



Department for  
International Trade

# Continuing the United Kingdom's Trade Relationship with the Southern African Customs Union Member States and Mozambique

**Economic Partnership Agreement between the Southern African Customs Union Member States and Mozambique, of the one part and the United Kingdom of Great Britain and Northern Ireland, of the other part**

November 2019





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Presented to Parliament

by the Secretary of State for International Trade

by Command of Her Majesty

November 2019



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## Introduction

1. This report explains the Government's approach to delivering continuity in the United Kingdom's ("UK") trade relationship with the Southern African Customs Union Member States and Mozambique as the UK leaves the European Union ("EU"). The partner countries covered are Botswana, Eswatini (formerly known as Swaziland), Namibia, Lesotho, Mozambique and South Africa (hereafter, referred to as "SACUM").
2. As the UK leaves the EU, the Government has sought to deliver the maximum possible certainty to businesses and consumers through ensuring continuity in the UK's existing trade relationships. It is in no-one's interests to disrupt existing trade flows.
3. To achieve this, the Government has developed new bilateral agreements that replicate, as far as possible, the effects of the Government's existing trade agreements with existing partners. In the event of either a negotiated agreement or no agreement with the EU, the SACUM-UK Economic Partnership Agreement is intended to take effect when the existing agreement between the EU and SACUM ceases to apply to the UK (or as soon as possible thereafter).
4. Wherever possible, the Government has sought a technical replication of these agreements but, in some cases, the UK has applied bespoke solutions for individual agreements as necessary to ensure continuity of effect in a bilateral context.
5. This report gives details of, and explains the reasons for, any significant differences between:
  - a. the trade-related provisions of the Economic Partnership Agreement between the Southern African Customs Union ("SACU") Member States<sup>1</sup> and Mozambique, of the one part and the United Kingdom of Great Britain and Northern Ireland, of the other part, ("the SACUM-UK EPA") and
  - b. the trade-related provisions of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the Southern African Development Community EPA States ("the SADC EPA States"<sup>2</sup>), of the other part, signed in Kasane on 10 June 2016 ("the existing EPA").
6. The report first sets out the general drafting changes which are consistent across all the UK's continuity trade agreements and which do not have a significant impact on the effect of the UK's current trade relationships. It then explains any significant differences between the trade-related provisions in the SACUM-UK EPA and the existing EPA. The report includes some discussion of the economic impacts and focuses solely on the changes made to the trading arrangements between the UK and SACUM (the "Parties") as a result of moving from the current to a new agreement. Any impacts resulting from the UK's exit from the EU or the nature of the Future Economic Partnership have been excluded from this report.

<sup>1</sup> The "SACU Member States" are Botswana, Eswatini, Lesotho, Namibia and South Africa.

<sup>2</sup> The "SADC EPA States" are Botswana, Eswatini, Lesotho, Namibia, South Africa and Mozambique.

## Legal approach

7. The UK has agreed with Economic Partnership Agreement (“EPA”) partners that the most appropriate form of legal instrument to ensure continuity is a long form agreement, which is an agreement based on the text of the EU-third country agreement. The SACUM-UK EPA is a long form agreement.
8. To draft the SACUM-UK EPA, the negotiating States have reproduced all relevant sections of the existing EPA with necessary technical and administrative changes to make this operable in a bilateral context.
9. The existing EPA is the main trade agreement between the EU and SACUM. The EU and South Africa are also parties to the Trade, Development and Cooperation Agreement (“the TDCA”). The current status of the TDCA is explained in this report (at paragraphs 65 and 125).

## Resources

10. This report is intended to aid businesses, consumers and parliamentarians in understanding any significant differences made to the UK’s trade relationship with SACUM, the reasons for any changes, and their impact.
11. Should you wish to view the existing EPA as originally published, it can be found online on [the European Commission’s website](#).
12. More detail, including decisions of the Joint Council, Trade and Development Committee and other committees established under the existing EPA for the purpose of administering the existing EPA, can be found on the [EUR-Lex website](#). A consolidated version of the existing EPA can also be found on the [EUR-Lex website](#). The consolidated text is not an authoritative version of the existing EPA but will assist readers to understand how the existing EPA has been amended since its entry into force.
13. Should you wish to view the full text of the SACUM-UK EPA, it will be laid in Parliament alongside an Explanatory Memorandum as part of the UK’s treaty ratification process in accordance with the Constitutional Reform and Governance Act 2010 (“CRAG Act”). The text will also be available on GOV.UK.

# Economic Background

## Trade between the UK and SACUM

14. This section provides a country-specific background analysis of trade between the UK and SACUM.
15. Total trade in goods and services between the UK and SACUM was £9.7 billion in 2018, accounting for 0.7% of total UK trade.<sup>3</sup>
16. South Africa is the UK's 27th largest trading partner, accounting for 91% of UK trade with SACUM, and 0.7% of total UK trade.<sup>4</sup> Botswana is the UK's 99th largest trade partner, Mozambique is the UK's 113th largest trade partner, Namibia is the UK's 139th largest trade partner, Eswatini is the UK's 149th largest trade partner, and Lesotho is the UK's 203rd largest trade partner. Botswana, Mozambique, Namibia, Eswatini and Lesotho collectively account for less than 0.1% of UK trade.
17. South Africa is the UK's 26th largest export market, accounting for 88% of UK exports to SACUM, and 0.7% of total UK exports. Botswana is the UK's 83rd largest export market, Mozambique is the UK's 111th largest export market, Namibia is the UK's 128th largest export market, Eswatini is the UK's 176th largest export market, and Lesotho is the UK's 202nd largest export market. Botswana, Mozambique, Namibia, Eswatini and Lesotho collectively account for less than 0.1% of UK exports.
18. South Africa is the UK's 28th largest import source, accounting for 95% of UK imports from SACUM, and 0.7% of total UK imports. Mozambique is the UK's 108th largest import source, Eswatini is the UK's 125th largest import source, Namibia is the UK's 134th largest import source, Botswana is the UK's 145th largest import source, and Lesotho is the UK's 215th largest import source, with imports from Lesotho of less than £500,000. Botswana, Mozambique, Namibia, Eswatini and Lesotho collectively account for less than 0.1% of UK imports.

**Table 1: Trade between the UK and SACUM, 2018 (£, million)**

	Trade in goods	Trade in services	Total trade
UK exports to SACUM	2,186	2,661	4,847
UK imports from SACUM	3,510	1,343	4,853
Total	5,696	4,004	9,700

Source: [ONS \(2019\), UK total trade: all countries, non-seasonally adjusted](#) (release date: 24th July 2019).

19. After South Africa, the countries in SACUM with the largest value of trade with the UK in 2018 were Botswana, Mozambique and Namibia. The trade between the UK and SACUM is shown in the table below.

<sup>3</sup> Source: [ONS \(2019\), UK total trade: all countries, non-seasonally adjusted](#).

<sup>4</sup> Treating EU members as individual trading partners with the UK.



**Table 2: Trade between the UK and SACUM countries, 2018 (£, million)**

	UK exports goods	UK exports services	UK imports goods	UK imports services	Total trade
South Africa	2,108	2,149	3,358	1,255	8,870
Botswana	24	370	12	8	414
Eswatini	0	13	7	49	69
Lesotho	1	3	0	0	4
Mozambique	12	99	103	25	239
Namibia	41	27	30	6	104
Total	2,186	2,661	3,510	1,343	9,700

Source: [ONS \(2019\), UK total trade: all countries, non-seasonally adjusted](#) (release date: 24th July 2019).

20. Using data from HMRC for trade in goods only, the following table shows that the top goods exported to the region were in machinery and mechanical appliances (£409 million), vehicles other than railway or tramway stock (£335 million), and electrical machinery and equipment (£219 million), representing just under half of the total value of goods exported to the region in 2018. The UK's top goods imported from the region were precious stones and metals (£4,180 million), edible fruits and nuts (£547 million) and vehicles other than railway or tramway stock (£409 million) representing over 80% of the total value of goods imported from the region.
21. ONS data is recorded on a 'Balance of Payments' or 'change of ownership' basis where a good or service leaving (entering) the economic territory of a country is recorded as an export (import) only if it has changed ownership between the resident of the reporting country and non-residents. Goods exports (imports) are recorded by HMRC if a good physically leaves (enters) the economic territory of a country. There is a significant difference between total UK goods imports from South Africa recorded on a 'change of ownership' basis versus a 'physical movement' basis. Most of this difference is likely to be driven by different statistical treatment for trade in gold under the two approaches.<sup>5</sup>

**Table 3: Top 5 UK goods exports to & imports from SACUM, 2018 (at HS2<sup>6</sup>, £ million)**

Top 5 UK goods exports to the region	Value	Top 5 UK goods imports from the region	Value
Machinery and mechanical appliances	409	Precious stones and metals	4,180

<sup>5</sup> The geographic location of gold in storage often differs from the economic nationality of its owner. Movement of gold into the UK from South Africa which is owned by a foreign national could be driving the difference between the total imports as recorded on a 'physical movement' and 'change of ownership' basis.

