



EUROPEAN UNION

NV/2019

NOTE VERBALE

The Delegations of the European Union to the Kingdom of Lesotho, the Republic of Botswana, the Kingdom of Eswatini, the Republic of Namibia and the Republic of South Africa present their compliments, respectively, to the Hon. Dr. Moeketsi Majoro, Chairman of SACU, the Hon. Habofanoeh Lehana, Minister of Trade and Industry of Lesotho, the Hon. Bogolo Joy Kenewendo, Minister of Investment, Trade and Industry of Botswana, the Hon. Manqoba Khumalo, Minister of Commerce, Industry and Trade of Eswatini, the Hon. Tjekero Tweya, Minister of Industrialization, Trade and SME Development of Namibia and the Hon. Ebrahim Patel, Minister of Trade and Industry of South Africa and have the honour to request, on behalf of the European Union, consultations with the Southern African Custom Union (SACU), pursuant to Article 77 of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the Southern African Development Community Member States (SADC), of the other part (EU-SADC EPA), concerning the imposition of a safeguard measure on import of frozen bone-in chicken portions from the European Union.

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The European Union would like to address in these consultations the safeguard measure approved by the SACU Council of Ministers on 27 June 2018, notified to the European Commission on 18 July 2018 and that entered into force on 28 September 2018. The measure concerns the imports of frozen bone-in chicken cuts from the European Union and is based on an alleged increase in the volume of imports into the territory of SACU causing or threatening to cause a disturbance and/or serious injury. The European Union is addressing this request to SACU pursuant to Article 75 (2) of the EU-SADC EPA, according to which SACU and its constituent states (Botswana, Lesotho, Namibia, South Africa and Swaziland) have to act as a collective for disputes which concern collective action of SACU.

The European Union is concerned that the measure above appears to be inconsistent with certain provisions under the EU-SADC EPA, as provided for below:

- Article 34 (2) of the EU-SADC EPA, which requires that safeguard measures may be taken if a product originating in one Party is being imported into the territory of another Party or SACU in such increased quantities and under such conditions as to cause or threaten to cause disturbances or serious injury in the territory of SACU. The measure at issue appears to be inconsistent with these requirements, *inter alia*, for the following reasons:
 - The assessment of the existence of a threat of disturbance and/or serious injury as a result of an increase in volume of imports was based on outdated import data;
 - The measure at issue was adopted by a different authority from the one which opened the investigation, and on a different legal basis;
 - The measure at issue has a different geographic scope than the investigation, which did not take into account the import data relating to SACU but was based on data relating exclusively to the Republic of South Africa;
 - Other factors such as the volatility of feed raw material prices, the increase in labour costs, diesel, electricity, plastic and cardboard boxes, duties imposed on the soya oilcake used in production of feed and imports from other countries were not appropriately taken into account in the analysis of the existence and level of a threat of disturbance and/or serious injury because of an increase in volume of imports;
 - The measure does not take into consideration that the imports during the period December 2016 – September 2018 greatly decreased compared to the period covered by the investigation.
- Article 34 (2) of the EU-SADC EPA, which provides that safeguard measures can be taken against imports that have increased as a result of the obligations incurred under the EU-SADC EPA. The measure at issue appears to be inconsistent with these requirements, *inter alia*, for the following reasons:
 - The alleged increase in quantity of import did not result from obligations incurred under the EU-SADC EPA;
 - Any import increase occurred prior to the application of EU-SADC EPA cannot be a result of the obligations incurred under the same agreement.
- Article 34 (2) of the EU-SADC EPA, which provides that the safeguard measure must not exceed what is necessary to remedy or prevent the serious injury or disturbance. The measure at issue appears to be inconsistent with these requirements, *inter alia*, for the following reasons:
 - Other factors such as the volatility of feed raw material prices, the increase in labour costs, diesel, electricity, plastic and cardboard boxes, duties imposed on the soya oilcake used in

production of feed and imports from other countries were not appropriately taken into account in the analysis of the existence and level of a threat of disturbance and/or serious injury because of an increase in volume of imports;

- The calculation of the price disadvantage on which the level of the measure is based, does not appropriately take into consideration the different level of antidumping duties, which were adopted by SACU against import of bone-in chicken portions from the European Union.
- The measure does not take into consideration that the imports during the period December 2016 – September 2018 greatly decreased compared to the period covered by the investigation.
- Article 34 (7) (a), (b) and (c) of the EU-SADC EPA, which provides, among others, that (i) situations referred to in Article 34 (2) of the EU-SADC EPA should be referred to the Trade and Development Committee and (ii) all relevant information required for a thorough examination of the case shall be submitted to the Trade and Development Committee (and therefore to the European Union Party). The measure at issue appears to be inconsistent with these requirements, *inter alia*, for the following reasons:
 - The Trade and Development Committee has not been given the opportunity to properly examine the case and propose a recommendation or satisfactory solution;
 - The Trade and Development Committee (and therefore the European Union Party) was not provided with the necessary data or was provided only with indexed data, which made it impossible to thoroughly and fully examine the situation.

The European Union reserves the right to address additional measures and claims under other provisions of the EU-SADC EPA regarding the above matters during the course of the consultations.

The European Union looks forward to receiving SACU's reply to this request and to finding a mutually convenient date and place for the consultations.

The European Union proposes to hold consultations in English and to agree to use English as common working language for the proceedings in accordance with Article 15 of Rules of Procedures for dispute avoidance and settlement in Decision No 2/2019 of the Joint Council.

14 June 2019