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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Annex I to Council Regulation (EC) No 1528/2007 as regards the exclusion of  
a number of countries from the list of regions or states which have concluded  
negotiations**

## **EXPLANATORY MEMORANDUM**

### **CONTEXT OF THE PROPOSAL**

After the negotiation process of the Economic Partnership Agreements (EPA) with the ACP regions which started in 2002 and was concluded in December of 2007, a number of countries have neither taken the necessary steps towards ratification of an EPA nor concluded comprehensive regional negotiations.

In particular, the Republic of Burundi, the Union of the Comoros, the Republic of Ghana, the Republic of Kenya, the Republic of Namibia, the Republic of Rwanda, the United Republic of Tanzania, the Republic of Uganda, the Republic of Zambia, have concluded negotiations but have not signed their respective Agreements.

The Republic of Botswana, the Republic of Cameroon, the Republic of Côte d'Ivoire, the Republic of the Fiji Islands, the Republic of Haiti, the Kingdom of Lesotho, the Republic of Mozambique, the Kingdom of Swaziland, and the Republic of Zimbabwe have signed but have not taken the necessary steps towards ratification of their respective Agreements.

Therefore, these countries no longer meet the conditions of the Market Access Regulation for advance provisional application of trade preferences which were extended to them as of 1 January 2008 in anticipation of the steps towards ratification of an EPA. According to the criteria set out in Article 2(3) of Council Regulation (EC) No 1528/2007 of 20 December 2007, trade preferences granted to these countries should no longer be maintained. The attached proposal is intended to amend the list of countries that benefit from the preferences (Annex I of Council Regulation (EC) No 1528/2007) by removing those which have still not taken the necessary steps towards ratification of an EPA. The Commission will continue to work with a view to ensuring that these countries become a contracting party to an EPA, and will use to the full the recent momentum of different negotiations to create a sustainable long term trade regime with these partners in keeping with the EPA negotiating directives and the priorities set out in the Cotonou Agreement.

The Commission has informed the Council, the European Parliament, the ACP Group of States and civil society that the current situation is not sustainable, as duty-free quota-free market access is still granted to beneficiary countries which are not taking the necessary steps towards ratification of the agreements on which this access is based, thus removing the justification for its advance provisional application.

Should the countries removed from Annex I take the necessary steps towards ratification of an EPA, they would continue to benefit from the respective trade preferences and could therefore be re-instated in the Annex as soon as possible in order to provide continuity of their market access. To this end the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the TFEU for the purpose of amending Annex I in order to reinstate these countries.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Annex I to Council Regulation (EC) No 1528/2007 as regards the exclusion of a number of countries from the list of regions or states which have concluded negotiations**

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,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Negotiations on the Economic Partnership Agreements ('the Agreements') between:

The CARIFORUM states, of the one part, and the European Community and its Member States, of the other part were concluded on 16 December 2007;

The European Community and its Member States, of the one part, and the Central Africa Party, of the other part were concluded on 17 December 2007 (the Republic of Cameroon);

Ghana, on the one part, and the European Community and its Member States, on the other part were concluded on 13 December 2007;

Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part were concluded on 7 December 2007;

The Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part were concluded on 28 November 2007 (the Republic of Seychelles and the Republic of Zimbabwe), on 4 December 2007 (the Republic of Mauritius), on 11 December 2007 (Union of the Comoros and the Republic of Madagascar) and 30 September 2008 (the Republic of Zambia);

The SADC EPA states, on the one part, and the European Community and its Member States, on the other part were concluded on 23 November 2007 (the Republic of Botswana, the Kingdom of Lesotho, the Kingdom of Swaziland, the Republic of Mozambique) and 3 December 2007 (the Republic of Namibia);

The East African Community Partner States, on the one part, and the European Community and its Member States, on the other part were concluded on 27 November 2007;

The Pacific States, of the one part, and the European Community, of the other part were concluded on 23 November 2007.