<sup>6</sup> The Harmonized System (HS) is an international nomenclature for the classification of products. It allows participating countries to classify traded goods on a common basis for customs purposes.

Vehicles other than railway or tramway stock	335	Edible fruit and nuts	547
Electrical machinery and equipment	219	Vehicles other than railway or tramway stock	409
Beverages, spirits and vinegar	136	Machinery and mechanical appliances	162
Pharmaceutical products	127	Ores, slag and ash	141

Source: [HMRC trade statistics by commodity code](#) (accessed July 2019). Sectors classified according to Harmonised System chapters. Data presented is recorded on a 'physical movement' basis where a good is recorded as an export (import) if it physically leaves (enters) the economic territory of a country.

22. The table below presents sectoral services data for South Africa only, as sector data isn't available for Botswana, Eswatini, Lesotho, Mozambique or Namibia. Using data from the ONS for trade in services only, the following table shows that in 2018 the top services exported to South Africa were in transportation (£402 million), travel (£393 million), and other business services (£353 million), representing just over half of the total value of services exported to the region in 2018. The UK's top services imported from South Africa were travel (£568 million), other business services (£317 million) and transportation (£115 million) representing 80% of the total value of services imported from South Africa.

**Table 4: Top 5 UK services exports to & imports from South Africa, 2018 (£ million)**

<b>Top 5 UK services exports to South Africa</b>	<b>Value</b>	<b>Top 5 UK services imports from South Africa</b>	<b>Value</b>
Transportation	402	Travel	568
Travel	393	Other Business Services	317
Other Business Services	353	Transportation	115
Intellectual property	343	Telecommunications, computer and information services	105
Financial	300	Financial	61

Source: [ONS \(2019\), UK trade in services: service type by partner country, non-seasonally adjusted](#) (release date: 24<sup>th</sup> July 2019).

Note: Data for 'manufacturing services' (export), 'Maintenance and repair' (export), 'construction' (export), 'intellectual property' (import), 'personal, cultural and recreational' (import) and 'government services' (import and export) have been omitted by the ONS as the data might be disclosive, but the values are included in the overall totals. Services data is always reported on a 'change of ownership' (Balance of Payments) basis.

## UK businesses exporting to and importing from South Africa

23. In 2017, HMRC estimated that 9,053 VAT registered UK businesses exported goods to and 3,218 imported goods from South Africa.<sup>7</sup> Of businesses who engaged in trade in goods, 61% were micro and small businesses, 21% were medium sized and 12% were large.<sup>8</sup> The majority of these were in the 'services' sector, where 5,205 businesses exported goods and 2,229 businesses imported goods.<sup>9</sup>
24. For context, provisional survey data from the ONS shows that around 340,500 (non-financial) registered businesses in Great Britain traded either goods or services or both in 2017 with another country.<sup>10</sup> This was just under 15% of all VAT/PAYE registered businesses. There were around 203,900 (non-financial) registered businesses in Great Britain engaged in goods trade with another country and 194,600 (non-financial) registered businesses trading in services in 2017. Some of these businesses traded in both goods and services. There will be other businesses trading internationally, which are not identified by these surveys as they are not registered for VAT. Neither of these sources include businesses trading below the VAT registration threshold.

## Economic impact of the existing EPA

25. The existing EPA was signed in June 2016 and has been provisionally applied since October 2016 between all parties to the agreement except for Mozambique. Provisional application with Mozambique began in February 2018.
26. A 2018 study on EU free trade agreements highlighted that the existing EPA is the first and only regional EU EPA in Africa where all partners are implementing the tariff cuts foreseen by the EPA. The study states that the existing EPA grants asymmetric market access to the SADC EPA States (the same states covered by the SACUM-UK EPA), who can shield sensitive products from full liberalisation. Botswana, Eswatini, Lesotho, Namibia and South Africa grant duty free and quota free treatment to around 85% of EU exports, with around a further 13% of EU exports benefiting from reduced tariffs or Tariff Rate Quotas ("TRQs").<sup>11</sup> Mozambique, a Least Developed Country ("LDC") and not a member of SACU, lowers duties on around 74% of EU imports.<sup>12</sup> If local industry is threatened because of import surges from Europe, EPAs allow measures to be taken to protect industrial sectors and infant industries.<sup>13</sup> In return, all SADC EPA States except for South Africa receive duty free and quota free treatment for all goods exports to the EU except arms and munitions. South Africa receives duty free and quota free treatment for 96% of its EU exports with a further 2.7% of its EU exports benefiting from reduced tariffs or TRQs.<sup>14</sup>

<sup>7</sup> HMRC. [Trade in Goods by Business Characteristics 2017](#). Business count data is not available for any other SACUM countries.

<sup>8</sup> The remainder are in the 'unknown' category for business size. Some businesses will be exporters and importers, so statistics may be an overestimate.

<sup>9</sup> This data does not include services traded. Instead it refers to those businesses in the services industry that trade in goods.

<sup>10</sup> ONS. [Annual Business Survey: Non-financial business economy, exporters and importers in Great Britain 2017](#).

<sup>11</sup> European Commission. (2018). [Individual reports and info sheets on Implementation of EU Free Trade Agreements](#), p 227.

<sup>12</sup> European Commission (2016), [Economic Partnership Agreement \(EPA\) between the European Union and the Southern African Development Community \(SADC\) EPA Group – Key advantages](#).

<sup>13</sup> European Commission (2017), [Economic Partnership Agreements](#).

<sup>14</sup> European Commission. (2018). [Individual reports and info sheets on Implementation of EU Free Trade Agreements](#), p 227.

27. In June 2016, the European Commission published an impact assessment on the economic impact of the existing EPA.<sup>15</sup> It estimated that, as a result of the tariff reductions set out in the existing EPA, individual SADC EPA States would see their GDP grow by between 0.01% and 1.18% by 2035. The weighted average estimated GDP increase, which was strongly dominated by South Africa, was about 0.03%. The impact assessment estimated the SADC EPA States were expected to see an average increase of 0.13% in their exports to the world, and 0.14% in their imports from the world. SADC EPA States' exports to the EU were expected to increase by 0.91%. The existing EPA was not expected to have a measurable impact on the EU's overall trade with the world, but exports to SADC EPA States were anticipated to increase by 0.73%. The existing EPA was expected to modestly reduce the poverty headcount in South Africa and Namibia, which were the two countries considered for the simulation of poverty impacts.
28. In 2018, DIT and DFID published a further impact assessment for the ratification of the existing EPA.<sup>16</sup> The impact assessment's central estimate was of a £2m cost to UK business, excluding benefits from increased trade. The cost was a one-off familiarisation cost associated with reading the guidance or employing a specialist agent in order to trade under the existing EPA preferences.<sup>17</sup> This was the only monetised impact and should be set against the numerous benefits to business and the wider economy that have not been monetised. Longer-term benefits of these agreements were expected to outweigh the limited, short-term costs.
29. In 2007, the European Commission published a Sustainability Impact Assessment (SIA) covering all their EPAs with African, Caribbean and Pacific States.<sup>18</sup> It found that EPAs have a positive effect on two-way trade flows and production for both LDCs and non-LDCs. It also estimated that there would be a positive social impact through greater employment and incomes. However, there was uncertainty over the effects on the environment.
30. The European Commission has highlighted the general development benefits associated with EPAs for partner countries.<sup>19</sup> These range from creating new business, trade and investment opportunities, to positive labour market impacts and support for farmers, to promoting economic integration into the local region.
31. In 2015, the DFID commissioned a Rapid Evidence Assessment (REA) on the empirical impact of free trade agreements ("FTAs") between developed and developing countries on economic development in developing countries.<sup>20</sup> The assessment concluded that there is mixed evidence on the observed impacts of FTAs on trade between developed and developing countries, and while some studies find large positive impacts of FTAs on the value of trade flows, others find minor or no impacts. This could be explained either by differences in the methodology between studies, or by differences in the impacts of agreements, which in turn could be driven by differences in the content of different agreements or the political, economic and institutional conditions of FTA partners. The REA also found that the empirical literature did

<sup>15</sup> European Commission (2016) '[The Economic Impact of the EU – SADC EPA Group Economic Partnership Agreement](#)'.

<sup>16</sup> DIT (2018) '[Impact Assessment for the Ratification of the EU-SADC Economic Partnership Agreement](#)'.

<sup>17</sup> International trade under preference allows businesses to import and/or export goods at a lower or nil rate of customs duty and/or levy charge.

<sup>18</sup> European Commission (2007), '[Sustainability Impact Assessment of the EU-ACP Economic Partnership Agreements – Summary of key findings, policy recommendations and lessons learned – Executive summary](#)'.

