the agreement, the EU adopted a Market Access Regulation (MAR), Council Regulation (EC) No 1528/2007, as of 1st January 2008 – that enabled an advanced application of EPAs. It was later decided that the MAR treatment [free access to the EU] would expire on 1st October 2014 for countries that did not enter into a regional agreement or had not taken the necessary steps to implement their interim EPAs. Botswana, Namibia and Swaziland were among the MAR countries that did enter into a regional EPA before 1 October 2014, and the Commission duly adopted Delegated Acts keeping them on the MAR, while stating that they were expected to see through their commitment and ratify the regional EPA by 1 October 2016.

EU- Southern African Development Community (SADC) EPA

The SADC consists of 15 members. Seven of them started negotiating an EPA with the EU as the SADC EPA Group, namely Angola, Botswana, Lesotho, Mozambique, Namibia, Swaziland and South Africa. South Africa initially participated as an observer and in a supportive capacity but formally joined negotiations in 2007.

The core of the EU-SADC EPA is the Southern African Customs Union (SACU), the oldest customs union in the world. By joining this configuration, Mozambique and Angola intended to enhance their already strong economic and trade links with SACU. The other eight SADC Member States (Democratic Republic of Congo, Madagascar, Malawi, Mauritius, Seychelles, Tanzania, Zambia and Zimbabwe) are part of other regional EPA configurations.

At the end of 2007, Botswana, Lesotho, Swaziland, Mozambique and Namibia agreed an Interim region-to-region EPA with the EU. The interim EPA contains a clause allowing

Angola and/or South Africa to join rapidly if they so wish. In the meantime Angola, being a Least Developed Country, maintains duty-free quota-free market access to the EU under the "*Everything But Arms*" initiative, while EU - South Africa trade is covered by the Trade, Development and Cooperation Agreement (TDCA) signed in 1999.

Botswana, Lesotho, Swaziland and Mozambique signed the interim EPA in June 2009. Although Namibia initialled the agreement more than four years ago, they decided not to sign.

Both sides agreed to continue negotiations for a comprehensive regional EPA covering services, investment and trade-related rules. In fact in 2010, the interim EPA signatory countries suspended the process of ratification of the agreement, pending the conclusion of comprehensive regional negotiations.

On 15 July 2014, the EU concluded negotiations with six states of the Southern African Development Community (SADC) EPA Group, comprising Botswana, Lesotho, Namibia, Mozambique, South Africa and Swaziland. Angola finally decided not to initial the agreement, but may join in the future pursuant to a specific accession clause in the agreement.

<u>Regional integration and complexities</u>

The SADC EPA Group is a very diverse group. The population of the six countries of the SADC EPA Group accumulates to some 100 million inhabitants, half of which live in South Africa. Their GDP according to figures provided by the World Bank in 2014 was 410 bln Euro, 85% of which was produced by South-Africa.

The group contains two least-developed countries (Lesotho and Mozambique) as well as one BRICS country (South Africa), which concluded a Trade, Development and Cooperation Agreement (TDCA) with the EU in 1999. Without the EPA, their GDP levels would force Swaziland into GSP status and Botswana and Namibia would graduate to Most-Favoured Nation (MFN) status.

Five of the SADC EPA Group states are part of the Southern African Customs Union (SACU). Established in 1910, this is the oldest customs union in the world. Is also has a common external tariff. Mozambique is not part of SACU, but has long established trade and investment links with SACU.

In 2013, the EU imported goods in the value of 31 bln Euro from the SADC EPA Group while exporting goods in the value of 33 bln Euro to SADC. SADC exports to the EU are composed of oil 23% (from Angola), diamonds 11% (from Botswana), coal 12%, precious stones, metals and fish (Namibia), and sugar (from Swaziland).

<u>2009 EP resolution on SADC EPA</u>

In March 2009 the European Parliament voted a resolution on the SADC EU Interim EPA and called amongst others for:

- A WTO conform EPA
- duty free quota free access into EU market
- support for existing regional integration (Southern African Customs Union, SACU)
- phasing out of EU agricultural export subsidies
- EU flexibility on export taxes, MFN clause and infant industry protection
- simpler and improved rules of origin, promoting regional cumulation

- the inclusion of a development cooperation chapter with increased and adequate assistance
- importance of respect for ILO conventions
- monitoring of implementation coordinated by the relevant parliamentary committee

Notably, the agreement never entered into force as it was signed but never ratified.

Key provisions in the EPA

Although this development-oriented regional trade agreement currently covers only merchandise trade, development-cooperation and trade and sustainable development provisions, it also leaves the door open to negotiate further provisions on services, investment, intellectual property, public procurement and enhanced stipulations on sustainable development.

The asymmetric nature of the agreement establishes a "positive discrimination" for the SADC EPA partners ensuring duty-free access to the EU market, at the same time reciprocally eliminating barriers to "substantially all the trade" and ensures **WTO-compatibility**, promoting regional integration, economic cooperation and good governance. EU will offer **duty free quota free** to five SADC countries, a continuation of present practice, but not disrupted through MAR amendment. Instead of offering unilateral preference, trade relations between SADC EPA countries and the EU are now stipulated in a contractual arrangement. Under progressive market opening provisions, SADC EPA countries will liberalise 86% of trade with the EU (Mozambique 74%) over a period of 10 years, excluding sensitive agricultural and fisheries products.