- (2) The conclusion of negotiations on the Agreements by Antigua and Barbuda, the Commonwealth of the Bahamas, Barbados, Belize, the Republic of Botswana, the Republic of Burundi, the Republic of Cameroon, Union of the Comoros, the Republic of Côte d'Ivoire, the Commonwealth of Dominica, the Dominican Republic, the Republic of the Fiji Islands, the Republic of Ghana, Grenada, the Cooperative Republic of Guyana, the Republic of Haiti, Jamaica, the Republic of Kenya, the Kingdom of Lesotho, the Republic of Madagascar, the Republic of Mauritius, the Republic of Mozambique, the Republic of Namibia, the Independent State of Papua New Guinea, the Republic of Rwanda, Federation of Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, the Republic of Seychelles, the Republic of Suriname, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Trinidad and Tobago, the Republic of Uganda, the Republic of Zambia<sup>1</sup> and the Republic of Zimbabwe permitted their inclusion in Annex I to Council Regulation (EC) No 1528/2007 of 20 December 2007 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<sup>2</sup>.
- (3) The Republic of Botswana, the Republic of Burundi, the Republic of Cameroon, Union of the Comoros, the Republic of Côte d'Ivoire, the Republic of the Fiji Islands, the Republic of Ghana, the Republic of Haiti, the Republic of Kenya, the Kingdom of Lesotho, the Republic of Mozambique, the Republic of Namibia, the Republic of Rwanda, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Uganda, the Republic of Zambia, and the Republic of Zimbabwe have not taken the necessary steps towards ratification of their respective Agreements,
- (4) Consequently, in the light of Article 2(3) of Regulation (EC) No 1528/2007, and in particular point (b) thereof, Annex I to that Regulation should be amended to remove those countries,
- (5) In order to ensure that partners can swiftly be reinstated in Annex I to that Regulation as soon as they have taken the necessary steps towards ratification of their respective Agreements, and pending their entry into force, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the European Commission in respect of reinstating the countries removed from Annex I through this Regulation. It is of particular importance that the European Commission carry out appropriate consultations during its preparatory work, including at expert level. The European Commission, when preparing and drawing-up delegated

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<sup>1</sup> OJ L 330, 9.12.2008, p.1

<sup>2</sup> OJ L 348, 31.12.2007, p. 1

acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council,

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1528/2007 is amended as follows:

(1) The following Articles 2a and 2b are inserted:

*"Article 2a*

The Commission shall be empowered to adopt delegated acts in accordance with Article 2b to amend Annex I by reinstating those regions or states from the ACP Group of States which were removed from that Annex by virtue of [**Regulation (EU) No .../...**<sup>3</sup>], and which have since taken the necessary steps towards ratification of their respective Agreements after removal from Annex I.

*Article 2b*

**Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 2a shall be conferred on the Commission for an indeterminate period of time from the entry into force of this Regulation.
3. The delegation of power referred to in Article 2a may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 2a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council."

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<sup>3</sup> OJ L ..., ....., p. .

(2) Annex I is replaced by the the text set out in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply on 1 January 2014.

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**ANNEX**

**"ANNEX I**

List of regions or states which have concluded negotiations within the meaning of Article 2(2):

ANTIGUA AND BARBUDA

THE COMMONWEALTH OF THE BAHAMAS

BARBADOS

BELIZE

THE COMMONWEALTH OF DOMINICA

THE DOMINICAN REPUBLIC

GRENADA

THE COOPERATIVE REPUBLIC OF GUYANA

JAMAICA

THE REPUBLIC OF MADAGASCAR

THE REPUBLIC OF MAURITIUS

THE INDEPENDENT STATE OF PAPUA NEW GUINEA

FEDERATION OF SAINT KITTS AND NEVIS

SAINT LUCIA

SAINT VINCENT AND THE GRENADINES

THE REPUBLIC OF SEYCHELLES

THE REPUBLIC OF SURINAME

THE REPUBLIC OF TRINIDAD AND TOBAGO"

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

**1. NAME OF THE PROPOSAL:**

Regulation of the European Parliament and of the Council amending Annex I to Council Regulation (EC) No 1528/2007 as regards the exclusion of a number of countries from the list of regions or states which have concluded negotiations.

**2. BUDGET LINES:**

**Chapter and Article:** Chapter 12, Article item 120 (Customs duties)

**Amount budgeted for the year 2011:** EUR 16 653 700 000

**3. FINANCIAL IMPACT**

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

(EUR million to one decimal place)

| Budget line | Revenue <sup>4</sup>                  | 1 year period starting 01/01/2014 | 2014    |
|-------------|---------------------------------------|-----------------------------------|---------|
| Article 120 | <i>Own resources – customs duties</i> |                                   | + 381.6 |

| Situation following action |         |         |  |  |  |
|----------------------------|---------|---------|--|--|--|
|                            | 2015    | 2016    |  |  |  |
| Article 120                | + 381.6 | + 381.6 |  |  |  |
|                            |         |         |  |  |  |

<sup>4</sup> Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % of collection costs. According to the current Own Resources Decision (Council Decision (EC, Euratom) No 436/2007 of 7 June 2007 on the system of the European Communities' own resources (OJ L 163, 23.6.2007, p. 17-21). This might be subject to change with entry into force of a new Own Resources Decision.



#### 4. ANTI-FRAUD MEASURES

The present proposal only amends the list of beneficiaries of the Regulation (EC) No 1528/2007 and does not concern measures of the Regulation related to the fight against fraud.

#### 5. OTHER REMARKS

Regulation (EC) No 1528/2007 granted a number of countries duty-free, quota-free access to the EU market under certain conditions. The present proposal amends the list of beneficiaries (Annex I) of this Regulation. If a country is removed from a list of beneficiaries, it will export to the EU under a different trade regime which is either less favourable or at best equal to the regime offered by the Regulation, resulting in more customs duties being collected on behalf of the EU.