<sup>19</sup> European Commission (2016) '[10 benefits of Economic Partnership Agreements \(EPAs\)](#)'.

<sup>20</sup> DFID (2015), '[The Impact of Free Trade Agreements between Developed and Developing Countries on Economic Development in Developing Countries](#)'.

not provide conclusive guidance on the overall impact of FTAs on economic development, due to a few significant gaps in coverage.

## Potential loss to UK if the SACUM-UK EPA is not ratified

32. Not being able to ratify this transitioned agreement would result in UK businesses losing the preferences negotiated in the existing EPA. This would include the re-imposition of many tariffs, returning to MFN treatment with SACUM. The benefits derived from trading under preferences under the EPA, such as increases in trade flows, may then be reversed.
33. It is unlikely that the entire effect of the existing EPA would disappear. Many tariffs would revert to MFN rates, discussed in further detail below, but it could take longer for some of the other benefits to be lost. Some gains might endure even in the long run. For example, the UK might still benefit from any regulatory arrangements agreed because of the EPA. Business connections formed because of the EPA might endure.
34. In addition, the existing EPA has only been applied since October 2016 between the EU and SACU, and February 2018 between the EU and Mozambique, with implementation not fully complete until 2031. Therefore, it is unlikely that all the benefits will have been realised yet.
35. The size of the impact of not ratifying the SACUM-UK EPA would depend on the responsiveness of trade flows to increased costs brought about by the loss of provisions within the agreement.<sup>21</sup>

## Immediate impact if not brought into effect

### Impact of tariffs under current MFN rates<sup>22</sup>

36. Much international goods trade takes place in products for which MFN rates are already zero. However, EPAs provide additional opportunities by reducing tariffs on products where this is not the case. If the SACUM-UK EPA was not approved and ratified, tariffs between the UK and SACUM would automatically revert to MFN rates for all trade, other than where specific partner countries benefitted from preferential access to the UK market under a unilateral preference scheme. This would lead to an increase in duties on some UK exports to and imports from SACUM.
37. To estimate the potential impact of losing tariff preferences if the SACUM-UK EPA was not ratified, assumptions have to be made. If all current trade between the UK and SACUM occurred at the negotiated preferential tariff rate and if current patterns of trade remained unchanged in future, reverting to the UK and partner countries' current MFN tariff rates (or reduced UK tariff rates where a country would qualify for a unilateral preference scheme) would result in an annual increase in total duties of up to around £200 million. This would predominantly be duties on imports from SACUM of up to around £120 million, with duties on UK exports increasing by up to around £80 million.<sup>23</sup> The large majority of this increase in total duties would fall on UK trade with South Africa.

<sup>21</sup> Head K and Mayer T. (2014). '[Gravity Equations - Workhorse, toolkit and cookbook](#)'. *Handbook of International Economics*, 4, pp. 131-195. Dhingra S, et al. (2018). '[Beyond Tariff Reductions: What Extra Boost From Trade Agreement Provisions?](#)'. *CEP Discussion Paper No 1532*, LSE, pp. 1-38.

<sup>22</sup> Tariff schedules used in this impact assessment are the applied tariff rates, not bound tariff rates.

<sup>23</sup> DIT's own calculations using tariff data from [ITC Market Access Map \(MacMap\)](#) and [HMRC trade statistics](#) (accessed February 2019). Implied additional duties are calculated using the difference in MFN and

38. These estimates assume that if the SACUM-UK EPA was not ratified, Lesotho and Mozambique would receive tariff free quota free UK market access as LDCs, Eswatini would qualify for standard Generalised System of Preferences (“GSP”) market access as a lower middle-income country, and South Africa, Botswana and Namibia would face UK MFN tariffs.
39. These estimates also assume that all tariff preferences offered under the existing EPA are fully utilised by exporters. This is unlikely to be true. For example, in 2016, the evidence suggests that 62% of the UK’s eligible goods exports to South Africa (defined as those which occurred under tariff lines where a preferential rate was offered under the agreement) actually utilised the tariff preferences.<sup>24</sup> In 2016, DIT estimates suggest that 93% of the UK’s eligible goods imports from Botswana, Eswatini, Mozambique, Namibia and South Africa were imported utilising the preferences under the agreement.<sup>25</sup> This means that the actual increase in duties could be lower than the estimates above.
40. The total duty which would in fact be charged on exports and imports would depend on how quantities and prices of traded products adjusted to the imposition of tariffs. If UK producers were not previously utilising the preferential rates or producers and consumers changed their behaviour in response to higher tariffs, this cost would be lower than estimated above. These are strong assumptions, so this figure should be treated as an indicative estimate of the magnitude of the trade barrier under this scenario.

preferential tariff rates and the 2018 value of trade for each product at HS6 level. Different approaches and data sources for this analysis are likely to yield different results. The estimate of implied additional duties may be different to which would be generated if trade and tariff data at a more disaggregated level (CN8 level) were used.

<sup>24</sup> Nilsson L and Preillon N. (2018). '[EU Exports, Preferences Utilisation and Duty Savings by Member State, Sector and Partner Country](#)'. *European Commission*, pp. 1-17. This report uses data collected by EU Delegations from relevant authorities in countries with which the EU has bilateral reciprocal trade agreements in place.

<sup>25</sup> DIT’s own calculations using data from [Eurostat](#) (accessed 19<sup>th</sup> November 2018). Note that using a single year does not account for fluctuating trends in bilateral trade flows, which can be significant. In general, data on the preference utilisation of trade deals is not readily accessible and should be treated with caution. They indicate whether businesses trading in goods are benefitting from negotiated preferences, but do not tell us which or how many businesses are using these preferences. Nor do they cover services trade. Data is not available for Lesotho.



41. The indicative estimates show that the largest implied increases in duties on UK exports would be on vehicles other than railway or tramway stock (HS87) of up to £29 million, electrical machinery and equipment (HS85) of up to £7 million, and plastics and articles thereof (HS39) of up to £6 million. On the imports side, the largest implied increases in duties would be in edible fruits and nuts (HS8) of up to £44 million, vehicles other than railway or tramway stock (HS87) of up to £40 million, and meat and edible meat offal (HS2) of up to £11 million.
42. Indicative estimates of implied additional tariff duties are provided above to give a sense of scale of possible additional costs of trade. Tariff duties are transfers, where the cost to business is equal to the extra tariff revenue collected by the UK Exchequer and the SACUM governments. However, there could be wider effects of increased costs of trade, including negative impacts on consumer choice, prices, and ultimately economic growth and welfare.

## **Businesses**

43. Additional duties could be absorbed by either business from the UK or SACUM (depending on whether it is the importer or exporter paying the duty), passed on to consumers, or existing trade patterns could be interrupted. This could impact UK competitiveness, leading to disruptions in supply chains and job losses in the short term.
44. Businesses that rely on imports as part of their supply chains may be affected if import prices rise, including UK exporters that rely on regional inputs to export goods to the rest of the world. In 2015 (latest available data), around 15.1% of the value added in UK's gross exports reflected imports from abroad, including 0.1% from South Africa.<sup>26</sup> UK companies which rely on imports from this region could become less competitive.

## **Consumers**

45. Imported products could be more expensive for consumers if retailers pass on additional duties to consumers through increases in domestic prices. This could disproportionately affect certain groups of consumers, for example those at the lower end of the income distribution, depending on the specific sectors affected. Consumers might also see a reduction in choice of products and services available. Given the reasonably small share of UK trade under the existing EPA, in this case the Government would expect these impacts to be relatively small overall, although impacts could be noticeable on specific product lines.

## **Longer term impact**

46. In the long run, the UK would forgo the longer-term benefits that the existing EPA would have brought to the UK. This could result in long-term UK GDP being marginally lower than it otherwise would have been if the SACUM-UK EPA was not ratified. Given the small share of UK trade under the existing EPA, the Government would expect the impact on GDP to be relatively small.
47. The Government expects the SACUM-UK EPA to support jobs and economic development in the SACUM economies by providing continuity in trading arrangements with the UK including

<sup>26</sup> OECD, 2018. [Trade in Value Added \(TiVA\): Origin of value added in gross exports, December 2018. Experimental statistics](#). No data available for Botswana, Eswatini, Lesotho, Namibia or Mozambique.

duty free and quota free UK market access. This could be of benefit to partner firms producing goods for which the UK is an important export market. In 2018, the UK market accounted for 20% of total exports of wine from South Africa, in addition to 18% of total South African exports of platinum, 16% of fruits and nuts, and 7% of motor cars. The UK also accounted for 24% of total exports of beef from Botswana, and 19% of beef exports from Namibia.<sup>27</sup>

<sup>27</sup> DIT's own calculations using data from [UN.COMTRADE](#) (accessed July 2019). Figures are given for imports from South Africa, Namibia and Botswana of product categories HS 2204 (*Wine of fresh grapes, including fortified wines*), HS 7110 (*Platinum, unwrought or in semi-manufactured forms, or in powder form*), HS 08 (*Edible fruit and nuts; peel of citrus fruit or melons*), HS 8703 (*Motor cars and other motor vehicles principally designed for the transport of person*), HS 0201 and 0202 (*Meat of bovine animals, fresh or chilled; Meat of bovine animals, frozen*) reported by the UK, as a proportion of the total imports of the same products from South Africa, Namibia and Botswana reported by all countries.. These figures may differ from those implied by export data reported by partner countries.



