



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**COUNCIL REGULATION**

**applying the arrangements for goods originating in certain states which are part of the African, Caribbean and Pacific Group of States (ACP) provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

This proposal for a Council Regulation applying the arrangements for goods originating in certain states which are part of the African, Caribbean and Pacific Group of States (ACP) provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements follows from the Communication from the Commission to the Council and the European Parliament on Economic Partnership Agreements (EPAs) that was adopted by the Commission on 23 October 2007 (COM(2007) 635).

That Communication sets out how the core objectives of full, comprehensive EPAs with all ACP regions can be achieved while minimising, as far as is possible, the risks of trade disruption for those African Caribbean and Pacific (ACP) Regions or Sub-Regions that conclude negotiations on agreements establishing, or leading to the establishment of, Economic Partnership Agreements before the expiry of the current trade regime on 31 December 2007 and in a manner consistent with the Community's international obligations. The Regulation does this by establishing a legal basis to apply the arrangements for goods provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements

This Regulation will be based on provisions in those agreements permitting the application of the agreements, in so far as is feasible, before the provisional application on a mutual basis of the agreements. As such it will continue in force once the agreements are provisionally applied and have entered into force, and will be amended or superseded in order to bring it into conformity with those aspects of the agreements which it has not been feasible to include in this Regulation. As a result, this Regulation is without prejudice to the relevant procedures for the conclusion and entry into force of the agreements.

Proposal for a

## COUNCIL REGULATION

**applying the arrangements for goods originating in certain states which are part of the African, Caribbean and Pacific Group of States (ACP) provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Whereas:

- (1) Article 37(1) of the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community (EC) and its Member States, of the other part, signed in Cotonou on 23 June 2000<sup>2</sup> (hereinafter referred to as the 'ACP-EC Partnership Agreement') provides that Economic Partnership Agreements (EPAs) are to enter into force no later than 1 January 2008.
- (2) Article 36(3) of the Cotonou Agreement provides for the maintenance of the trading arrangements contained in Annex V to that Agreement until 31 December 2007.
- (3) The Community has since 2002 been negotiating Economic Partnership Agreements with the ACP Group of States in the form of six regions comprising the Caribbean, Central Africa, Eastern and Southern Africa, the Pacific Island States, the South African Development Community and West Africa.
- (4) Those agreements establishing, or leading to the establishment of, Economic Partnership Agreements for which negotiations have been concluded provide that the parties may take steps to apply the agreement, before provisional application on a mutual basis, to the extent feasible. It is appropriate to take action to apply the agreements on the basis of these provisions.
- (5) The arrangements included in this Regulation are to be amended, as necessary, in accordance with the agreements establishing, or leading to the establishment of, Economic Partnership Agreements, as and when such agreements are signed and concluded pursuant to Article 300 of the Treaty and are in force. The arrangements are to be terminated in whole or in part if the agreements in question do not enter into force within a reasonable period of time in accordance with the Vienna Convention on the Law of Treaties.
- (6) For the Community, the arrangements in the agreements establishing, or leading to the establishment of, Economic Partnership Agreements, shall provide for duty free access

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ L 317, 15.12.2000, p. 3. Agreement as rectified by OJ L 385, 29.12.2004, p. 88.

and no tariff rate quotas for all products with the exception of arms, subject to transitional periods and arrangements for certain sensitive products and specific arrangements for the French Overseas Departments. In the light of the specificities of the situation of South Africa, products originating in South Africa shall continue to benefit from the relevant provisions of the Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and South Africa, of the other part<sup>3</sup>, until such time as an agreement establishing, or leading to the establishment of, Economic Partnership Agreements enters into force between the Community and South Africa.

