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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Special Committee on Customs and Trade Facilitation and in the Special Committee on Geographical Indications and Trade in Wines and Spirits established by 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, as regards the adoption of the Rules of Procedure for the Special Committee on Customs and Trade Facilitation and of the Rules of Procedure of the Special Committee on Geographical Indications and Trade in Wines and Spirits, respectively

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Special Committee on Customs and Trade Facilitation and in the Special Committee on Geographical Indications and Trade in Wines and Spirits set up by the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the Southern African Development Community ('SADC') EPA States, of the other part, in connection with the envisaged adoption of the Rules of Procedure of the Special Committee on Customs and Trade Facilitation and of the Rules of Procedure of the Special Committee on Geographical Indications and Trade in Wines and Spirits, respectively.

2. CONTEXT OF THE PROPOSAL

2.1. 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

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 ('the Agreement') aims 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.

The Agreement is provisionally applied between the European Union and its Member States, of the one part, and Botswana, Lesotho, Namibia, Eswatini and South Africa, of the other part, from 10 October 2016, and between the European Union and its Member States, of the one part, and Mozambique, of the other part, from 4 February 2018.

2.2. The Special Committee on Customs and Trade Facilitation and the Special Committee on Geographical Indications and Trade in Wine and Spirits

Article 50 of the Agreement establishes the Special Committee on Customs and Trade Facilitation and provides that its functions shall include "determining its own rules of procedures" (2)(f).

Article 13 of the Protocol 3 "Geographical indications and trade in wines and spirits" to the Agreement establishes the Special Committee on Geographical Indications and Trade in

Wines and Spirits and provides that “the Special Committee shall determine its own rules of procedure” (5).

2.3. The envisaged acts of the Special Committee on Customs and Trade Facilitation and of the Special Committee on Geographical Indications and Trade in Wines and Spirits

The purpose of the envisaged acts is to establish the Rules of Procedure of the Special Committee on Customs and Trade Facilitation and the Rules of Procedure of the Special Committee on Geographical Indications and Trade in Wines and Spirits, respectively.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

This proposal for a Council Decision establishes the position to be taken on the Union's behalf in the Special Committee for Geographical Indications and Trade in Wines and Spirits and in the Special Committee on Customs and Trade Facilitation set up by the EU-SADC EPA with regard to the Rules of Procedure of the Special Committee on Geographical Indications and Trade in Wines and Spirits and of the Special Committee on Customs and Trade Facilitation, respectively.

The Parties to the Agreement discussed these rules of procedures and agreed that, subject to the EU's decision making procedures, these should be adopted at the subsequent meetings of the Special Committee on Customs and Trade Facilitation and of the Special Committee on Geographical Indications and Trade in Wines and Spirits.

The substance of the attached rules of procedure is very similar to that of rules of procedure of other Economic Partnership Agreements or other trade agreements.

Rules of procedure are essential for completing the institutional framework of the Agreement and hence for ensuring a smooth implementation of the Agreement.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’

The concept of ‘acts having legal effects’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’. Finally, the notion of ‘acts having legal effects’ also includes acts of an organisational nature that influence the way in which decisions are made within the body, for instance if a body with decision-making powers adopts or modifies its rules of procedure.

4.1.2. Application to the present case

The Special Committee on Geographical Indications and Trade in Wines and Spirits and the Special Committee on Customs and Trade Facilitation are bodies set up by an agreement, namely the EU-SADC EPA.

The respective acts which the two committees are called upon to adopt constitute acts having legal effects because they are acts of an organisational nature that influence the way in which decisions are made within the body. The envisaged act will be binding under international law in accordance with Articles 50 of the Agreement and Article 13 of the Protocol 3 to the Agreement, respectively.

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision is Article 207(4), first subparagraph, of the TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(4), first subparagraph, of the TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the acts of the Special Committee on Geographical Indications and Trade in Wines and Spirits and the Special Committee on Customs and Trade Facilitation will amend the respective rules of procedure, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Economic Partnership Agreement between the European Union and its Member States, of the one part, and the Southern African Development Community ('SADC') EPA States, of the other part, was signed by the European Union and its Member States on 10 June 2016¹ ('the Agreement'). It is provisionally applied between the European Union and its Member States, of the one part, and Botswana, Lesotho, Namibia, Eswatini and South Africa, of the other part, from 10 October 2016, and between the European Union and its Member States, of the one part, and Mozambique, of the other part, from 4 February 2018.
- (2) Pursuant to Article 50(1) of the Agreement, the Special Committee on Customs and Trade Facilitation is established.
- (3) Pursuant to Article 13(1) of the Protocol 3 to the Agreement, the Special Committee on Geographical Indications and Trade in Wines and Spirits is established.
- (4) Pursuant to Article 50(2)(f) of the Agreement, the Special Committee on Customs and Trade Facilitation is to determine its Rules of Procedures.
- (5) Pursuant to Article 13(5) of Protocol 3 to the Agreement, the Special Committee on Geographical Indications and Trade in Wines and Spirits is to determine its Rules of Procedure.
- (6) It is appropriate to establish the position to be taken on the Union's behalf within these two committees, respectively, as the decisions establishing the Rules of Procedure will have legal effects in the Union.

¹ Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part (OJ L 250, 16.9.2016, p. 3).

- (7) The position of the Union within these two committees as regards the adoption of their respective Rules of Procedure should be based on the respective draft Decisions of the two committees attached to this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Special Committee on Customs and Trade Facilitation, established under Article 50 of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the Southern African Development Community ('SADC') EPA States, of the other part, shall be based on the draft Decision of that committee regarding its Rules of Procedure attached to this Decision.

Article 2

The position to be taken on the Union's behalf within the Special Committee on Geographical Indications and Trade in Wines and Spirits, established under Article 13 of the Protocol 3 to the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the Southern African Development Community ('SADC') EPA States, of the other part, shall be based on the draft Decision of that committee regarding its Rules of Procedure attached to this Decision.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*