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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: ANNEX to the Recommendation for a Council Decision updating the
negotiating directives for the negotiations of Economic Partnership
Agreements (EPAs) with African, Caribbean and Pacific (ACP) countries
and regions

Delegations will find attached document COM(2019) 608 final - ANNEX.

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ANNEX

ANNEX

to the

Recommendation for a Council Decision

updating the negotiating directives for the negotiations of Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific (ACP) countries and regions

ANNEX

Directives for the negotiations of Economic Partnership Agreements (“EPAs”) with African Caribbean Pacific (ACP) countries and regions

1. Preamble

Apart from the general reference to the Cotonou Agreement and its successor agreement, special reference will be made, inter alia, to the following:

- The commitment of the parties to promote and expedite the economic, cultural and social development of the ACP States, with a view to contributing to peace, prosperity and security and to promoting a stable and democratic political environment;
- The commitment of the parties to the respect for human rights, including core labour rights, democratic principles and the rule of law, which constitute the essential elements of the ACP-EU Partnership and to good governance, which constitutes a fundamental element of the ACP-EU Partnership;
- The commitment of the parties on a set of internationally agreed principles and rules aimed at fostering a mutually supportive relationship between trade and sustainable development, including supporting the 2030 Agenda for Sustainable Development (2030 Agenda) and its Sustainable Development Goals (SDGs), and the Paris Agreement under the UN Framework Convention on Climate Change;
- The commitment of the parties to centre their partnership on the objective of reducing and eventually eradicating, poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy; to build, therefore, ACP-EU economic and trade co-operation on regional integration initiatives existing within the ACP countries;
- The objective of ACP-EU economic and trade co-operation to foster the smooth and gradual integration of ACP States into the world economy, with due regard for their political choices and development priorities, and in particular their own poverty reduction strategies (notably Poverty Reduction Strategy Programmes) thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries;
- The commitment of the parties to support the regional integration process within the ACP Group of States and to foster regional integration as a key instrument for the integration of ACP countries into the world economy;
- The commitment of the parties to strengthen economic and trade co-operation and to create a new trading dynamic between them with a view to facilitating the transition of the ACP countries to a liberalised global economy;
- The commitment of the parties to take account of the different needs and levels of development of the ACP countries and regions;
- The commitment of the parties to respect their obligations assumed within the framework of the World Trade Organisation (WTO) and to further the objectives of the WTO;
- The joint objective of the parties to enhance co-operation in all areas relevant to trade and to achieve progressive and reciprocal liberalisation of trade in goods and

services, in accordance with WTO rules, taking into account the level of development of the ACP countries and the economic, social and environmental constraints they are facing;

- The commitments of the parties to ensure that efforts undertaken in the framework of the Cotonou Agreement and its successor agreement and those undertaken in the framework of EPAs are mutually reinforcing.

2. Nature and Scope of the Agreements

EPAs shall aim at fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries.

Pursuant to the provisions of Article 36(1) of the Cotonou Agreement and the relevant provision in the new ACP-EU Partnership Agreement, once applicable, negotiations shall aim at establishing Economic Partnership Agreements (“EPAs”) with ACP sub-groups defined in accordance with the provisions of Article 37(3) of the Cotonou Agreement and the relevant provision in the new ACP-EU Partnership Agreement, once applicable, taking into account the regional integration process within the ACP.

EPAs shall be directed at fostering closer economic integration between the parties, by removing progressively barriers to trade between them and enhancing co-operation in all areas relevant to trade, in full conformity with the provisions of the WTO.

EPAs shall be consistent with the objectives and principles of the Cotonou Agreement and its successor agreement, and in particular with the provisions of Part III, Title II thereof. Negotiations of EPAs shall therefore notably take account of the different levels of development of the parties as well as of the particular economic, social and environmental constraints of the ACP countries and of the capacity to adapt and to adjust their economies to the liberalisation process.

3. Trade in Goods

3.1. Objective

EPAs shall be directed at establishing free trade areas between the parties, based on the development objectives of the Cotonou Agreement and its successor agreement, in conformity with the provisions of the WTO. It is understood, therefore, that the following market access conditions would be available only in the context of these EPAs.