The calculation of impact on the EU budget takes the situation created by Regulation (EC) No 1528/2007 as the *status quo* (duty-free, quota-free access to the EU market, no duties paid). Then, for each country concerned, it compares the *status quo* to duties paid under an alternative trade regime each country will enjoy once removed from the list of beneficiaries, which is as follows:

- for least-developed countries (LDCs): the Everything But Arms (EBA) scheme, offering duty-free, quota-free access to the EU market (no duties paid);
- for upper-middle-income countries (UMICs): the most-favoured-nation (MFN) treatment (duties paid as per general EU tariff schedule);<sup>5</sup>
- for other developing countries (DCs): the Generalised System of Preferences (GSP) that suspends or reduces tariffs (some duties paid, some at a reduced rate).

Please note that the final impact on the EU budget will depend on the number of countries removed from the list of beneficiaries. The present amendment proposes to remove 18 countries from Annex I, of which 9 would not benefit from the EBA scheme and therefore their exports to the EU would be subject to a duty. However, if they fulfill certain conditions before the amendment takes effect on 1 January 2014, they will continue to benefit from current trade preferences. In this respect, the figure given is a maximum, as it assumes all 9 concerned countries will be removed: in fact, if a country continues to benefit from the Regulation, the customs duties will not accrue to the EU budget and the figure will be lower.

Table 1 gives a breakdown of budgetary impact per country concerned. The calculation is based on the year 2009 and assumes that trade flows remain constant. The amount of dutiable imports reflects the status of the country, i.e. the applicable trade regime in absence of the preferences provided by Regulation (EC) No 1528/2007. The customs duties that are to accrue to the EU budget are calculated by multiplying the amount of dutiable imports (column 4) by the margin of preference (the difference between the applicable duty rates under Regulation (EC) No 1528/2007 and alternative trade regime, column 5). The total net amount

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<sup>5</sup> Assuming that the GSP reform (Proposal for a Regulation of the European Parliament and of the Council applying a scheme of Generalised Tariff Preferences) is adopted.

of duties to accrue to the EU budget reduces the gross total by the 25% percent collection cost retained by the Member States.

**Table 1:** Budgetary impact per country potentially concerned by the proposed amendment to Regulation (EC) No 1528/2007:

| 1   | 2              | 3          | 4                | 5                  | 6 = 5*4             |
|---|----------------|------------|------------------|--------------------|---------------------|
| Country                                   | Country status | EU Imports | Dutiable Imports | Pref Reg 1528/2007 | Pref value (duties) |
|   |                | 1000 EUR   | 1000 EUR         | %                  | 1000 EUR            |
| <b>Botswana</b>                           | UMIC           | 370.707    | 35.639           | 81,7               | 29.111              |
| <b>Burundi</b>                            | LDC            | 39.000     | 0                | 0                  | 0                   |
| <b>Cameroon</b>                           | DC             | 1.741.473  | 333.724          | 14,9               | 49.858              |
| <b>Comoros</b>                            | LDC            | 9.000      | 0                | 0                  | 0                   |
| <b>Fiji</b>                               | DC             | 92.402     | 89.986           | 75,3               | 67.782              |
| <b>Ghana</b>                              | DC             | 1.087.880  | 376.548          | 10,3               | 38.654              |
| <b>Haiti</b>                              | LDC            | 19.000     | 0                | 0                  | 0                   |
| <b>Ivory Coast</b>                        | DC             | 3.051.022  | 1.029.512        | 10,3               | 105.662             |
| <b>Kenya</b>                              | DC             | 1.075.563  | 751.792          | 5,8                | 43.804              |
| <b>Lesotho</b>                            | LDC            | 101.000    | 0                | 0                  | 0                   |
| <b>Mozambique</b>                         | LDC            | 679.000    | 0                | 0                  | 0                   |
| <b>Namibia</b>                            | UMIC           | 585.765    | 298.663          | 19,5               | 58.156              |
| <b>Rwanda</b>                             | LDC            | 37.000     | 0                | 0                  | 0                   |
| <b>Swaziland</b>                          | DC             | 130.656    | 125.764          | 52                 | 65.427              |
| <b>Tanzania</b>                           | LDC            | 348.000    | 0                | 0                  | 0                   |
| <b>Uganda</b>                             | LDC            | 371.000    | 0                | 0                  | 0                   |
| <b>Zambia</b>                             | LDC            | 233.000    | 0                | 0                  | 0                   |
| <b>Zimbabwe</b>                           | DC             | 234.992    | 167.459          | 30,1               | 50.365              |
| <b>TOTAL</b>                              |                |            |                  |                    | 508.819             |
| <b>TOTAL net (after collection costs)</b> |                |            |                  |                    | 381.614             |

Source: COMEXT (Eurostat), DG TRADE calculations