- (7) Instead of relying on the special arrangements for least-developed countries provided for in Regulation (EC) No 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences<sup>4</sup>, it is preferable that those least-developed countries which are also ACP States base their future trade relationship with the Community on Economic Partnership Agreements. In order to facilitate such a development, it is appropriate to provide that such countries which have concluded negotiations on agreements establishing, or leading to the establishment of, Economic Partnership Agreements, and which can benefit from the arrangements provided under this Regulation may continue to benefit, for a limited period of time, from the special arrangements for least developed countries in Regulation (EC) No 980/2005<sup>5</sup> in respect of those products where the transitional arrangements set out in this Regulation are less favourable.
- (8) The rules of origin applicable to imports made under this Regulation should for a transitional period be those set in Annex II to this Regulation. Those rules of origin shall gradually be replaced on the basis of the relevant Economic Partnership Agreement.
- (9) It is necessary to provide for the possibility to temporarily suspend the arrangements set out in this Regulation in the event of a failure to provide administrative co-operation, irregularities or fraud. Where a Member State provides information to the Commission on a possible fraud or failure to provide administrative cooperation, the relevant Community legislation shall apply, in particular Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters<sup>6</sup>.
- (10) It is appropriate that this Regulation provides for transitional arrangements for sugar and rice, together with special transitional safeguard and surveillance mechanisms applicable after the termination of the transitional arrangements.
- (11) In the context of the transitional arrangements for sugar, Protocol 3 attached to Annex V to the Cotonou Agreement (containing the text of Protocol 3 on ACP sugar) will cease to apply with effect from 1 October 2009<sup>7</sup>.
- (12) Upon the termination of Protocol 3 and in view of the particular sensitivity of the sugar market, it is appropriate to adopt transitional measures for that product. At the

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<sup>3</sup> OJ L 311, 4.12.1999, p. 1.

<sup>4</sup> OJ L 169, 30.6.2005 p. 1.

<sup>5</sup> OJ L 169, 30.6.2005 p. 1.

<sup>6</sup> OJ L 82, 22.3.1997, p. 1. Regulation as amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

<sup>7</sup> Council Decision 2007/627/EC of 28 September 2007 (OJ L 255 29.9.2007 p. 38).

same time, it is appropriate to adopt specific transitional surveillance and safeguard measures for certain agricultural processed products with a potential high content on sugar which could be traded to circumvent the transitional specific safeguard measures for sugar imports into the EC.

- (13) It is also appropriate to adopt general safeguard measures for the products covered by this Regulation.
- (14) In view of the particular sensitivity of agricultural products, it is appropriate that bilateral safeguard measures may be taken when imports cause or threaten to cause disturbances in the markets for such products or disturbances in the mechanisms regulating those markets.
- (15) In accordance with Article 299(2) of the Treaty, due account should be taken in all Community policies of the particular structural, social and economic situation of the outermost regions of the Community specifically with reference to customs and trade policies.
- (16) Special account should therefore be taken both of the sensitivity of agricultural products, especially sugar, and of the particular vulnerability and interests of the outermost regions of the Community when laying down the rules on bilateral safeguards in an effective manner.
- (17) The measures necessary for the implementation of this Regulation should be adopted in accordance with Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>8</sup>.
- (18) This Regulation makes it necessary to repeal the current set of Regulations adopted in the context of Annex V of the ACP-EC Partnership Agreement, notably Regulation (EC) No 2285/2002 on the safeguard measures provided for in the ACP-EC Partnership Agreement and repealing Regulation (EEC) No 3705/90<sup>9</sup>, Regulation (EC) No 2286/2002 of 10 December 2002 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EC) No 1706/98 and Article 1(2) of Regulation (EC) No 1964/2005 of 29 November 2005 on the tariff rates for bananas<sup>10</sup>. As a consequence, all implementing measures based on those provisions which are repealed are rendered obsolete.

HAS ADOPTED THIS REGULATION:

## **Chapter 1**

### **Subject matter, scope and market access**

#### *Article 1*

#### **Subject matter**

This Regulation applies the arrangements for goods originating in certain states which are part of the African, Caribbean and Pacific Group of States (ACP) provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements.

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<sup>8</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

<sup>9</sup> OJ L 348, 21.12.2002, p. 3.

<sup>10</sup> OJ L 316, 2.12.2005, p. 1.

## *Article 2*

### **Scope**

1. This Regulation shall apply to goods originating in the regions and states listed in Annex I.
2. The Council shall, upon a proposal from the Commission, amend Annex I to add regions or states from the ACP Group of States which have concluded negotiations on an agreement between the Community and that region or state which at least meets the requirements of Article XXIV GATT 1994.
3. The state or region will remain on Annex I unless the Council, upon a proposal from the Commission, amends Annex I to remove a region or state from that Annex, in particular, where:
  - (a) the region or state signals its intent not to ratify an agreement which has permitted it to be included in Annex I;
  - (b) ratification of an agreement which has permitted a region or state to be included in Annex I has not taken place within a reasonable period of time such that the entry into force of the agreement is unduly delayed; or,
  - (c) the agreement is terminated, or the region or state concerned terminates its rights and obligations under the agreement but the agreement otherwise remains in force.