## **Explanation of this Agreement, including Significant Differences from the Existing EPA**

48. This section provides a discussion of changes in the SACUM-UK EPA. 'General Provisions' sets out the generic technical changes that have been made, consistent with the approach taken in all continuity agreements. 'Transitional Provisions' details specific changes that have been agreed in the main Agreement, which take account of the development aims of the EPA, circumstances within SACUM, and existing discussions under the EU-SADC EPA institutions. 'Annexes and Protocols' sets out the technical changes agreed in the Annexes and Protocols.

# General Provisions

## Removal and replacement of references to the EU

49. Reference to the “European Union”, the “EU”, “EU Party” and, similarly, references to all EU Treaties, or commitments and reservations made by other “EU Member States” have also been removed or replaced, as have references to the “European Community”, the “EC”, and the “EC Party”.
50. References to “Member States” have been deleted or replaced with references to the “United Kingdom” (as appropriate).
51. References to EU institutions have been replaced with appropriate UK-equivalent institutions or deleted (as appropriate).
52. Certain provisions relevant only to the EU, such as provisions which apply only to EU Outermost Regions, have been deleted, as have provisions relating to the accession of EU Member States and to EU languages (other than English and other languages which remain relevant to particular agreements).

## Territorial Application

53. The Territorial Application article sets out to which territories the SACUM-UK EPA applies, and how it applies to them.
54. In the existing EPA, the Territorial Application article defined the EU’s territorial coverage of the agreement by referencing the Treaty on European Union (“TEU”) and the Treaty on the Functioning of the European Union (“TFEU”). In the SACUM-UK EPA, this has been replaced by an article which ensures that it applies to the UK and the territories engaged in trade for whose international relations the UK is responsible in the same way as the existing EPA did. The territories, other than UK itself, to which the SACUM-UK EPA may apply can be separated into categories based upon the application of the EU Treaties under EU law to date. These categories of territory are:
  - a. Gibraltar, to which, broadly, provisions not relating to goods or customs apply; and
  - b. the Channel Islands and the Isle of Man, to which, broadly, provisions relating to tariffs and trade in goods apply.
55. The Overseas Territories (Anguilla, Cayman Islands, Falkland Islands, South Georgia and the South Sandwich Islands, Montserrat, Pitcairn, Saint Helena, Ascension and Tristan da Cunha, British Antarctic Territory, British Indian Ocean Territory, Turks and Caicos Islands, British Virgin Islands and Bermuda) benefit from some specific provisions on cumulation with respect to rules of origin.

## Continuation of Time-Bound Periods

56. Parts of the existing EPA provide for a transitional period, requiring or allowing a party to complete an action within a certain timeframe, which may not yet have been fulfilled under the conditions of the existing EPA. These have been amended in the SACUM-UK EPA so that the SACUM-UK EPA reflects the remaining time in which the obligation must be fulfilled. As SACU is a customs union which Mozambique is not part of, they have separate time-bound commitments to reflect this, for instance on tariff elimination schedules.

## Entry into Force provisions

57. The entry into force provisions in the existing EPA have been replaced in the SACUM-UKEPA with new provisions to ensure that, whatever the scenario in which the existing EPA ceases to apply to the UK, the new EPA can enter into force as swiftly as possible. For the SACUM-UK EPA to enter into force, it must first be ratified by all the Parties, and then the Parties need to exchange notifications of the completion of the necessary domestic procedures. In UK domestic law, before a treaty subject to ratification may be ratified, it must be laid before Parliament for scrutiny under the CRAG Act.

## Provisional Application

58. The SACUM-UK EPA provides that, pending entry into force, the Parties will provisionally apply the provisions of the agreement to the extent that internal requirements allow such application ("provisional application"). This may be effected either by provisional application, where possible, or by ratification of the SACUM-UK EPA. Provisional application by the UK and SACUM must be notified to the Depository.

## Memorandum of Understanding

59. The UK and the SACU Member States and Mozambique agreed to a non-legally binding Memorandum of Understanding ("MoU") as a Bridging Mechanism to ensure continuity of trade in the event that the UK left the EU without an agreement on 31 October 2019 (which can be seen in Annex A), given that required domestic approval processes could not be completed by that date. The MoU was therefore intended to bridge the gap between a no-deal exit on 31 October 2019 and the date the Agreement comes into force. Should the UK and the SACU Member States and Mozambique be unable to complete all the required domestic processes to bring the Agreement into effect before the EU-SADC EPA ceases to apply to the UK, agreement on a new Bridging Mechanism may be needed to ensure continuity of trade.

## Joint Institutions

60. All of the joint institutions provided for in the existing EPA have been retained in full. The SACUM-UK EPA establishes a Joint Council which is responsible for the implementation and operation of the SACUM-UK EPA and has the power to take decisions in respect of all matters covered by the SACUM-UK EPA. The SACUM-UK EPA also establishes the SACUM-UK Trade and Development Committee ("the TDC") which shall assist the Joint Council. The TDC has the power to establish and set the rules of procedure for any special technical groups to deal with specific matters falling within their competence and will report to and be responsible to the Joint Council.

61. Article 104 of the SACUM-UK EPA stipulates that decisions adopted by the Joint Council, Trade and Development Committee and three special committees established under the existing EPA are deemed to have been adopted, *mutatis mutandis*, by the institutions of the SACUM-UK EPA to the extent those decisions relate to the UK and SACUM.

## Dispute Settlement

62. The economic benefits of a free trade agreement can only be realised if they are faithfully implemented and complied with. A dispute settlement mechanism in an agreement signals the parties' intention to abide by the agreement, thereby increasing business and stakeholder confidence that commitments set out in the agreement can, and will, be upheld. The dispute settlement mechanism therefore provides an important deterrent function. It also provides an effective mechanism for enforcing those commitments, and for resolving any disputes arising.

63. The SACUM-UK EPA replicates the effects of the dispute settlement provisions in the existing EPA with the exception of Article 91 and Protocol 4 where a few amendments have been necessary. In the existing EPA, Article 91 provides that if the EU and the SADC EPA States cannot agree on a common working language, each party will bear the cost of translation and interpretation into the language chosen by the party complained against, unless such language is an official language of that party. Taking into account the fact that Mozambique is the only party to the SACUM-UK EPA which does not use English as an official language, and that Mozambique is an LDC, this provision has been removed from the SACUM-UK EPA, reflecting the development-focused nature of the agreement. The effect of such a change is that the UK is likely to be expected to bear the costs of any translation and interpretation into Portuguese.
64. The existing EPA addresses the relationship between the TDCA. Protocol 4 to the existing EPA repealed the trade-related provisions of the TDCA, save for a provision on maritime transport. The TDCA contains its own dispute settlement mechanism, which continues to apply to that maritime transport provision. As the TDCA will no longer apply to the UK once it leaves the EU or at the end of any implementation period agreed between the EU and the UK, Protocol 4 to the SACUM-UK EPA replicates the effect of maritime transport provision of the TDCA. This provision will no longer be subject to the TDCA dispute settlement mechanism; rather, any issues arising would be resolved under the SACUM-UK EPA dispute settlement mechanism.
65. One of the impacts of transitioning the dispute settlement chapters in the existing EU trade agreements is that, in the event that a dispute arises, the UK will be directly responsible for any relevant costs associated with the dispute settlement process.

## Transitional Provisions

### Removal and Replacement of References to SADC and Swaziland

66. The title of the agreement has been altered to refer to the “Southern African Customs Union Member States and Mozambique” as the term “Southern African Development Community” in the existing agreement implies a larger body of countries in that regional grouping which are not EPA states. The title therefore accurately reflects all members of the Southern African Customs Union and Mozambique as parties to the agreement.
67. In 2018 the Kingdom of Swaziland formally changed its name to the Kingdom of Eswatini. The Agreement uses the current name, and accordingly the acronym for Botswana, Eswatini, Lesotho, Mozambique, and Namibia has changed from BLMNS to BELMN.