3.2. Import duties

- Imports into the European Union

EPAs shall build upon and further enhance the market access conditions currently provided under the Cotonou Agreement and its successor agreement. The specific arrangements for further tariff dismantling shall be fixed in the course of the negotiations, taking account of the existing and potential export interests of the ACP countries and of the impact of trade liberalisation measures in particular on regional integration within the ACP.

- Imports into the ACP countries

With the overriding objective of promoting development through regional economic integration and adequate policies, negotiations will pursue (1) the elimination of customs duties on imports from the EC for substantially all trade over the course of a transitional period, and (2) the abolishing of all charges having equivalent effect to customs duties upon entry into force of EPAs.

The timetable for tariff dismantling and the final product coverage of trade liberalisation by the ACP countries will reflect the economic, social and environmental constraints they are facing as well as their capacity to adapt their economies to the liberalisation process. Therefore, a transitional period, compatible with the objectives of the Cotonou Agreement, its successor agreement and WTO rules, will be applied in a flexible way, to take into account specific constraints of the ACP countries concerned. The same flexibility will be applied in relation to product coverage and the calendar/rhythm of liberalisation commitments by the ACP countries.

In this context, the parties will examine, on a case-by-case basis, the potential impact of export refund mechanisms on the process of trade liberalisation.

Notwithstanding the above, ACP countries shall grant to the European Union at any time treatment no less favourable than MFN treatment. This does not apply with respect to concessions made between ACP countries or by ACP countries to other developing countries in the framework of regional agreements or other trade provisions compatible with WTO requirements.

During the negotiations, and in the light of Article 349 of the Treaty on the Functioning of the European Union and the agreements reached in the framework of the Cotonou Agreement and its successor agreement, account will be taken of the specific interests of the European Union's outermost regions. In this context, EPAs may in particular provide for specific measures in favour of products from these regions, aimed at their integration into intra-regional trade in the short term, in accordance with the provision of the WTO.

The ACP countries shall undertake, at least, to extend automatically the treatment granted to the European Union to all other parties of the EPA concerned, preferably ahead of trade liberalisation vis-à-vis the European Union.

Where serious difficulties occur as a result of trade liberalisation, the ACP countries may, in consultation with the European Union, temporarily suspend the application of the liberalisation schedule and, where necessary re-modulate the rate of progress towards the ultimate establishment of the free trade area, in full conformity with the provisions of the WTO.

The trade liberalisation plans and schedule of the ACP countries shall be part of EPAs. It shall include the appropriate product lists as well as timetables for tariff dismantling. These lists and timetables will be finalised during the negotiations.

- Basic duties

The basic duties to which the agreed reductions are to be applied shall be the MFN duties effectively applied by the ACP countries on the day of the signature of the EPAs. They shall be defined in a list attached to each EPA.

3.3. General provisions

Export duties. Any export duties applied in trade between the parties shall be eliminated on an agreed timetable that will not exceed ten years.

Quantitative restrictions and measures having equivalent effect applied to exports or imports in trade between the parties shall be abolished on entry into force of EPAs.

National treatment and fiscal measures. A standard national treatment provision, ensuring parties' products receive treatment no less favourable than that accorded to like products of national origin, will be included in the EPAs. Any discriminatory internal fiscal measures or practices already in existence will be eliminated from the entry into force of EPAs.

Tax carve out clause. EPAs will include a tax carve out clause in accordance with Article 52 of the Cotonou Agreement and with the relevant tax carve out provision of its successor Agreement, once applicable.

Variable speed. Where compatible with the integration objectives of the ACP regions concerned, EPAs shall provide for variable speed in trade liberalisation, taking into account the level of development of the ACP countries concerned as well as of the different intensities of integration that may exist within the region, in line with the region's internal integration process.

Food security clause. The Agreement shall include provisions aimed at fostering food security in accordance with WTO rules.

Safeguards. Safeguard provisions shall apply, in accordance with the relevant provisions of the WTO.

