Regulation (EU) 2016/1076 of the European Parliament and of the Council of 8 June 2016 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, economic partnership agreements (recast)

REGULATION (EU) 2016/1076 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 8 June 2016

applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, economic partnership agreements

(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Council Regulation (EC) No 1528/2007[(3)] has been substantially amended several times[(4)]. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.

(2) In accordance with the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part[(5)], as amended, economic partnership agreements (EPAs) were to enter into force no later than 1 January 2008.

(3) Since 2002 the Union has been negotiating EPAs with the African, Caribbean and Pacific (ACP) Group of States in the form of seven regions comprising the Caribbean, Central Africa, Eastern and Southern Africa, the East African Community, the Pacific Island States, the South African Development Community and West Africa. Such EPAs have to be consistent with World Trade Organisation (WTO) obligations, support regional integration and promote the gradual integration of the ACP economies into the rules-based world trading system, thereby fostering their sustainable development and contributing to the overall effort to eradicate poverty and to enhance living conditions in the ACP States. At the first stage, negotiations may be concluded on

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agreements leading to the establishment of EPAs covering, as a minimum requirement, WTO-compatible goods arrangements consistent with regional economic and political integration processes, to be complemented as soon as possible by complete EPAs.

(4) Those agreements establishing, or leading to the establishment of, EPAs 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 those 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, EPAs, as and when such agreements are signed and concluded pursuant to Article 218 of the Treaty on the Functioning of the European Union (TFEU) and are either provisionally applied or 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 imports into the Union, the arrangements in the agreements establishing, or leading to the establishment of, EPAs should provide for duty-free access and no tariff-rate quotas for all products with the exception of arms. Those arrangements are subject to transitional periods and arrangements for certain sensitive products and specific arrangements for the French overseas departments. Given the specific nature of the case of South Africa, products originating in South Africa should 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 the Republic of South Africa, of the other part[(6)], as amended ('the TDCA'), until such time as an agreement establishing, or leading to the establishment of, an EPA enters into force between the Union and South Africa.

(7) The rules of origin applicable to imports made under this Regulation should for a transitional period be those laid down in Annex II. Those rules of origin should be superseded by those annexed to any agreement with the regions or states listed in Annex I when that agreement is either provisionally applied, or enters into force, whichever is the earliest.

(8) It is necessary to provide for the possibility of temporarily suspending the arrangements set out in this Regulation in the event of a failure to provide administrative cooperation or of irregularities or fraud. Where a Member State provides information to the Commission concerning possible fraud or failure to provide administrative cooperation, the relevant Union legislation should apply, in particular Council Regulation (EC) No 515/97[(7)].

(9) It is also appropriate to provide for general safeguard measures for the products covered by this Regulation.

(10) In view of the particular sensitivity of agricultural products, it is appropriate to allow safeguard measures to be taken when imports cause or threaten to cause disturbances in the markets for such products or disturbances in the mechanisms regulating those markets.

(11) In accordance with Article 349 TFEU, due account should be taken in all Union policies, in particular in customs and trade policies, of the particular structural, social and economic situations of the outermost regions of the Union.

(12) 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 Union when laying down the rules on safeguards in an effective manner.

(13) Article 134 of the Treaty establishing the European Community was deleted by the Treaty of Lisbon without being replaced with an equivalent Article in the Treaty on European Union or the TFEU. The reference to that Article in Regulation (EC) No 1528/2007 should therefore be omitted.

(14) In order to make technical adaptations to the arrangements for products originating in certain states which are part of the ACP Group of States, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending Annex I to this Regulation in order to add or to remove regions or states, and in respect of introducing technical amendments to Annex II to this Regulation that are necessary as a result of the application of that Annex. Moreover, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of adding an Annex to this Regulation which sets out the regime applicable to products originating in South Africa once the relevant trade provisions of the TDCA have been superseded by the relevant provisions of an agreement establishing, or leading to the establishment of, an EPA. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(8)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(15) Certain countries that have not taken the necessary steps towards the ratification of their respective agreements have been removed from Annex I to Regulation (EC) No 1528/2007 by Regulation (EU) No 527/2013 of the European Parliament and of the Council[(9)].

(16) In order to ensure that those countries can swiftly be reinstated in Annex I to this Regulation as soon as they have taken the necessary steps towards ratification of their respective agreements, and pending entry into force thereof, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of reinstating the countries removed from Annex I to Regulation (EC) No 1528/2007 by Regulation (EU) No 527/2013.

(17) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be

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exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[10].

(18) The advisory procedure should be used for the suspension of the elimination of duties given the nature of such suspensions. It should also be used for the adoption of surveillance and provisional safeguard measures given the effects of such measures. Where a delay in the imposition of measures would cause damage which would be difficult to repair, it is necessary to allow the Commission to adopt immediately applicable provisional measures,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND MARKET ACCESS

Article 1

Subject matter

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

Article 2

Scope

1 This Regulation applies to products originating in the regions and states listed in Annex I.

2 The Commission is empowered to adopt delegated acts in accordance with Article 22 to amend Annex I in order to add regions or states from the ACP Group of States which have concluded negotiations on an agreement with the Union which at least meets the requirements of Article XXIV of the General Agreement of Tariffs and Trade 1994 (GATT 1994).

3 A region or state shall remain on the list in Annex I unless the Commission adopts a delegated act in accordance with Article 22 amending Annex I to remove that region or state from that Annex, in particular where:

a the region or state indicates that it intends 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.

***Changes to legislation:** There are currently no known outstanding effects for the Regulation (EU) 2016/1076 of the European Parliament and of the Council. (See end of Document for details)*

Article 3

Delegation of power

The Commission is empowered to adopt delegated acts in accordance with Article 22 to amend Annex I to this Regulation by reinstating those regions or states from the ACP Group of States which were removed from Annex I to Regulation (EC) No 1528/2007 by Regulation (EU) No 527/2013 and which have, since such removal, taken the necessary steps towards ratification of their respective agreements.

Article 4

Market access

1 Import duties shall be eliminated on all products of Chapters 1 to 97, with the exception of Chapter 93, of the Harmonised System originating in a region or state listed in Annex I. Such elimination shall be subject to the general safeguard mechanism provided for in Articles 9 to 20.

2 For products of Chapter 93 of the Harmonised System originating in regions or states listed in Annex I, the most-favoured-nation duties applied shall continue to apply.

3 Paragraph 1 shall not apply to products originating in South Africa. Such products shall be subject to the relevant provisions of the TDCA. The Commission is empowered to adopt delegated acts in accordance with Article 22 to add an Annex to this Regulation setting out the regime applicable to products originating in South Africa once the relevant trade provisions of the TDCA have been superseded by the relevant provisions of an agreement establishing, or leading to the establishment of, an EPA.

4 Paragraph 1 shall not apply to products under tariff heading 0803 00 19 originating in a region or state listed in Annex I and released for free circulation in the outermost regions of the Union until 1 January 2018. Paragraph 1 of this Article and Article 8 shall not apply to products under tariff heading 1701 originating in a region or state listed in Annex I and released for free circulation in the French overseas departments until 1 January 2018. Those periods shall be extended to 1 January 2028 unless otherwise agreed between the Parties to the relevant agreements. The Commission shall publish a notice in the *Official Journal of the European Union* informing interested parties of the expiry of this provision.

CHAPTER II

RULES OF ORIGIN AND ADMINISTRATIVE COOPERATION

Article 5

Rules of origin

1 The rules of origin set out in Annex II shall apply in determining 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 regions or states listed in Annex I when that agreement is either provisionally applied, or enters into force, whichever is the earlier. The Commission shall publish a notice