### Built-In Agenda

68. The SACUM-UK EPA includes a work programme for the Parties to work on in the future through the joint institutions. Under the “built-in agenda” the Parties agree to consider areas requiring technical adjustments, including resolving and reaching solutions for errors inherited from the existing EPA.
69. The SACUM-UK EPA replicates the commitment under the existing EPA for the Parties “to further strengthen their trade links”. The built-in agenda specifies a range of issues that the UK and SACUM agree to consider as part of future negotiations. These issues largely reflect items under ongoing discussion in the existing EPA institutions. The fulfilment of this commitment is not time-bound.
70. The built-in agenda also commits the Parties to undertake a review of the cumulation restrictions that currently apply among SACUM. Under the existing EPA, exporters in Botswana, Eswatini, Lesotho, Mozambique and Namibia are not able to cumulate materials originating in South Africa that cannot be imported directly into the EU duty free and quota free. These materials comprise around 4% of South African exports to the EU.<sup>28</sup> Under the SACUM-UK EPA also, exporters in Botswana, Eswatini, Lesotho, Mozambique and Namibia will not be able to cumulate materials originating in South Africa that cannot be imported directly into the UK duty free and quota free. The review process will carry out an analysis of the regional cumulation arrangements, including related elements, and consider the developmental impacts of any future modifications in line with the Objectives of Article 1 of the SACUM-UK EPA. The review will begin no later than 15 months from entry into force of the SACUM-UK EPA.
71. The built-in agenda will be kept under ongoing review and revised as necessary by the Trade and Development Committee.

### Sanitary and Phytosanitary Standards

72. Sanitary and Phytosanitary (SPS) articles in FTAs concern the application of food safety and animal and plant health regulations. SPS provisions in FTAs allow countries to set standards and regulations that allow for the protection of human, animal or plant life and health. SPS provisions in FTAs can increase transparency in trading by allowing the recognition of equivalent measures in relation to animal health, and import requirements, including health

<sup>28</sup> European Commission. (2018). [‘Individual reports and info sheets on Implementation of EU Free Trade Agreements’](#), p 227.

certification. Changes to SPS provisions in continuity agreements have been related to non-substantive technical changes and we do not expect them to have an impact.

73. In recognition of the development needs in the region and to ensure that risks of trade disruption are minimised, the UK has agreed to transitional implementation provisions regarding SPS as part of the “Transitional Implementation Arrangements” provision, to facilitate SACUM’s smooth transition to the new agreement. In relation to SPS, this provides SACUM with a twelve-month grace period for the use of EU model health certificates and plant protection certificates accepted by the EU, with a possibility of extension for a further six months by mutual consent. Furthermore, the transitional SPS text provides SACUM with a six-month grace period during which the EU list of approved establishments will be used by the UK, with a possibility to extend for a further six months by mutual consent. Both grace periods begin from the date of the UK’s exit from the European Union.

### **Other Transitional Arrangements**

74. Technical Barriers to Trade (TBT) articles in trade agreements cover aspects relating to regulations, standards and conformity assessments for goods. The SACUM-UK EPA provides for the smooth transition of TBT aspects in order to ensure continuity of market access.
75. There is also a transitional implementation arrangement for exports subject to TRQs exported under the existing EPA and cleared after entry into force of the SACUM-UK EPA, such that they will be counted against TRQs under the new agreement.

# Annexes and Protocols

## Goods

76. Goods chapters in trade agreements set out the treatment and the level of access to the domestic market granted to goods from partner countries. This includes setting tariff levels on various products, establishing bilateral safeguards and determining the Rules of Origin.
77. In the SACUM-UK EPA, commitments on tariffs for both the UK and SACUM have been transitioned without changes. This means that tariff preferences applied by the UK to goods from SACUM will remain the same as those applied by the EU under the existing EPA, and likewise those countries will continue to apply the same preferences to goods from the UK that they are currently applying to goods from the EU.
78. In cases where import duties remain subject to staged tariff reductions, reductions will continue at the same pace as scheduled in the existing EPA.

## Tariff Rate Quotas

79. TRQs allow a certain quantity of a product to enter the market at a zero or reduced tariff rate. Imports above the quota are subject to a higher tariff rate – usually the MFN rate. The EU has agreed TRQs, both for imports to the EU and to partner countries, in some of its trade agreements. In order for products to be able to continue to benefit from the use of TRQs in trade between the UK and partner countries, these quotas need to be present in the new UK agreements with those partners.
80. TRQs administered by the UK and by FTA partners have been re-sized to reflect the fact that the UK is a smaller importer and exporter than the EU-28. Solutions were agreed with partner countries to set quotas to a sufficient level that would allow for continuity of historical trade flows, in most circumstances, for importers and exporters from both sides.
81. Tables 5 and 6 set out the new SACUM-UK quotas applicable under the new agreement. Table 5 sets out the TRQs administered by the UK, which under the SACUM-UK EPA are only applicable to imports from South Africa. Table 6 sets out the TRQs which are administered by SACU on imports from the UK.
82. TRQs have been resized based on a range of evidence including historical usage data and trade flow data. In order to address future market access opportunities for UK and partner businesses, it was also agreed to use a proxy indicator to set TRQs where data showed historic trade was low. This includes instances where the UK or partner's usage of a TRQ was zero. Doing so allows future market access opportunities for UK and partner businesses using a fair and evidence-based methodology.
83. Without transitioning these TRQs, and without any other mitigating actions, goods imported from South Africa that are currently covered by TRQs in the existing EPA could face MFN tariffs. This could make these imports more expensive. The nature of the impact of this will depend on a number of factors, including existing trading patterns and the behaviour and responsiveness of domestic consumers and businesses to the change in tariff. UK imports from South Africa, based on trade data (at HS6 level) covering these products were worth £134m in total in 2018, equivalent to 2.2% of total UK goods imports from South Africa. Trade in goods currently exported from the United Kingdom to SACU could also be adversely affected if the relevant TRQs are not transitioned. In the absence of any explicit action by SACU, that trade would face MFN tariffs. As explored above for UK imports, the nature of the impact will depend on a number of factors.

84. Based on historical usage of the quotas, the overall, immediate, impact on UK producers and consumers resulting from this approach to re-sizing TRQs is expected to be limited.

**Table 5: List of TRQs administered by the UK for imports from South Africa and new quota volumes (tonnes unless stated otherwise)**

Quota No.	Product description	New UK quota volume	Agreed annual increase in UK quota volume
091801	Skimmed milk powder	159	NA
091802	Butter	159	NA
091804	Strawberries	127	2.5
091806	Refined sugar or cane sugar for refining	22,045	NA
091808	Cane sugar for refining	49,320	NA
091818	White crystalline powder	159	NA
091820	Citrus jams	32	NA
091822	Canned fruit, except tropical canned fruit	18,181	NA
091824	Tropical canned fruit	999	19
091826	Frozen orange juice	350	6.5
091829	Apple juice	1,218	37 <sup>29</sup>
091830	Active yeast	111	NA
091892	Wine in containers of less than or equal to 2 litres (litres)	49,118,818	459,606
091893	Wine in any volume of container (litres)	21,050,922	196,974
091894	Ethanol	25,448	NA

<sup>29</sup> It is an increase of 37 tonnes for the period of 10 calendar years beginning from 2017, thereafter an increase of 22.5 tonnes only.



**Table 6: List of TRQs administered by SACU for imports from the UK and new quota volumes (tonnes unless stated otherwise)**

<b>Product description</b>	<b>New SACU quota volume</b>	<b>Agreed annual increase in SACU quota volume</b>
Wheat and meslin	30,090	NA
Barley	1,003	NA
Cheese	1,390	27
Pig fat	20	NA
Cereal based food preparations	796	NA
Pork	150	NA
Butter and other dairy fats	94	NA
Ice cream	24	NA

## Rules of Origin

85. In trade agreements, Rules of Origin are used to determine the economic nationality of a good. To qualify for preferential tariff rates, a good must “originate” in the territory of one of the parties to the agreement. Trade agreements may also allow materials originating and/or processing in a country other than the exporting party to count towards meeting the specific origin requirements for preferential treatment, a process known as “cumulation”.

86. There are two categories relevant to determining whether goods “originate” in the exporting country for the purposes of:

- a. **Wholly obtained** – these are goods that are wholly obtained or produced entirely in a single country. Examples include 1) mineral products extracted from the soil; 2) live animals born and raised.
- b. **Substantial transformation** – these are goods that are made from materials which come from more than one country, and the origin is therefore defined as that of the country where the goods were last substantially transformed. This can be determined in three ways:
  - I. **Value added** – this type of rule requires that a proportion of the final value of the product be added in the exporting country.
  - II. **Change in Tariff Classification (CTC)** – This type of rule requires that the final product be sufficiently different from the imported materials so that it moves to a different tariff classification altogether.

III. **Specific processing or manufacturing** – These rules typically apply where value-added or CTC rules may not adequately determine originating status, and where specific processes are required to meet originating criteria.