Antidumping. If one of the parties finds that injurious dumping or subsidisation is taking place in trade by the other party within the meaning of the provisions of GATT, it may take appropriate measures against this practice, in accordance with the GATT/WTO rules and practices. In this context, the European Union shall have special regard to the particular economic and social situation of the ACP countries concerned.

Standstill. The parties will agree that no new duties will be introduced nor existing duties be increased and that no new quantitative restrictions nor measures having equivalent effect will be introduced by either party after the entry into force of the agreements between the regional grouping and the EU.

Transparency. Both sides will be required to communicate to each other its customs tariff schedule and any subsequent amendments made to it.

Exceptions clause. The Agreement will include a standard exceptions clause allowing measures to be taken, for instance, on grounds of protection of public order, human, animal or plant life or health, conservation of exhaustible natural resources etc, provided that such measures are applied in conformity with WTO rules.

Classification of goods. The Harmonised System shall be applied to the classification of goods in trade between the Parties.

3.4. Rules of origin, administrative co-operation and financial responsibility

Negotiations on the rules of origin, administrative co-operation and financial responsibility shall be based in the standard EU preferential rules of origin and on the existing rules of origin under each EPA. In this context, the European Union shall assess any specific request for changes to the rules of origin, presented by the ACP State(s), aimed at simplifying existing rules and improving current market access for the ACPs.

The Agreement will empower the Contracting Parties to take appropriate measures in the event of lack of administrative co-operation or mismanagement. With respect to the issue of losses of customs duties linked to the mismanagement of preferential imports appropriate measures could be identified on the basis of a horizontal Council decision.

3.5. Customs, trade facilitation and anti-fraud measures

Negotiations shall aim at simplifying all requirements and procedures related to imports and exports, in particular with regard to customs processes, import licensing, customs valuation, transit rules and pre-shipment inspection, drawing on the highest international standards and in conformity with the provisions of the WTO Trade Facilitation Agreement. The agreement will include a Protocol on mutual administrative assistance in customs matters. It will also include an anti-fraud clause to prevent the abuse of tariff preferences.

4. Trade in Services and Investment

4.1. Scope

The Agreement will provide for a progressive and reciprocal liberalisation of trade in services and investment aiming at assuring a comparable level of market access opportunities, consistent with the relevant WTO rules, in particular Article V of the GATS, taking into account the level of development of the ACP countries concerned. [The Agreements will provide for audio-visual services to be dealt separately in specific agreements for cultural cooperation and partnership between the parties. These agreements will ensure the possibility for the European Community Union and its Member States as well as for the ACP to preserve and develop their capacity to define and implement their cultural and audio-visual policies for the preservation of their cultural diversity, while recognizing, preserving and promoting the cultural values and identities of the ACP, to foster intercultural dialogue by improving market access opportunities for the cultural goods and services of these countries, in accordance with the provisions of Article 27 of the Cotonou Agreement and the relevant provision of its successor Agreement, once applicable.]

The parties will agree that no new or more discriminatory measures will be introduced by either party after the entry into force of the agreements between the regional grouping and the European Union.

The liberalisation process will take place on an asymmetrical basis. The ACP countries will be allowed a certain measure of flexibility depending on their level of development in overall terms as well as in terms of sector and sub-sector in accordance with the provisions of the GATS, in particular those relating to developing countries' participation in the liberalisation agreements.

For the European Union, the transition period will not exceed 10 years.

For the ACP side, a transitional period, compatible with the objectives of the Cotonou Agreement, its successor agreement and WTO rules, will be applied in a flexible way, to take into account specific constraints of the ACP countries concerned.

ACP countries belonging to an EPA will undertake to apply at least the same arrangements between them as they apply to the European Union.

The EPAs will reconfirm the commitments made under the terms of Article 42 of the Cotonou Agreement and the relevant provision of its successor Agreement, once applicable.