## *Article 3*

### **Market access for goods originating in regions or states listed in Annex I**

1. Subject to Articles 6, 7 and 8, import duties shall be eliminated on all products of Chapters 1 to 97 but not 93 of the Harmonized System originating in a region or state listed in Annex I. Such elimination shall be subject to the transitional safeguard and surveillance mechanisms set out in Articles 9 and 10 and the general safeguards mechanism provided for in Articles 11 to 22.
2. For products of Chapter 93 of the Harmonized System originating in regions or states listed in Annex I the applied MFN duties shall continue to apply.
3. Notwithstanding Article 3(2) of Regulation (EC) No 980/2005, goods originating in least-developed countries listed in Annex I of that Regulation and which are included in Annex I to this Regulation shall, in addition to the arrangements provided for in this Regulation, continue to benefit from the preferences provided pursuant to Regulation (EC) No 980/2005 in respect of products:
  - (a) of tariff heading 1006 except for subheading 10061010, until 31 December 2009; and,
  - (b) of tariff heading 1701, until 30 September 2009.
4. Paragraph 1 and Articles 6, 7 and 8 shall not apply to products originating in South Africa. Such products shall be subject to the relevant provisions of the Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part<sup>11</sup>. In accordance with the procedure referred to in Article 24(3), an Annex shall be

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<sup>11</sup> OJ L 311, 4.12.1999, p. 1.

added to this Regulation setting out the regime applicable to products originating in South Africa once the relevant trade provisions of the Agreement on Trade, Development and Cooperation have been superseded by the relevant provisions of an agreement establishing, or leading to the establishment of, an Economic Partnership Agreement.

5. Paragraph 1 and Article 7 shall not apply to products of either tariff heading 1701 or tariff heading 0803 0019 originating in a region or state listed in Annex I and released for free circulation in the French overseas departments until 1 January 2018. This period shall be extended to 1 January 2023 unless otherwise agreed with the regions or states listed in Annex I as provided for in the relevant agreements. The Commission shall publish a notice in the *Official Journal of the European Union* informing interested parties of the termination of this provision.

## **Chapter II**

### **Rules of origin and Administrative Co-operation**

#### *Article 4*

##### **Rules of Origin**

1. The rules of origin set out in Annex II shall apply in order to determine whether products originate in the regions or states listed in Annex I.
2. The rules of origin set out in Annex II shall be superseded by those annexed to any agreement with the countries listed in Annex I when that agreement is either provisionally applied, or enters into force, whichever is the earliest. The Commission shall publish a notice in the *Official Journal of the European Union* to inform operators. The notice shall specify the date of provisional application or entry into force, which shall be the date from which the rules of origin in the agreement shall apply to products covered by this Regulation.
3. The Commission assisted by the Customs Code Committee established by Regulation (EEC) 2913/92 shall monitor the implementation and application of the provisions of Annex II. Technical amendments and decisions on the management of Annex II may be adopted in accordance with the procedure laid down in Article 247 and 247A of Regulation (EC) No 2913/92.

#### *Article 5*

##### **Administrative co-operation**

1. Where the Commission has made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud, it may temporarily suspend the elimination of duties in Articles 3, 6 and 7 (hereafter referred to as the "relevant treatment"), in accordance with this Article.
2. For the purpose of this Article a failure to provide administrative co-operation shall mean, *inter alia*:
  - a) a repeated failure to respect relevant obligations requiring the verification of the originating status of the product(s) concerned;
  - b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin;

- c) a repeated refusal or undue delay in obtaining authorisation to conduct administrative co-operation missions to verify the authenticity of documents or accuracy of information relating to the granting of the relevant treatment provided for in this Regulation.

For the purpose of this Article a finding of irregularities or fraud may be made, *inter alia*, where there is a rapid increase, without satisfactory explanation, in imports of goods exceeding the usual level of production and export capacity of the region or state concerned.