87. As a member of the EU, all UK content is currently considered as “originating” in the EU and UK exports are designated as “EU origin”. This means that originating materials from, and processing in, the UK and the rest of the EU can be used interchangeably in bilateral trade with existing EU FTA partners. This will no longer be the case when existing EU FTAs stop applying to the UK. At this point, the designation of UK exports will shift from “EU” originating to “UK” originating and EU content will (unless specific provision is made in new arrangements) no longer count towards meeting the origin requirements for preferential treatment for either party. This would have implications for goods traded between the UK, EU and SACUM EPA.
88. To address these implications and to provide maximum continuity for business, it has been agreed in the SACUM-UK EPA that EU materials and processing can be recognised (i.e. cumulated) in UK and SACU Member States and Mozambique exports between each other. This will apply for an interim period of 3 years, unless and until a preferential trade agreement between the UK and the EU is applicable. Not later than six months before the end of this interim period, the UK and SACUM shall consult as to whether the period should be extended or whether the relevant provisions require modification. Should modification be required, the parties shall aim to put in place arrangements that are no less beneficial in respect of trade between them. This is reflected and further detailed in Article 4A of Protocol 3
89. The UK and SACUM have agreed to remove non-UK EU Overseas Countries and Territories (“EU OCTs”) from the cumulation arrangements in Article 4 of Protocol 1 and review cumulation arrangements with them as part of the built-in agenda. The relevant references to OCTs have been updated to refer to UK OCTs only. This adjustment has been assessed as having minimal effect as UK trade in goods with non-UK EU OCTs is negligible.<sup>30</sup>
90. The other existing cumulation provisions have been replicated. All cumulation provisions are set out in detail in Title II of Protocol I to the SACUM-UK EPA (Definition of the concept of ‘originating products’) and are subject to satisfying certain conditions specified in the agreement.
91. Products taken from the sea outside of a Party’s territorial waters are considered wholly obtained (i.e. originating) if taken by a vessel that satisfies the definition of “vessels” in Article 7 of Protocol 1 to the SACUM-UK EPA. This also applies for the purpose of determining the origin of products made aboard “factory ships” exclusively from products taken outside territorial waters by a Party’s vessels.
92. The SACUM-UK EPA replicates the existing requirements that vessels and factory ships be registered in, and sail under the flag of, one of the Parties, and be at least 50% owned by nationals of, or companies with sufficient links to, one of the Parties. EU nationals and companies are not, however, included in the ownership criteria of the SACUM-UK EPA (Article 7 paragraph 2 (c) (i) and (ii)), which must now be fulfilled only within the UK, a SACU Member State or Mozambique. This is an issue that the parties have agreed to consider as part of future negotiations under the built-in agenda. This adjustment is expected to have a minimal effect given the nature of trade from the UK to SACUM.
93. If cumulation of EU content for the UK and SACUM were not permitted under the SACUM-UK EPA, some UK and SACUM based exporters might find themselves unable to access preferences as they are currently able to under the existing EPA. UK exporters to SACUM countries who rely on EU content might have to revert to paying MFN tariff rates, if they

<sup>30</sup> Source: [ONS \(2019\), UK total trade: all countries, non-seasonally adjusted.](#)

continued using EU content, or they might have to review and reassess their existing supply and value chains as a result of this change. The impact would, of course, vary across sectors.

94. The SACUM-UK EPA provides only for trade between the UK and SACUM and does not provide for either Party’s direct trade with the EU, including, for example, where UK and SACUM based exporters use content from each other in exports to the EU.

## Origin Quotas

95. Origin quotas, also known as derogations, allow a volume of specific product lines to be exported under a more lenient rule of origin. They allow exporters who may have struggled to meet the origin requirements in the list of product-specific rules to secure preferential access for a specified amount of their product.
96. The only automatic derogation quota in the existing EPA relates to exports of prepared or preserved Albacore tuna from Namibia (not other SADC EPA States) to the EU.
97. To maintain the market access offered under the existing quota, the UK and SACUM have re-sized the automatic derogation quota to better reflect bilateral trade flows and the fact that the UK is a smaller market than the EU28.
98. If the automatic derogation was not transitioned, and no other mitigating actions taken, imports from Namibia for this product, which are currently covered by the quota in the existing EPA, could face more restrictive rules of origin under the SACUM-UK EPA, and potentially even MFN tariffs. The nature of the impact of this will depend on a number of factors, including existing trading patterns and the response of domestic consumers and businesses to the change in tariff.
99. The overall, immediate, impact on UK producers and consumers resulting from this approach to resizing automatic derogation quotas is expected to be limited. The UK did not import any products from Namibia under the relevant HS codes in 2018. In order to preserve future market access opportunities for Namibian businesses, it was agreed to use a proxy based on overall trade flow data where historic trade in the specific product was very low.

**Table 5: List of origin quotas from Namibia to the UK and new quota volumes**

Order Number <sup>31</sup>	Product description	New UK quota volume (tonnes)
09.1600	Prepared or preserved Albacore tuna	254 tonnes

## Geographical Indications and Trade in Wines and Spirits

100. The SACUM-UK EPA retains the protections provided in the existing EPA for UK and South African GIs.<sup>32</sup> The retained protections include those for Irish Whiskey/Uisce Beatha Eireannach/Irish Whisky (Irish Whiskey) and Irish Cream, which are GIs that relate to the territory of both Northern Ireland and the Republic of Ireland, known as ‘transborder GIs’. The

<sup>31</sup> Inward quotas, which are administered by the European Union, each have a unique order number. Further information about existing EU quotas can be found on the [EU Customs and Taxation website](#).

<sup>32</sup> Protocol 3 of the existing EPA applies to the EU and South Africa only.

SACUM-UK EPA specifies in footnotes added to Protocol 3 that South Africa will undertake a domestic procedure in order to enable it to continue protecting Irish Whiskey and Irish Cream under the SACUM-UK EPA. However, in the meantime, there will be no impact on the continued use and protection of the Irish Whiskey and Irish Cream GIs because they will continue to be protected under the existing EPA and the SACUM-UK EPA confirms that operators can continue to use the relevant GI where their product complies with the GI product specification.

101. All other GIs and protected designations which relate to EU Member States that are not the UK are not incorporated into the SACUM-UK EPA Annex I to Protocol 3. This is because the SACUM-UK EPA can only protect GIs of states that are party to the agreement. This has no effect on existing GI protections relating to EU Member States, which will remain protected under the existing EPA. We do not expect these changes to have an impact on bilateral trade flows between the UK and SACUM.
102. The SACUM-UK EPA recognises the importance of continuity in existing wine trade to both parties. A new provision has been inserted in Protocol 3 which sets out both parties' intention to avoid disruption in trade in wine. We do not expect this change to have an impact on bilateral trade flows between the UK and SACUM. Furthermore, the UK and South Africa have agreed to consider entering into future negotiations on laws and regulations concerning winemaking practices, import documentation, as well as labelling and presentation of wine sector products.

## **Services**

103. Services provisions in trade agreements set out the treatment and the level of access to the domestic market granted to that trade partner's service suppliers and services. Commitments build upon the level of access and the treatment granted to all WTO Members, whilst protecting governments' right to regulate their domestic markets.
104. Amongst the existing EU FTAs, the content of the services chapters and depth of the commitments undertaken vary considerably. The variety of these services provisions have in some cases necessitated a bespoke approach to deliver continuity in services commitments between the UK and the third country. Some agreements have not required amendment whilst others have required technical alteration to their text to deliver continuity of effect. Where such technical changes have been necessary the effects of the original commitments have been replicated as far as possible.
105. Chapter IX (Trade in Services and Investment) contains the SACUM-UK EPA's services content. There are also services provisions which were in the Cotonou Agreement and the TDCA and which have been incorporated into a new Annex VII and into Protocol 4 respectively, which replicate the effect of the EU agreement.
106. Minor changes have been made to the services provisions from the Cotonou Agreement which are reflected in Articles 8 and 9 of Annex VII to the SACUM-UK EPA. These changes reaffirm the principles that will apply to any development cooperation provided by the UK to Botswana, Eswatini, Lesotho, Namibia, and Mozambique related to their capacity to supply services, including maritime transport services.
107. An additional provision in Article 10 is in relation to Information and Communication Technologies and was made in the spirit of the SACUM-UK EPA to further reaffirm the principles that will apply to any development cooperation (Article 7 of Annex VII). This is not likely to have a significant impact on trade flows.