4.2. Practical arrangements

Where justified by particular economic, social and environmental constraints encountered by the ACP countries, the negotiations may be postponed. In such an event, the parties shall regularly assess the situation in the course of the EPA negotiations. They will ensure that the preparatory phase to these negotiations is actively used to prepare for the negotiations, in particular by mobilising appropriate support for the development of services in line with the

provisions of the Cotonou Agreement in particular Article 41(5) thereof and the relevant provision of its successor Agreement, once applicable.

5. Current Payments and Capital Movements

EPAs will reconfirm the commitments undertaken in the framework of Article 12 of Annex II to the Cotonou Agreement and the relevant provision of its successor Agreement, once applicable.

With a view to strengthening and developing financial markets, the parties shall seek to negotiate further opening of the capital market beyond direct investment, while respecting existing monetary agreements and while taking into account the need to develop an appropriate regulatory framework.

The agreements will include a clause providing for the possible revision of this chapter to ensure coherence between obligations made within the framework of Economic Partnership Agreements and other relevant agreements, including commitments under the GATS.

6. Trade-related Areas

6.1. General

EPAs will reconfirm the respective commitments undertaken in the framework of the Cotonou Agreement¹ and its successor agreement, in particular with regard to competition policy, protection of intellectual property rights (including geographical indications), standardisation and certification, sanitary and phytosanitary measures, trade and environment, trade and labour standards, consumer policy and protection of consumer health. These provisions will be reviewed in the light of the results of the forthcoming multilateral trade negotiations.

6.2. Specific areas

In addition, the following shall apply with regard to the following areas:

Investment. In accordance with the objective of “reducing and eventually eradicating poverty consistent with the objective of sustainable development” (and with regard to articles 1, 29, 75 to 78, and to Annex II of the Cotonou Agreement and the relevant provision of its successor Agreement, once applicable) the parties agree to establish a regulatory framework which shall facilitate, enhance and stimulate mutually beneficial sustainable investment between them. This framework will be based on principles of non-discrimination, openness, transparency and stability.

Where identified by both parties as an area for negotiation, and subject to additional country- or region-specific negotiating directives, provisions on investment protection may be negotiated, which will endorse the best results agreed in the competent international fora or bilaterally. Those provisions should ensure a strong protection of investors and investments, while fully preserving the Parties' right to regulate within their territories to achieve legitimate policy objectives.

Public procurement. EPAs will aim to ensure full transparency in procurement rules and methods at all government levels following the principles of the Government Procurement Agreement (WTO). In addition, the parties will seek progressive liberalisation of their procurement markets on the basis of the principle of non-discrimination and taking into account their development levels.

¹ Articles 45 to 51 and 78 of the Cotonou Agreement and the relevant provision of its successor Agreement, once applicable.

Standards, technical regulations and conformity assessments. EPAs should contain a comprehensive chapter on Technical Barriers to Trade (TBT), building on and going beyond the WTO Agreement on TBT.

Sanitary and Phytosanitary Standards. EPAs should contain a comprehensive chapter on Sanitary and Phytosanitary Standards (SPS), building on the WTO Agreement on SPS.

Data protection. EPAs will set the objective to work towards the elimination of obstacles to free movement of personal data between the parties, created by the lack of adequate protection for personal data, via, inter alia, exchange of information and experts.

Intellectual Property Rights. EPAs should create an adequate, balanced and effective level of protection and provide for civil and border enforcement provisions in the area of intellectual property rights, including geographical indications.

Trade and Competition: EPAs should aim to minimise distortions of competition by means of provisions on competition policy, subsidies and state-owned enterprises. The provisions will not impede the delivery of public services.

Trade and Sustainable Development: EPAs should adhere to the relevant internationally agreed principles and rules on labour (including gender non-discrimination), and environmental aspects of trade and sustainable development, including sustainable fisheries and those related to climate change, in particular the Paris Agreement. EPAs should include provisions for the effective implementation and monitoring of these rules, as well as a mechanism to address any disputes arising between the Parties.

Agricultural Dialogue: Given the relevance of the agricultural sector for the socio-economic development and food security of ACP countries, EPAs may foresee a dialogue on agriculture (Agriculture Partnership), which may cover issues like commodities and regional value chains, use of new technologies and sustainable food systems.