3. Where the Commission, on the basis of information provided by a Member State or on its own initiative, finds that the conditions laid down in paragraphs 1 and 2 above, are fulfilled, the Commission may, acting in accordance with the procedure set out in Article 24(2) of this Regulation, suspend the relevant treatment provided it has first:
  - (a) informed the Committee provided for in Article 24;
  - (b) notified the region or state concerned in accordance with any relevant procedures applicable between the Community and that state or region; and,
  - (c) published a notice in the *Official Journal of the European Union* stating that that a finding has been made of a failure to provide administrative co-operation, irregularities or fraud.
4. The period of suspension under this Article shall be limited to that necessary to protect the Community's financial interests. It shall not exceed six months, which may be renewed. On conclusion of the period, the Commission shall decide either to terminate the suspension after informing the Committee provided for in Article 24 or to extend the period of suspension in accordance with the procedure referred to in paragraph 3.
5. The temporary suspension procedures set out in paragraphs 2 to 4 of this Article shall be superseded by those set out in any agreement with the countries listed in Annex I when that agreement is either provisionally applied, or enters into force, whichever is the earliest. The Commission shall publish a notice in the *Official Journal of the European Union* to inform operators. The notice shall specify the date of provisional application or entry into force, which shall be the date from which the temporary suspension procedures in the agreement shall apply to products covered by this Regulation.
6. In order to implement the temporary suspension set out in any agreement with the countries listed in Annex I, the Commission shall, without undue delay:
  - (a) inform the Committee provided for in Article 24 that a finding has been made of a failure to provide administrative co-operation, irregularities or fraud; and
  - (b) publish the notice in the *Official Journal of the European Union* stating that a finding has been made of a failure to provide administrative co-operation, irregularities or fraud.

The Commission shall take a decision suspending the relevant treatment in accordance with the procedure set out in Article 24(2) of this Regulation.

## **Chapter III**

### **Transitional arrangements**

#### **SECTION 1**

##### **RICE**

###### *Article 6*

###### **Zero duty tariff rate quotas and eventual elimination of duties**

1. Import duties on the products of tariff heading 1006 shall be eliminated as from 1 January 2010, with the exception of import duties on the products of subheading 1006 10 10 which shall be eliminated as from 1 January 2008.
2. The following tariff rate quotas at zero duty shall be opened for products of tariff heading 1006 except for subheading 1006 10 10 originating in the states listed in Annex I which form part of the CARIFORUM region:
  - (a) 187,000 tonnes, husked rice equivalent, for the period between 1 January 2008 and 31 December 2008;
  - (b) 250,000 tonnes, husked rice equivalent, for the period between 1 January 2009 and 31 December 2009.
3. The detailed rules for implementing the tariff quotas referred to in paragraph 2 shall be determined in accordance with the procedures referred to in Articles 13 and 26(2) of Regulation (EC) No 1785/2003<sup>12</sup>.

#### **SECTION 2**

##### **SUGAR**

###### *Article 7*

###### **Zero duty tariff rate quotas and eventual elimination of duties**

1. Import duties on products of tariff heading 1701 shall be eliminated as from 1 October 2009.
2. In addition to the tariff rate quotas opened and administered pursuant to Article 28 of Regulation (EC) No 318/2006<sup>13</sup>, the following tariff rate quotas shall be opened for products of tariff subheading 1701 11 10 for the period between 1 October 2008 and 30 September 2009:
  - (a) 150,000 tonnes, white sugar equivalent, at zero duty reserved for products originating in least developed countries as listed in Annex I to Regulation (EC) No 980/2005 and which are listed in Annex I. This tariff rate quota shall be divided between regions according to quantities to be determined in conformity with the agreements qualifying regions or states for inclusion in Annex I; and,
  - (b) 80,000 tonnes, white sugar equivalent, at zero duty reserved for products originating in regions or states which are not least developed countries and

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<sup>12</sup> OJ L 270, 21.10.2003 p. 96.

<sup>13</sup> OJ L 58, 28.2.2006, p. 1.

which are listed in Annex I. This tariff rate quota shall be divided between regions according to quantities to be determined in conformity with the agreements qualifying regions or states for inclusion in Annex I.

3. Article 30 of Regulation (EC) No 318/2006 shall apply to imports under the tariff rate quotas referred to in the previous paragraph.
4. The detailed rules for dividing by region and implementing the tariff quotas referred to in this Article shall be determined by the Commission in accordance with the procedures referred to in Article 39(2) of Regulation (EC) No 318/2006.

#### *Article 8*

##### **Transitional arrangement**

For the period between 1 October 2009 and 30 September 2012, Article 7(1) shall not apply to imports of products of CN code 1701 unless the importer undertakes to purchase such products at a price not lower than 90% of the reference price (on a c.i.f. basis) set in Article 3 of Regulation (EC) No 318/2006 for the relevant marketing year.