Promotion of regional integration

The EPA did not only avoid breaking up the oldest existing customs union in the world through the MAR amendment, but instead strengthened the SACU by harmonising South Africa to SACU, and brings Mozambique closer to SACU. The EU-SA TDCA used to de facto apply to the whole SACU as one legal entity. Its trade provisions will be replaced by an agreement which has been negotiated by all. Imports coming from the EU will be subject to a single external tariff.

The EPA also strengthens regional integration in various other ways, including through its **Rules of origin regional cumulation** possibilities, the openness to other SADC states (Angola) joining the EPA, and through institutional strengthening of SACU. The dispute settlement mechanism in the EPA builds on the DSM provisions from TDCA and will apply to all SADC EPA countries. In addition, common provisions on trade management (such as safeguards) and common decision making bodies will further strengthen the regional integration process.

Furthermore, "regional preference provisions" rule out a possibility for the SADC EPA countries to grant products originating in other SADC EPA countries a less favourable treatment than to those imported from the EU.

The parties commit to facilitate regional trade by boosting customs co-operation and by implementing reforms, in particular by harmonising and simplifying procedures and regulations in the SADC region, facilitating transit and fighting fraud.

Promotion of trade and development

There are several safeguards foreseen: multilateral safeguards, bilateral safeguards, agricultural safeguards as well as a transitional safeguard clause for a list of products originating from Botswana, Lesotho, Namibia and Swaziland (BLNS) to mitigate any potential negative impact in these countries.

As the use of **agricultural export subsidies** will no longer be allowed upon entry into force of the EPA, another key demand of SADC EPA countries was met.

Gradual lifting of tariffs on intermediates and inputs, such as fertilisers and machinery, will give a further boost to the value-addition process.

On services, the EPA contains a rendez-vous clause. Negotiations with limited number of SADC countries on services will continue. The rendez-vous clause gives the opportunity to implement provisions on services at a later stage, as it also does for public procurement and IPR.

An important Protocol on Geographic Indications between South Africa and the EU is included, which was a key demand of the EU. In total, 105 South African products (102 of which concern wines) and 251 products are covered by the protocol. The EU will protect South African names such as Rooibos and numerous wine names like Stellenbosch and Paarl.

A detailed chapter on **development cooperation** identifies trade-related areas that could benefit from **EU financial support**. Differently from the ECOWAS EPA however, which foresees a considerable financial envelope, there is no financial commitment made at this stage. Nevertheless, specific programmes from the national and regional indicative programmes for the DCI and the 11th EDF are scheduled to be funded in the context of the preparation and implementation of the EPA.

Policy space

In the EPA, the EU has shown flexibility allowing SADC EPA States to "grandfather" existing export duties and to apply new **export taxes** in exceptional circumstances in case of specific revenue needs, to promote infant industries or for environmental protection. Generally more room is provided for BLNS countries, but also some limited possibilities for South Africa on a limited number of products (8) if it can justify industrial development needs for maximum 12 years. That text allows SADC countries to benefit from raw materials.

A MFN clause was included, but will not automatically extend preferences to the EU. These extensions have to be examined first and would only apply to agreements with major trading countries. The MFN clause is only applicable to customs duties and fees, rules of origins are not included.

As described before many safeguards are foreseen, also to **protect infant industries**. Moreover, SADC had the possibility to exclude sensitive products from liberalisation.

Respect or values and monitoring the implementation of the agreement

The agreement contains a non-execution clause (Art 110.2), which provides the basis for taking 'appropriate measures' under the existing Cotonou Agreement if a Party fails to fulfil its obligations in respect to the fundamental principles in Article 2 of the Agreement.

Suspension of trade benefits is one such measure even if this will be considered an action of last resort.

The first part of the EPA is devoted to sustainable development, which underlines the importance of these provisions. The parties reconfirm their obligations under international law, including **ILO conventions,** and commit themselves not to derogate from their environmental and labour laws. The EPA also establishes a consultation procedure for any environmental or labour matter. **Dialogue** on such issues may involve relevant authorities and stakeholders. The agreement defines a comprehensive list of areas in which the partners will cooperate to foster sustainable development.

Your rapporteur believes it is important to strengthen **the monitoring provisions** in the agreement. In Article 4, the parties agree to continuously monitor the operation and the impact of this agreement, "**within their respective participative processes**", to make sure that its "benefits for the people" is maximised. Also a review of the agreement will take place every five years (Article 116). However the practical tools for this monitoring need to be strengthened. Pending establishment of the abovementioned sustainable-development dialogue and relevant participative processes for monitoring, **the absence of a Joint Parliamentary Committee and a Joint Consultative Committee** (which do exist in the Cariforum EPA, but are not part of the SADC EPA text) may be felt here, unless existing structures can be used (regional Joint Parliamentary Assembly meetings; EU-South Africa parliamentary committee, etc.). These omissions are regrettable and pragmatic solutions will need to be found to address this weakness.

<u>Conclusion</u>

Your rapporteur recommends giving consent to the SADC - EU Economic Partnership Agreement. This EPA has the potential to bring fundamental positive change and contribute to sustainable economic growth and deepened intra-regional trade and integration.

However, the trade and partnership agreement can only be a small part of a larger strategy. The SADC states should conduct trade and development-friendly domestic policies and pursue structural reforms. The regulatory framework that attracts investment is another element in the equation. These countries should also consider using the potential of the EPA by going beyond trade in goods only and also address services in the future. The EU should provide assistance in terms of capacity building and trade related assistance. The EP will need to monitor implementation and raise issues when appropriate. Appropriate monitoring structures need to be put in place to maximize the impact of the agreement.