6.3. Implementation

The EPA Council (see below, point 8), assisted by a Joint Implementation Committee composed of senior technical experts, will monitor the implementation of these provisions. The Joint Implementation Committee will meet on a regular basis and at least once a year. It will draw up annual reports assessing the progress made and formulating recommendations on measures for further achievements, including the provision of development co-operation in accordance with the provisions of the Cotonou Agreement and the relevant provision of its successor Agreement, once applicable.

7. Complementarity

EPAs and the development strategies of ACP partners (notably PRSPs) shall be mutually supportive. In particular, in order to facilitate the achievement of the objectives of EPAs the ACP parties will undertake to fully integrate EPAs within their development strategies and the EU to do likewise within its development co-operation strategies. This would encompass fostering support to the private sector development in particular Small and Medium Enterprises (SMEs) including its gender dimension. They will undertake to allocate adequate resources for that purpose within the national and regional indicative programmes, in accordance with the relevant provisions of the Cotonou Agreement and the relevant provision of its successor Agreement, once applicable.

8. Institutional Framework

A Joint EPA Council will be established for each EPA, which will perform the following functions:

- ensure that the EPA operates properly;
- study the development of economic and trade co-operation between the parties;
- seek appropriate methods of preventing problems which might arise in areas covered by the EPA, in particular with regard to the achievement of the EPA's development objectives;
- exchange opinions and make recommendations on any issue of common interest relating to economic and trade co-operation, including future actions for the proper implementation of the EPA and, in particular, the need for development co-operation to be provided in accordance with the relevant provisions of the Cotonou Agreement and the relevant provision of its successor Agreement, once applicable.

The composition, frequency, agenda and venue of joint EPA Council meetings will be agreed on through consultation between the parties.

The EPA Council will have the power to take decisions in respect of all matters covered by the EPA. It will report to the Council of Ministers established in accordance with the provisions of Article 15 of the Cotonou Agreement and the relevant provision of its successor Agreement, once applicable, on matters of common concern to the entire ACP Group of States and the European Union.

The EPA should provide for regular consultations and communication with civil society.

9. Final Provisions

EPAs will include

- a chapter on dispute settlement and a clause on non-execution, including provisions corresponding to Articles 96 and 97 of the Cotonou Agreement and the relevant provision of its successor Agreement, once applicable. Dispute settlement provisions on trade or trade related matters will not affect the parties' rights and obligations under WTO rules, in particular the Understanding on Rules and Procedures Governing the Settlement of Disputes;
- a clause on future developments providing that EPAs may be extended, in particular through accession, or merged, in accordance with the progress made in regional integration;
- a clause on their entry into force, the duration (unlimited), termination, notice required for denunciation and a territorial application clause.

For the purpose of EPAs, the parties on the ACP side shall mean the regional grouping or its Member States or the regional grouping and its Member States, in accordance with their respective spheres of competence. EPAs shall apply as well to measures taken by any state, regional or local authorities within the territories of the parties.

10. Structure and Organisation of the Negotiations

In accordance with the relevant provisions of the Cotonou Agreement and the relevant provision of its successor Agreement, once applicable, the period of negotiations will also be used for capacity building in the public and private sector of the ACP countries with a view to enhance their ability to define and implement appropriate regional and multilateral trade strategies and policies. This will include measures to enhance competitiveness, to strengthen regional organisations and to support regional trade integration initiatives, where appropriate with assistance to budgetary adjustment and fiscal reform, as well as to upgrade infrastructure, and to improve investment. These measures will be monitored by Regional Preparatory Task

Forces, which will be established jointly by the regional grouping engaged in EPA negotiations and the European Union, at the beginning of the negotiations. The Regional Preparatory Task Forces will inter alia provide suggestions to be considered within the national and regional programming dialogue between the European Union and the ACP countries.

Appropriate mechanisms will be established to ensure that Non-state actors in the EU and in the ACP countries will be informed and consulted on the content of negotiations and that co-ordination with ongoing ACP-EU dialogues is ensured.