#### *Article 9*

##### **Transitional safeguard mechanism for sugar**

1. For the period 1 October 2009 to 30 September 2015 the treatment granted in Article 7(1) for imports of products of tariff heading 1701 originating in regions or states listed in Annex I and which are not least-developed countries listed in Annex I to Regulation (EC) No 980/2005 may be suspended when:
  - (a) imports originating in regions or states which are ACP States and which are not least developed countries listed in Annex 1 to Regulation (EC) No 980/2005 exceed the following quantities:
    - (i) 1.38 million tonnes in the marketing year 2009/2010,
    - (ii) 1.45 million tonnes in the marketing year 2010/2011,
    - (iii) 1.6 million tonnes in the marketing years 2011/2012 to 2014/2015; and
  - (b) imports originating in all ACP States exceed 3.5 million tonnes.
2. The quantities provided for in paragraph 1(a) may be subdivided by region.
3. During the period of application of this Article, imports of products of tariff heading 1701 originating in regions or states listed in Annex I will require an import licence.
4. The suspension of the treatment granted in Article 7(1) shall terminate at the end of the marketing year in which it was introduced.
5. Detailed rules on the subdivision of quantities provided for in paragraph 1, for the management of the system referred to in paragraphs 1, 3 and 4 shall be adopted in accordance with the procedure referred to in Article 39(2) of Regulation (EC) No 318/2006.

## Article 10

### Transitional surveillance mechanism

1. For the period 1 January 2008 to 30 September 2015, imports of products of tariff headings 17049099, 18061030, 18061090, 21069059, 21069098 originating in regions or states listed in Annex I shall be subject to the surveillance mechanism provided for in Article 308d of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Regulation (EEC) No 2913/92 establishing the Community Customs Code<sup>14</sup>.
2. On the basis of that surveillance, the Commission will verify if there is a cumulative increase of imports of one or more of these products originating in a particular region by more than 20% in volume during a period of twelve consecutive months compared to the average of the yearly imports over the previous three twelve month periods.
3. If the level referred to in paragraph 2 is reached, the Commission shall analyse the pattern of trade, the economic justification and the sugar content of such imports. If the Commission concludes that such imports are used to circumvent the tariff rate quotas, transitional arrangements and special safeguard mechanism provided for in Articles 7, 8 and 9, it may suspend the application of Article 3(1) to imports of products of tariff headings 17049099, 18061030, 18061090, 21069059, 21069098 originating in regions or states listed in Annex I which are not least-developed countries listed in Annex I to Regulation (EC) No 980/2005 until the end of the marketing year concerned.
4. Detailed rules for the management of this system and decisions of suspension shall be adopted in accordance with the procedure referred to in Article 16 of Regulation (EC) No 3448/93<sup>15</sup>.

## Chapter IV General safeguard provisions

### Article 11

#### Definitions

For the purposes of this Chapter:

- (a) "*Community industry*" means the Community producers as a whole of the like or directly competitive products operating within the territory of the Community, or those Community producers whose collective output of the like or directly competitive product constitutes a major proportion of the total Community production of those products
- (b) "*serious injury*" means a significant overall impairment in the position of Community producers;
- (c) "*threat of serious injury*" means serious injury that is clearly imminent;
- (d) "*disturbances*" means disorders in a sector or industry;

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<sup>14</sup> OJ L 253, 11.10.1993, p. 1.

<sup>15</sup> OJ L 318, 20.12.1993, p. 18.

- (e) *"threat of disturbances"* means disturbances that are clearly imminent.

#### *Article 12*

##### **Principles**

1. A safeguard measure may be imposed in accordance with the provisions set out in this Chapter where products originating in the States listed in Annex I are being imported in the Community in such increased quantities and under such conditions as to cause or threaten to cause any of the following:
  - (a) serious injury to the Community industry
  - (b) disturbances in a sector of the economy, particularly where these disturbances produce major social problems or difficulties which could bring about serious deterioration in the economic situation of the Community, or
  - (c) disturbances in the markets of agricultural products<sup>16</sup> or mechanisms regulating those markets.
2. In cases where products originating in the States listed in Annex I are being imported in the Community in such increased quantities and under such conditions as to cause or threaten to cause disturbances in the economic situation of one or several of the Community's outermost regions, a safeguard measure may be imposed in accordance with the provisions set out in this Chapter.