## Trade Remedies

108. Trade remedies provide a safety net for domestic industry against unfair or injurious trading practices caused by dumped, subsidised or unexpected surges of imports of goods. All major WTO members have a trade remedies regime; the UK will operate its own regime once outside the EU.
109. Articles 34, 35, 36, 37 and 38 of the existing EPA allow parties to apply safeguard measures when surges of imports of goods resulting from tariff reductions under the agreement are causing injury to a domestic industry; when the import of agricultural products into SACU exceed specified reference quantities; and where measures are needed to prevent shortages of foodstuff or other products.
110. In relation to SACU's agricultural safeguards under the SACUM-UK EPA, quantities have been resized to reflect that the UK is a smaller importer than the EU-28. For products where there was sufficient trade, the re-sized reference quantities were based on a methodology, similar to that taken with re-sizing of TRQs based on historic trade. A proxy indicator was used where there was insufficient trade). The approach taken to rounding and applying the pro-rata principle was consistent with the methodological approach taken to re-sizing TRQs.
111. Transitional implementation provisions on safeguard measures in the SACUM-UK EPA allow for any safeguard measure applied in accordance with Articles 34-38 of the existing EPA on products originating from the UK, a SACU Member State or Mozambique, and in place when the UK leaves the EU, to continue to be applied under the SACUM-UK EPA. A measure can be applied for the remainder of its duration and at the same level at which it is applied under the existing EPA.
112. At the point of signature of the SACUM-UK EPA there was only one safeguard measure being applied under the existing EPA. This current safeguard is being applied by SACU to EU exports of frozen bone-in poultry pieces. The requirements of the SACUM-UK EPA transitional implementation provisions on safeguard measures ensure that measures applied under this provision against the UK are applied for no longer, and at a level no higher, than if the effects of the existing EPA were continued.
113. The SACUM-UK EPA requires any extension to a general bilateral safeguard measure under Article 34(6)(b) of the existing EPA to be limited to the level needed to remedy or prevent serious injury to the applying party's domestic industry. This will require the level of the measure to be adjusted to reflect the most recent import levels from the UK, a SACU Member State, or Mozambique.
114. The SACUM-UK EPA provides that a safeguard measure under Articles 34-38 of the SACUM-UK EPA cannot be applied to a product which was subject to a safeguard measure under the transitional implementation provision until at least a year has passed since the termination of the measure. This will encourage the applying party's domestic industry to make adjustments in anticipation of the termination of a measure and ensure the proportionate use of safeguards.
115. The SACUM-UK EPA reserves the Parties' position on the validity of any safeguard measure applied under the existing EPA and is without prejudice to any challenge of a measure under Part III of the SACUM-UK EPA.

## Entry Price System

116. The existing EPA contains references to maintaining the entry price system ("EPS"), with respect to imports from South Africa. The EPS provides for an additional specific import tariff

to be levied on 15 kinds of fruits and vegetables entering the EU market, which varies proportionally depending on the gap between the product's actual import price and a synthetic import price calculated by the Commission. Some of these fruits and vegetables are produced in the UK whilst others are not. The UK Government has not yet decided whether or not to apply the EPS as part of its long-term MFN tariff policy. To reflect this, the SACUM-UK EPA states that the EPS may be applied (rather than maintained). We do not expect this to have an impact on trade flows.

## **Bilateral Safeguards – Sugar**

117. The existing EPA includes a provision that allows the EU:

- a. to apply a bilateral safeguard duty to imports from SADC EPA States if certain conditions are satisfied, including for example if a disturbance in an EU agricultural product market arises (the 'bilateral safeguard'); and
- b. to determine that, in respect to imports from BELMN, a disturbance in the EU sugar market for this purpose has arisen if the price of sugar falls below a certain level (the 'trigger price mechanism'). In line with the principle of technical replication we are transitioning these provisions and establishing a trigger price mechanism for the UK sugar market.

118. Data is not, however, available to determine what the appropriate level for the trigger price mechanism should be in the UK at this time. This is particularly the case given recent volatility in sugar prices following the reform of the EU domestic sugar regime. To ensure that the SACUM-UK EPA is operable upon entry into force, we have agreed with our partners to suspend the trigger price mechanism temporarily. The UK and SACUM have agreed to review the price trigger after entry into force of the SACUM-UK EPA. The price trigger set in the existing EPA will reapply after a period of five years, unless the Parties reach agreement on a replacement trigger price.

119. We do not envisage that suspending the safeguard mechanism will have an impact on the UK. Given the substantial convergence of UK and EU sugar prices with those prevailing on world markets, it is unlikely that it will be appropriate to deploy safeguards in the foreseeable future. Indeed, the EU has not previously needed to utilise this mechanism to implement safeguard duties for sugar. The temporary suspension of the trigger price mechanism does not prevent the UK applying a bilateral safeguard duty to sugar imports based on the standard procedures applicable in the SACUM-UK EPA.

## **Customs and Trade Facilitation**

120. In FTAs, Customs and Trade Facilitation is used to allow for the efficient transport of goods across national borders whilst seeking to minimise the administrative and operational burden on traders as well as associated costs through measures such as Customs Cooperation and Transparency. The SACUM-UK EPA has transitioned Protocol II on Mutual Administrative Assistance in Customs Matters, with only minor modifications.

## **Cotonou Agreement**

121. The existing EPA contains a range of references to the Partnership Agreement between the EU and the African, Caribbean and Pacific (ACP) Group of States<sup>33</sup> ("the Cotonou

<sup>33</sup> 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, signed in Cotonou on 23 June 2000, revised on 25 June 2005, and further revised on 22 June 2010.

Agreement”). The Cotonou Agreement provides a framework for the EU’s political, development and trade relations with these 79 developing countries. When the UK leaves the EU the Cotonou Agreement will cease to apply to the UK.

122. Some references to the Cotonou Agreement contained in the existing EPA can be deleted without any change to the effect of the SACUM-UK EPA. For others, we have sought to ensure continuity of the effect of the references in the existing EPA to the Cotonou Agreement which are relevant to the UK’s trade relationship with SACUM. Those references include the objectives and essential and fundamental elements set out in the Cotonou Agreement and the ability to take appropriate measures in the event of a violation of those elements. For these references, the UK has replicated the relevant provisions of the Cotonou Agreement in the SACUM-UK EPA in Annex VII.
123. Annex VII replicates the language of the Cotonou Agreement and the existing EPA to ensure that respect for human rights, democratic principles and the rule of law, and good governance remain as essential and fundamental elements of the SACUM-UK EPA. If needed, appropriate measures can be taken in the event of a violation of these elements. Annex VII also outlines the principles that will apply to any development cooperation provided by the UK to the SACUM EPA states to support implementation of the SACUM-UK EPA. The overall result is a replication of the effects of the Cotonou references in the existing EPA, and we do not expect this to have an impact.

## **Trade, Development and Cooperation Agreement (TDCA)**

124. The EU-SADC EPA included references to the TDCA between the EU and South Africa which preceded the existing EPA. The relationship between the TDCA and the SACUM-UK EPA is set out in Protocol 4. It recognises that the TDCA will no longer apply to the UK when it ceases to be a Member State or at the end of any implementation period during which the rights and obligations under the TDCA continue to apply to the UK. We have replicated the effects of the references to the TDCA that are relevant to the UK and South Africa’s trade relationship. This ensures that there will be no trade impact when the TDCA no longer applies to the UK.

## **Amending the SACUM-UK EPA**

125. Amendments may be made to the SACUM-UK EPA, including its annexes, appendices and protocols, following a decision of the Joint Council. Upon adoption by the Joint Council, such amendments will enter into force subject to ratification, acceptance or approval by the Parties.
126. Any amendment to a treaty which would require changes to UK law would, before coming into effect, first require those changes to be made domestically. This means that Parliament would have the opportunity to scrutinise and debate such changes to UK law in the normal manner.



## Annex A

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND (“the United Kingdom” or “UK”)

AND

THE GOVERNMENTS OF THE REPUBLIC OF BOTSWANA, THE KINGDOM OF ESWATINI, THE KINGDOM OF LESOTHO, THE REPUBLIC OF MOZAMBIQUE, THE REPUBLIC OF NAMIBIA AND THE REPUBLIC OF SOUTH AFRICA (the “Southern African Customs Union (“SACU”) Member States” and Mozambique”)

CONCERNING THE TEMPORARY ARRANGEMENTS FOR THE CONTINUATION OF THE EFFECTS OF THE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE ONE PART, AND THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY ECONOMIC PARTNERSHIP AGREEMENT STATES OF THE OTHER PART (“THE EU-SADC EPA”)

The Government of the United Kingdom and the Governments of the SACU Member States and Mozambique (hereinafter referred to as “the Participants”),

- *Noting* that the United Kingdom will, in accordance with European Council Decision (EU) 2019/584 taken in agreement with the United Kingdom of 11 April 2019 extending the period under Article 50(3) of the Treaty on European Union, cease to be a Member State of the European Union on 31 October 2019,
- *Recognising* that the Participants have signed the text of an Economic Partnership Agreement between the Republic of Botswana, the Kingdom of Eswatini, The Kingdom of Lesotho, The Republic of Mozambique, The Republic of Namibia and The Republic of South Africa of the one part and the United Kingdom, of the other part (“the SACUM-UK EPA”) to continue the treatment and effects, as between them, of the EU-SADC EPA,
- *Recognising* that the Participants will not have completed the domestic procedures required for the SACUM-UK EPA to be brought into force as between them prior to 31 October 2019,
- *Desiring* nevertheless to continue the treatment and effects of the relationship between the Participants provided for by the EU-SADC EPA without interruption,

Have reached the following understanding:

### Section 1

#### Purpose

The Participants intend that the treatment and effects of the EU-SADC EPA should continue as between them, without interruption once the EU-SADC EPA ceases to apply to the United Kingdom.