#### *Article 13*

##### **Determination of the conditions to impose safeguard measures**

1. The determination of serious injury or a threat thereof shall cover inter alia the following factors:
  - (a) the volume of imports, in particular where there has been a significant increase, either in absolute terms or relative to production or consumption in the Community;
  - (b) the price of imports, in particular where there has been a significant price undercutting as compared with the price of a like product in the Community;
  - (c) the consequent impact on Community producers as indicated by trends in certain economic factors such as production, capacity utilisation, stocks, sales, market share, the depression of prices or prevention of price increases which would normally have occurred, profits, return on capital employed, cash flow, employment;
  - (d) factors other than trends in imports which are causing or may have caused injury to the Community producers concerned.
2. The determination of disturbances or a threat thereof shall be based on objective factors, including the following elements:
  - (a) the increase in the volume of imports in absolute or relative terms to Community production and to imports from other sources and

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<sup>16</sup> For the purpose of this article agricultural products are those covered by Annex I of the WTO Agreement on Agriculture.

- (b) the effect of such imports on prices, or
  - (c) the effect of such imports on the situation of the Community industry or the economic sector concerned, including inter alia on the levels of sales, production, financial situation and employment.
3. In determining whether imports are made under such conditions as to cause or threaten to cause disturbances in the markets of agricultural products or mechanisms regulating those markets, including Regulations creating Common Market Organisations, all relevant objective factors must be taken into consideration, including one or more of the following elements:
- (a) the volume of imports as compared to previous calendar or marketing years' levels, as the case may be, internal production and consumption, planned future levels according to the reform of the Common Market Organisations;
  - (b) level of internal prices compared to the reference or target prices if applicable, and, if not applicable, compared to the average internal market prices during the same period of previous marketing years;
  - (c) As of 1 October 2015, in the markets of products of tariff heading 1701: situations where the Community average market price of white sugar falls during the two consecutive months below 80% of the average Community market price for white sugar prevailing during the previous marketing year.
4. In determining whether the conditions referred to above are being met in the case of the Community's outermost regions, the analyses are limited to the territory of the outermost region(s) concerned. Particular attention shall be paid to the size of the local industry, its financial situation and the situation of employment.

#### *Article 14*

##### **Initiation of proceedings**

1. An investigation shall be initiated upon request by a Member State or on the Commission's own initiative if it is apparent to the Commission that there is sufficient evidence to justify such initiation.
2. The Member States shall inform the Commission should trends in imports from any of the States referred to in Annex I appear to call for safeguard measures. This information shall contain the evidence available, as determined on the basis of the criteria laid down in Article 13. The Commission shall pass this information on to all the Member States within three working days.
3. Consultation with the Member States shall take place within eight working days of the Commission sending the information to Member States as provided for in paragraph 2. Where, after consultation, it is apparent that there is sufficient evidence to justify an initiation of a proceeding, the Commission shall publish a notice in the *Official Journal of the European Union*. Initiation shall take place within one month of receipt of information from a Member State.
4. If the Commission, after consulting the Member States, takes the view that the circumstances set out in Article 12 exist, it shall immediately notify the region or states in Annex I concerned of its intention to initiate an investigation. The notification may be accompanied by an invitation for consultations with the aim of clarifying the situation and arriving at a mutually satisfactory solution.

## *Article 15*

### **The investigation**

1. Following the initiation of the proceeding, the Commission shall commence an investigation.
2. The Commission may request Member States to supply information and Member States shall take whatever steps are necessary in order to give effect to such request. Where this information is of general interest or where its transmission has been requested by a Member State, the Commission shall forward it to all Member States provided it is not confidential, and if confidential then a non-confidential summary shall be forwarded.
3. In the case of an investigation limited to an outermost region, the Commission may request the competent local authorities to supply the information referred to in paragraph 2 above, via the Member State concerned.
4. The investigation shall, whenever possible, be concluded within six months from the initiation of the investigation. In exceptional circumstances, this time limit may be extended by a further period of three months.

## *Article 16*

### **Imposition of provisional safeguard measures**

1. Provisional safeguard measures shall be applied in critical circumstances where a delay would cause damage which it would be difficult to repair, pursuant to a preliminary determination that circumstances set out in Article 12 as appropriate, exist. The Commission shall take such provisional measures after consultation with Member States or, in cases of extreme urgency, after informing the Member States. In this latter case, consultation shall take place within ten days of notification of the Member States of the action taken by the Commission.
2. In view of the particular situation of outermost regions and their vulnerability to any surge in imports, provisional safeguard measures shall be applied in proceedings that concern them where a preliminary determination has shown that imports have increased. In that case, the Commission shall inform Member States upon taking the measures and consultation shall take place within ten days of notification to the Member States of the action taken by the Commission.
3. Where a Member State requests immediate intervention by the Commission and where the conditions in paragraph 1 or 2 of this Article are met, the Commission shall take a decision within five working days of the receipt of the request.
4. The Commission shall forthwith inform the Council and the Member States of any decision taken under paragraphs 1, 2 and 3. The Council, acting by a qualified majority, may decide differently within one month of having been informed by the Commission pursuant to this paragraph.
5. Provisional measures may take the form of an increase in the customs duty on the product concerned up to a level which does not exceed the customs duty applied to other WTO members, or the duty level of tariff quotas.
6. The duration of provisional measures shall not exceed 180 days. In cases where provisional measures are limited to outermost regions, their duration may not exceed 200 days.

7. Should the provisional safeguard measures be repealed because the investigation shows that the conditions contained in Articles 12 and 13 are not met, any duty collected as a result of these provisional measures shall be automatically refunded.

#### *Article 17*

#### **Termination of investigation and proceeding without measures**

Where bilateral safeguard measures are deemed unnecessary and there is no objection within the Advisory Committee referred to in Article 21, the investigation and proceeding shall be terminated by Commission decision. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal for a Council Regulation that the proceeding be terminated. The proceeding shall be deemed terminated if, within one month, the Council acting by qualified majority has not decided otherwise.

#### *Article 18*

#### **Imposition of definitive measures**

1. Where the facts as finally established show that the circumstances set out in Article 12, as appropriate, are met, the Commission shall request consultations with the region or state concerned meeting in the context of the appropriate institutional arrangement set up in the relevant agreements permitting a region or state to be included in Annex 1 with a view to seeking a mutually acceptable solution
2. If the consultations referred to in paragraph 1 do not lead to a mutually satisfactory solution within thirty days of the matter being referred to the region or state concerned, a decision to impose definitive bilateral safeguard measures shall be taken by the Commission, in consultation with Member States, within twenty working days following the end of the consultation period.
3. Any decision taken by the Commission pursuant to this Article shall be communicated to the Council and Member States. Any Member State may, within ten working days following the day of such communication, refer the decision to the Council.
4. If a Member State refers the Commission's decision to the Council, the Council, acting by a qualified majority, may confirm, amend or revoke the decision. If within one month of the referral of the matter, the Council has not taken a decision, the decision taken by the Commission shall be deemed confirmed.
5. Definitive measures may take one of the following forms:
  - a suspension of the further reduction of the rate of import duty for the product concerned originating in the region or state concerned,
  - an increase in the customs duty on the product concerned up to a level which does not exceed the customs duty applied to other WTO members,
  - a tariff quota.
6. No bilateral safeguard measure shall be applied on the same product from the same region or state less than one year after previous such measures have lapsed or been removed.

## *Article 19*

### **Duration and review of safeguard measures**

1. A safeguard measure shall remain in force only for such period of time as may be necessary to prevent or remedy the serious injury or disturbances. The period shall not exceed two years, unless it is extended under paragraph 2. Where the measure is limited to one or several of the outermost region(s) of the Community, the period of application may not exceed four years.
2. The initial period of duration of a safeguard measure may exceptionally be extended provided it is determined that the safeguard measure continues to be necessary to prevent or remedy serious injury or disturbances.
3. Extensions shall be adopted in accordance with the procedures of this Regulation applying to investigations and using the same procedures as the initial measures.  
The total duration of a safeguard measure may not exceed four years, including any provisional measure. In the case of a measure limited to outermost regions, this limit is extended to eight years.
4. If the duration of a safeguard measure exceeds one year, it shall be progressively liberalised at regular intervals during its period of application, including any extension.

Consultations with the region or state concerned shall be held periodically in the relevant institutional bodies of the agreements, with a view to establishing a timetable for their abolition as soon as circumstances permit.

## *Article 20*

### **Surveillance measures**

1. Where the trend in imports of a product originating in an ACP State is such that they could cause one of the situations referred to in Article 12, imports of that product may be subject to prior Community surveillance.
2. The decision to impose surveillance shall be taken by the Commission.  
Any decision taken by the Commission pursuant to this Article shall be communicated to the Council and Member States. Any Member State may, within ten working days following the day of such communication, refer the decision to the Council.  
If a Member State refers the Commission's decision to the Council, the Council, acting by a qualified majority, may confirm, amend or revoke the decision. If within one month of the referral of the matter, the Council has not taken a decision, the decision taken by the Commission shall be deemed confirmed.
3. Surveillance measures shall have a limited period of validity. Unless otherwise provided, they shall cease to be valid at the end of the second six-month period following the first six months after the measures were introduced.
4. Surveillance measures may be limited to the territory of one or more Community outermost region(s) where necessary.