## Section 2

### Treatment of the provisions of the EU-SADC EPA

- 21 In pursuance of the purpose in Section 1, the Participants have decided to treat the provisions of the EU-SADC EPA as having effect as between them, *mutatis mutandis*, for the period between the date on which the EU-SADC EPA ceases to apply to the United Kingdom and the entry into force of the SACUM-UK EPA. The continuation, *mutatis mutandis*, of the treatment and effects of the EU-SADC EPA as between the Participants will take due account of the fact that the United Kingdom will no longer be a Member State of the European Union.<sup>1</sup>
- 22 The Participants have decided that, for the purposes of applying the treatment and effects of the EU-SADC EPA between them on a temporary basis, until the SACUM-UK EPA enters into force, in accordance with paragraph 2.1:
- (i) **Treatment of tariff rate quotas (“TRQs”)**  
Trade in products subject to TRQs will continue between the Participants as as under the EU-SADC EPA, in accordance with the quantities specified in Annex I to this Memorandum.
  - (ii) **Treatment of European Union content in terms of Rules of Origin**  
For the purposes of determining whether a product traded between the SACU Member States or Mozambique and the UK is originating in one of them, European Union content in such products will continue to be recognised,<sup>2</sup> in order to continue the effects of the EU-SADC EPA.
  - (iii) **Treatment of automatic derogation**  
The automatic derogation in Article 43(10) of Protocol 1 of the EU-SADC EPA will continue to apply to trade between Namibia and the UK, as indicated by the annual quota in Annex II to this Memorandum.
  - (iv) **Treatment of Geographical Indications (“GIs”)**  
Protocol 3 of the EU-SADC EPA continues to have effect between the UK and South Africa but only the GIs that relate to South Africa and the UK in Protocol 3 form part of this Memorandum. For the avoidance of doubt, the “Irish Cream” and “Irish Whiskey/Uisce Beatha Eireannach/Irish Whisky” GIs form part of this Memorandum and, as is the case under the EU-SADC EPA, may be used by any operator marketing the product concerned conforming to the corresponding product specification.

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<sup>1</sup> For greater certainty, this Memorandum will not apply to the Sovereign Base Areas of Akrotiri and Dhekelia in the Republic of Cyprus.

<sup>2</sup> Materials originating in the European Union will be considered as materials originating in a SACU Member State, Mozambique or the UK when incorporated into a product obtained in that country. Working or processing carried out in the European Union will be considered as having been carried out in a SACU Member State, Mozambique or the UK when the materials obtained undergo subsequent working or processing in that country. The working or processing in that country should in any case go beyond the operations referred to in Article 9(1) of Protocol 1 of the EU-SADC EPA.

- 23 Notwithstanding paragraph 1, the Participants have decided that the following provisions in the EU-SADC EPA will not be treated as having effect between them:
- (a) Part III on Dispute Avoidance and Settlement; and
  - (b) Part V on the Institutional provisions in the EU-SADC EPA.

### Section 3

#### Entry into force of the SACUM–UK EPA

- 3.1 The Participants will use their best endeavours to the full extent possible to bring the SACUM–UK EPA into force as between them within six (6) months of this Memorandum coming into effect.
- 3.2 The Participants accept that, following entry into force of the SACUM-UK EPA, any action carried out pursuant to this Memorandum will be understood to have been carried out pursuant to the SACUM–UK EPA.

### Section 4

#### Amendment

This Memorandum may be amended at any time by the mutual written consent of the Participants.

### Section 5

#### Termination

This Memorandum may be terminated by any Participant giving two (2) months' written notice, or such shorter period as the Participants may agree. In any event, this Memorandum will terminate without any further notice on the earlier of the date of entry into force of the SACUM–UK EPA and six (6) months from the date that this Memorandum comes into effect. The Participants will consult to determine how any outstanding matters should be dealt with.

### Section 6

#### Disputes

The Participants will consult at the request of any Participant identifying a concern about the interpretation or application of this Memorandum and endeavour to resolve the matter between themselves. The Participants accept that they will not seek recourse to any national or international tribunal or any third party for settlement of such matters.

### Section 7

#### Effective date

This Memorandum will come into effect on 31 October 2019, if:

- (i) the EU-SADC EPA ceases to apply to the UK on that date;
- (ii) all the Participants have signed this Memorandum; and
- (iii) the SACUM-UK EPA has not entered into force.

The foregoing represents the understanding reached between the Participants on the matters referred to in this Memorandum.

Signed in duplicate at [X] on [X] in English and Portuguese, both texts having equal validity.

For the Government of the  
Republic of Botswana:

For the Government of the  
Kingdom of Eswatini:

For the Government of the  
Kingdom of Lesotho:

For the Government of the  
Republic of Mozambique:

For the Government of the  
Republic of Namibia:

For the Government of the  
Republic of South Africa:

For the Government of the  
United Kingdom of Great Britain  
and Northern Ireland:

## Annex I – Treatment of TRQs

### Part 1 – TRQs granted by the UK for goods originating in South Africa

<b>EU-SADC EPA provision</b>	<b>Description</b>	<b>2019 quantity <sup>3</sup></b>	<b>2020 quantity</b>
Paragraph 12(a) of Annex I	Skimmed milk powder	159 metric tons	159 metric tons
Paragraph 12(b) of Annex I	Butter	159 metric tons	159 metric tons
Paragraph 12(f) of Annex I	Strawberries	127 metric tons	129.5 metric tons
Paragraph 12(g) of Annex I	Refined sugar or cane sugar for refining	22045 metric tons	22045 metric tons
Paragraph 12(g) of Annex I	Cane sugar for refining	49320 metric tons	49320 metric tons
Paragraph 12(h) of Annex I	White crystalline powder	159 metric tons	159 metric tons
Paragraph 12(i) of Annex I	Citrus jams	32 metric tons	32 metric tons
Paragraph 12(j) of Annex I	Canned fruit, except tropical canned fruit	18181 metric tons	18181 metric tons
Paragraph 12(k) of Annex I	Tropical canned fruit	999 metric tons	1018 metric tons
Paragraph 12(l) of Annex I	Frozen orange juice	350 metric tons	356.5 metric tons
Paragraph 12(m) of Annex I	Apple juice	1218 metric tons	1255 metric tons
Paragraph 12(n) of Annex I	Active yeast	111 metric tons	111 metric tons
Paragraph 12(o) of Annex I	Wine in containers of less than or equal to 2 litres	49 118 818 litres	49 578 424 litres
Paragraph 12(o) of Annex I	Wine in any volume of container	21 050 922 litres	21 247 896 litres
Paragraph 12(p) of Annex I	Ethanol	25 448 metric tons	25 448 metric tons

<sup>3</sup> As this Memorandum will come into effect on 31 October 2019 if the conditions in section 7 are satisfied, the TRQ quantities, which will be applicable for the remainder of 2019, will be reduced pro rata to the remaining number of days of 2019.

Part 2 – TRQs granted by SACU for goods originating in the UK

<b>EU-SADC EPA provision</b>	<b>Description</b>	<b>2019 quantity <sup>4</sup></b>	<b>2020 quantity</b>
Paragraph 13(a) of Annex II	Wheat and meslin	30 090 metric tons	30 090 metric tons
Paragraph 13(b) of Annex II	Barley	1 003 metric tons	1 003 metric tons
Paragraph 13(c) of Annex II	Cheese	1 390 metric tons	1 417 metric tons
Paragraph 13(d) of Annex II	Pig fat	20 metric tons	20 metric tons
Paragraph 13(e) of Annex II	Cereal based food preparations	796 metric tons	796 metric tons
Paragraph 13(f) of Annex II	Pork	150 metric tons	150 metric tons
Paragraph 13(g) of Annex II	Butter and other dairy fats	94 metric tons	94 metric tons
Paragraph 13(h) of Annex II	Ice cream	24 metric tons	24 metric tons

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<sup>4</sup>As this Memorandum will come into effect on 31 October 2019 if the conditions in section 7 are satisfied, the TRQ quantities, which will be applicable for the remainder of 2019, will be reduced pro rata to the remaining number of days of 2019.

## Annex II – Treatment of Automatic Derogation

EU-SADC EPA provision	Description	2019 quantity <sup>5</sup>	2020 quantity
Article 43(10) of Protocol 1	Prepared or preserved Albacore tuna (Thunnus alalunga) of HS Heading 1604, manufactured from non-originating Albacore tuna of HS Headings 0302 or 0303	254 metric tons	254 metric tons

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<sup>5</sup> As this Memorandum will come into effect on 31 October 2019 if the conditions in section 7 are satisfied, the automatic derogation quantity, which will be applicable for the remainder of 2019, will be reduced pro rata to the remaining number of days of 2019.











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