5. The decision to impose surveillance measures shall be communicated forthwith to the appropriate institutional body set up in the relevant agreements permitting a region or state to be included in Annex I for information.

#### *Article 21*

##### **Consultations**

The competent consultative committee for the purposes of this Chapter shall be the Advisory Committee provided for in Article 4 of Regulation (EC) No 3285/94. In the case of products falling under CN code 1701, the competent committee shall be assisted by the committee established pursuant to Article 39 of Regulation (EC) No 318/2006.

#### *Article 22*

##### **Exceptional measures with limited territorial application**

Where it emerges that the conditions laid down for the adoption of bilateral safeguard measures are met in one or some Member States of the Community, the Commission, after having examined alternative solutions, may exceptionally, and in accordance with Article 134 of the Treaty, authorise the application of surveillance or safeguard measures limited to the Member State or Member States concerned if it considers that such measures applied at that level are more appropriate than measures applied throughout the Community. These measures must be strictly limited in time and must disrupt the operation of the internal market as little as possible.

## **Chapter V Procedural provisions**

#### *Article 23*

##### **Adaptation to technical developments**

This Regulation shall be amended in accordance with the procedure referred to in Article 24(3) in order to take account of any technical modifications which may be necessary in the light of agreements concluded with the regions or states listed in Annex I.

#### *Article 24*

##### **Committee**

1. The Commission shall be assisted by the EPA Implementation Committee (hereinafter referred to as 'the Committee').
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.
4. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

## **Chapter VI**

### **Final provisions**

#### *Article 25*

##### **Amendments**

Article 1(2) of Regulation (EC) No 1964/2005 is deleted.

#### *Article 26*

##### **Repeals of existing acts**

The following Regulations are hereby repealed:

- (a) Regulation (EC) No 2285/2002
- (b) Regulation (EC) No 2286/2002

#### *Article 27*

##### **Entry into force**

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union* and shall become applicable on 1 January 2008.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*  
*The President*

**ANNEX 1**

*List of regions or states which have concluded negotiations*

**ANNEX 2**  
*Rules of origin*

This Annex is distributed as a separate document.

**LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A  
BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE**

**1. NAME OF THE PROPOSAL:**

Council Regulation applying the arrangements for goods originating in certain states which are part of the African, Caribbean and Pacific Group of States (ACP) provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements.

**2. BUDGET LINES:**

Chapter and Article: **12/120**

Amount budgeted for the year concerned: **16 431 900 000 (PDB 2008)**

**3. FINANCIAL IMPACT**

- Proposal has no financial implications
- Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

The proposal removes all remaining customs tariffs on products originating in those ACP regions or states that conclude negotiations on Economic Partnership Agreements or agreements including WTO compatible trade arrangements. In 2006 the theoretical maximum duties payable on products originating in the ACP States were € 17.3 million which amounts to € 13.0 million net revenue.

The only exception is South Africa, which is party to the Economic Partnership Agreement negotiations but will be offered a separate trade arrangement that retains customs tariffs on certain products imported into the Community. This trade arrangement is under negotiation and a financial assessment will be included with the proposal to Council for a Decision authorising signature of the relevant Economic Partnership Agreement.

Under the provisions of the Cotonou Agreement and the Everything But Arms Arrangement of the Generalised System of Preferences over 99% of goods originating in the ACP states enter the Community free of customs tariffs. It is worth noting that 95% of goods originating in South Africa also enter the Community free of customs tariffs under the provisions of the Trade and Development Cooperation Agreement.

No additional expenditure is envisaged.

(€ million to one decimal place)

Budget line	Revenue	12 month period, starting 1.1.2008	2008
Article 3, Chapter 1, Title I	<i>Impact on own resources</i>	13.0	13.0

Situation following action					
	2009	2010	2011	2012	2013
Article 3, Chapter 1, Title I	13.0	13.0	13.0	13.0	13.0

#### 4. ANTI-FRAUD MEASURES

In order to protect the Communities' financial interests against fraud and other irregularities, the Commission may carry out on-the-spot checks and inspections in accordance with Article 5, Chapter II of this Regulation. Where necessary, investigations shall be conducted by the European Anti-Fraud Office (OLAF) and these shall be governed by Regulation (EC) No 1073/1999 of the European Parliament and of the Council. The Commission will conduct regular document-based and on-the-spot checks.